PART THREE

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)

CONTENTS

CHAPTER I

INTRODUCTION

Background to the Survey

1. In accordance with article 19 of the Constitution of the International Labour Organisation, the Governing Body of the International Labour Office requested those governments which had not ratified the Conventions dealing with forced labour to supply reports in 1967 indicating the position of their law and practice in regard to the standards contained in these Conventions. The supply of these reports has provided an opportunity for the Committee of Experts, in accordance with its usual practice, to make a general review of the situation in the field covered by the forced labour Conventions, both in ratifying States and in countries which have not ratified both or either of these Conventions.

2. The forced labour Conventions were chosen by the Governing Body for reports under the article 19 procedure as part of the action undertaken by the I.L.O., on the occasion of the International Year for Human Rights, to review the effectiveness of the measures taken by the Organisation to promote and safeguard human rights and to explore new avenues of advance. Such a review was called for in the 1966 Conference resolution on the contribution of the I.L.O. to the International Year for Human Rights, and will be at the centre of the discussion to be undertaken by the Conference at its 1968 session on the basis of the report concerning I.L.O. action in the human rights field which the Director-General is submitting to it. The present survey of the situation in regard to one important area of human rights protection of concern to the I.L.O. may thus assist the Conference in seeing in fuller perspective the problems and potentialities of the Organisation's action.

3. The present survey also acquires added significance in view of the adoption by the United Nations General Assembly in December 1966 of the human rights Covenants. The Covenant on Civil and Political Rights contains specific provisions against forced or compulsory labour [1], and the Covenant on Economic, Social and Cultural Rights recognises the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.[2] The work of the International Labour Organisation in analysing the problems arising in the implementation of its own Conventions dealing with forced labour accordingly serves to clarify issues which are liable to arise also in relation to the putting into effect of obligations under the Covenants.

4. Forced labour was the first basic human rights subject within the Organisation's competence to be dealt with in I.L.O. standards. Given the close historical and institutional relationship between slavery and forced labour, international action against the latter was seen as an extension of earlier measures aimed at the

[1] Article 8, para. 3.

[2] Article 6.

suppression of slavery, and indeed the steps which resulted in the drawing up of the Forced Labour Convention of 1930 were initiated as a result of discussions which took place in the League of Nations at the time of adoption of the Slavery Convention of 1926. While the elimination of slavery and slavery-like practices is receiving the continuing attention of the United Nations, the ending of all forms of forced labour remains a major preoccupation of the International Labour Organisation. As recently as 1965 the International Labour Conference reaffirmed its condemnation of forced labour and all practices involving the use of forced labour, and urged that the necessary action be taken to put an end to these practices.

Development of I.L.O Standards

5. When the first I.L.O. Convention on forced labour was adopted in 1930, forced labour was largely a colonial phenomenon. In large areas of the world then under a colonial administration various forms of coercion were in use in order to obtain labour which was not forthcoming spontaneously for the development of communications and the general economic infrastructure, and for the working of mines, plantations and other activities. Compulsion to work was developed within a system of administration frequently relying on traditional tribal relationships. Accordingly, although the Convention of 1930 was not limited in scope to countries of any particular political or economic status, but was intended to be an instrument of general application [1], its provisions were fashioned to take account of conditions then prevalent in colonial territories. Since that time, significant changes have taken place. On the one hand, as a result of the world-wide trend towards independence, there has been a major evolution in the political status and conditions of many of the territories concerned. On the other hand, far-reaching changes have taken place in labour market conditions, which are characterised no longer by reluctance of populations to offer their services for wage-earning employment, but in many instances rather by a rural exodus and the resultant problems of finding employment for large numbers of work-seekers, particularly the young. The question of free choice of employment thus arises today in a political and economic setting which is radically different from that prevailing when the first forced labour Convention was framed, and forms part of the wider problem of developing positive employment policies designed to meet both individual and national needs.

6. Already before the above transformations manifested themselves, the I.L.O. had come to adopt new approaches to the problems of forced labour. Discussions which took place both in the United Nations and in the I.L.O. in the years following the Second World War suggested that in a number of countries systems of forced labour had been established which went beyond the situations examined in the preparatory work leading to the 1930 Convention. International inquiries were undertaken by an Ad Hoc Committee on Forced Labour established jointly by the United Nations and the I.L.O., which reported in 1953 [2], and subsequently by an I.L.O. Committee on Forced Labour.[3] These inquiries revealed the existence in

[1] See *Forced Labour*, Report I, International Labour Conference, 14th Session, Geneva, 1930, pp. 126-128, and the general observation on this Convention in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Appendix), International Labour Conference, 32nd Session, Geneva, 1949, pp. 25-26.

[2] *Report of the Ad Hoc Committee on Forced Labour*, United Nations document E/2431, I.L.O. Studies and Reports, New Series, No. 36 (Geneva, 1953).

[3] See Report of the I.L.O. Committee on Forced Labour (1956-1957), I.L.O. : *Official Bulletin*, Vol. XLII, 1959, No. 6, p. 269, and Report of the I.L.O. Committee on Forced Labour (1959), ibid., p. 236.

the world of systems of forced labour as a means of political coercion, as a regular and normal means of carrying out state plans and projects for economic development, and as a punishment for infringement of labour discipline. The Abolition of Forced Labour Convention, adopted in 1957 as a result of these inquiries, accordingly had two main purposes : to abolish compulsory mobilisation and use of labour for economic purposes in the present-day political and economic setting, and also to abolish forced labour as a means of political coercion or of punishment in various circumstances. A clause against forced labour as a means of discrimination was also inserted in the new instrument.

1962 Survey by the Committee of Experts and Subsequent Developments

7. While the adoption of the Abolition of Forced Labour Convention and the operation of the regular supervision procedures in relation to a constantly growing number of ratifying States were seen as an essential part of the intensification of the I.L.O.'s action in this field, it was also considered necessary to pursue more general inquiries. Thus, the work of the I.L.O. Committee on Forced Labour was continued for a further two years, and it was decided to call for reports on the forced labour instruments under article 19 of the Constitution (that is, from non-ratifying States) in 1961, only two years after the entry into force of the 1957 Convention. Following the receipt of these reports, the Committee of Experts proceeded in 1962 to a general survey of the effect given to the I.L.O.'s standards concerning forced labour.[1]

8. As regards measures for the compulsory call-up of labour for economic purposes, the Committee's survey noted the considerable influence which the Forced Labour Convention, 1930, had had in the progressive reduction and even elimination of forced labour in many countries. However, the Committee also noted a trend in recent years in certain countries towards the adoption of new legislation providing for various forms of compulsion to labour. The Committee's comments on this matter gave rise to much discussion at the following session of the International Labour Conference, where it was sought—both in the Committee on the Application of Conventions and Recommendations and in plenary session of the Conference—to clarify the nature and aims of the legislative measures in question and the problems which they were designed to meet. In his reply to the discussion of his report, the Director-General of the International Labour Office undertook that the problems raised would receive special attention by the I.L.O. with a view to finding acceptable ways of overcoming them. Research by the Office brought out the magnitude and particular urgency of problems arising in connection with the training and employment of young people. The Conference in 1966 adopted a resolution dealing with the development of the I.L.O.'s action in this field. The Governing Body decided in November 1967 to place the question of special youth employment and training schemes for development purposes on the agenda of the Conference in 1969. The aim of the proposed Conference discussion is to lay down new standards which may provide guidance on the objectives and organisation of the schemes in question. The Conference discussion will also provide an opportunity to clarify the relationship between the rules governing participation in youth employ-

[1] I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 46th Session, Geneva, 1962, Part Three : Forced Labour. References to the reports of the Committee of Experts are hereafter indicated by the abbreviation " R.C.E.", followed by the year.

ment and training schemes and the existing instruments concerning forced or compulsory labour.

9. At its session in March 1966, in view of suggestions which had already been made to the Governing Body by the Director-General concerning a Conference discussion of the above-mentioned issues, the Committee of Experts decided to defer further comment on compulsory service of youth in economic and social activities in individual observations and requests on the application of the forced labour Conventions, until the results of the Conference deliberations became available.[1] However, the Committee requested governments to continue to provide information on any relevant developments in their national law and practice in their reports on these Conventions.

10. The present survey provides an opportunity to assess the developments which have taken place in national law and practice relating to the call-up of labour since the Committee's previous study in 1962. Whereas in 1962 the Committee had frequently to base its conclusions exclusively on the texts of recently adopted laws, in the intervening period the governments concerned have been able, in their reports and in information provided to the Conference, to explain the circumstances which led to the adoption of certain laws, the ends aimed at, and the use made in practice of the legislation in question. In possession of this more ample information on the factual situation, the Committee is in a better position to determine the true effect of national law and practice. The survey likewise provides an opportunity to clarify the scope and purpose of the provisions of the existing Conventions and, in the light of such clarification, to indicate the nature of the problems which now exist in regard to their implementation.

11. Difficulties in ensuring respect for the principle of free choice of work are symptomatic of imbalances in the development and utilisation of a nation's manpower resources. The elimination of all forms of compulsion to labour therefore finds its surest guarantee in a comprehensive, positive manpower programme.[2] Particular importance accordingly attaches to a further development in the I.L.O.'s standard-setting work which has taken place since the Committee's survey of 1962, namely the adoption in 1964 of the Employment Policy Convention and Recommendation. In laying down as a major goal of social policy the promotion of full, productive and freely chosen employment, the Conference reaffirmed the principle of freedom of labour in the context of measures aimed at stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment. At the same time, it sought to provide guidance as to the practical programmes and measures which should be taken to realise this policy, both generally and in conditions of economic underdevelopment. The suggestions concerning methods of application contained in the Recommendation in several instances refer to the need for consistency of the measures taken with the provisions of the two forced labour Convention.[3]

12. The Committee noted in its survey of 1962 the not inconsiderable progress which had been achieved in various countries in which the U.N.-I.L.O. Ad Hoc

[1] R.C.E., 1966, Part One, paras. 10-12.

[2] This point was emphasised by the two Commissions of Inquiry appointed under article 26 of the I.L.O. Constitution which examined complaints concerning the observance of the Conventions under consideration—see I.L.O.: *Official Bulletin*, Vol. XLV, No. 2, Apr. 1962, Supplement II, paras. 762-763 ; ibid., Vol. XLVI, No. 2, Apr. 1963, Supplement II, para. 456.

[3] Annex to the Recommendation, paras 8 and 10.

Committee on Forced Labour had in 1953 found the existence of systems of forced labour. However, as regards the new aspects of the forced labour problem which had been taken up in the Abolition of Forced Labour Convention, 1957—that is, forced labour as a means of political coercion or as punishment in certain circumstances—the Committee indicated that the comments made in its survey must be considered of a preliminary nature. It pointed out that an examination of the observance of the provisions of the 1957 Convention necessitated the study of a large variety of legislative texts and that the true effect of legislation could in many cases be ascertained only on the basis of information concerning its practical application. As the first reports on the application of the Convention received from ratifying States had been examined by the Committee only the previous year, it had not yet been possible to obtain the necessary supplementary information on numerous points. In the years which have passed since the previous survey, it has been possible for governments to provide a considerable volume of additional material and for the I.L.O. supervisory bodies to evaluate this material and to clarify its bearing on the observance of the 1957 Convention. At the present time, the Committee is therefore in a better position to identify and to give guidance as to the main problems arising in the implementation of the Abolition of Forced Labour Convention.

Ratifications and Declarations of Application

13. The Conventions dealing with forced labour remain among the most widely accepted I.L.O. instruments. Indeed, the Forced Labour Convention, 1930, is the most widely ratified Convention, and now binds a total of 143 countries, having been ratified by 99 States and being applicable (without modification) to 44 territories. The Abolition of Forced Labour Convention, 1957, binds a total of 112 countries, namely 80 States and 32 territories (in all except two cases, without modification). Altogether 101 countries (69 States and 32 territories) are bound by both Conventions. Detailed indications of the countries bound by these instruments will be found in Appendix II to this survey.

Information Available

14. As already indicated, the present survey is based both on reports supplied under article 19 of the I.L.O. Constitution by countries which have not ratified the Conventions concerned and on the reports supplied under article 22 of the Constitution by countries bound by these instruments. The total number of reports supplied under article 19 is 20 in respect of the Forced Labour Convention, 1930, and 38 in respect of the Abolition of Forced Labour Convention, 1957. Detailed indications of the countries which have supplied these reports, as well as of the countries for which information has been available in reports supplied under article 22, will be found in Appendix II to this survey. The total number of countries whose reports have been taken into consideration in the preparation of this survey is 162 (113 States and 49 territories). As usual, the Committee, in addition to examining the information contained in the reports, has also sought to take account of relevant legislation.[1] In two cases, it noted comments which had been made upon governments' reports by employers' and workers' organisations.[2]

[1] See footnote to para. 16 below.

[2] Japan (comments by the General Council of Trade Unions of Japan on the report concerning Convention No. 105); Uruguay (comments by the Building League of Uruguay concerning Conventions Nos. 29 and 105).

ARRANGEMENT OF THE SURVEY

15. The various kinds of forced or compulsory labour covered by the Conventions of 1930 and 1957 may be considered to fall into two broad categories. On the one hand, there are cases of call-up of labour, the imposition of obligations of service or production or the imposition of other restrictions upon free choice of work. Here the primary emphasis is on the work or service to be obtained, that is, the product of the obligations imposed. On the other hand, there are cases of labour imposed as a means of political coercion or education [1] or as punishment in various other circumstances. In these cases, the primary emphasis is on the effect intended to be produced on the individuals concerned. The possibility of overlap of these main categories of forced or compulsory labour of course exists, as where labour exacted as a means of coercion or punishment is also utilised for the execution of works of economic importance. However, for purposes of convenience, it is proposed to examine the available material under two broad headings corresponding to the above-mentioned categories. The following chapters will therefore deal successively with forced or compulsory labour for the purpose of production or service and with forced or compulsory labour as political coercion or education or as punishment in various other circumstances.

16. A survey of the situation concerning the implementation of the standards on forced labour differs somewhat from surveys relating to international labour standards in other fields. Normally, surveys of this kind are designed to ascertain 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 the non-existence of certain practices. Consequently, attention in the present survey will be devoted to problems arising in the implementation of these Conventions rather than to the attainment of positive standards. The survey will seek to indicate in what respects difficulties exist in achieving the full observance of the forced labour Conventions and how these difficulties may be overcome. Within this perspective, and having regard to the great variety of situations which may exist, the references to national law and practice will be illustrative of the main problems examined rather than purport to present an exhaustive list of all the situations which have given or might give rise to comments by supervisory bodies.[2]

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17. Mr. Gubinski, member of the Committee, expressed reservations concerning certain propositions contained in the report. These reservations are principally the result of his view that the report went outside the sphere of the Conventions and

[1] The case involved here relates to the imposition of " forced or compulsory labour " as a means of " political education " covered by the 1957 Convention, and is to be distinguished from general obligations to receive education or training, for which see para. 26.

[2] As has already been recalled, in the case of the forced labour Conventions the I.L.O. supervisory bodies have to scrutinise a wide range of national laws and regulations in order to satisfy themselves that no form of forced or compulsory labour falling within the scope of one or other of these Conventions is provided for or might be imposed as result of the practical application of such legislation. In many instances the Committee is able to conclude, from the terms of the legislation or as a result of clarification provided by governments of the manner in which it is interpreted and applied by national authorities, that no incompatibility with the relevant international standards exists. For this reason, the Committee has considered it appropriate on this occasion—in contrast to its normal practice in surveys relating to instruments calling for positive national standards—not to append to this review a comprehensive list of legislation consulted, but to confine itself to indicating relevant national provisions in regard to the specific cases mentioned in the course of the survey.

Recommendations dealing with forced labour and compulsion to work. He considers that Article 2, paragraph 2 *(c)*, of Convention No. 29, which excludes from the legal definition of forced or compulsory labour cases where work or service is exacted from any person as a consequence of a conviction in a court of law, is also applicable to other instruments of the International Labour Organisation relating to this question, and particularly to Convention No. 105. None of them, with the exception of Convention No. 29, in effect contains an exhaustive definition of the term " forced or compulsory labour ", relying, as regards its meaning and scope, precisely on this instrument. Accordingly, Mr. Gubinski is of the opinion that the report has largely gone beyond the scope of the subject to be examined in the present study. He has in mind the parts containing an analysis and criticism of the penal legislation of numerous States. The fact that in many prison systems the serving of a prison sentence, passed by a court, involves an obligation to work for the convicted person does not justify the inclusion of such work within the scope of the prohibitions laid down in Convention No. 105. Professor Lunz associated himself with the statement made by Mr. Gubinski.

18. The Committee was not able to accept the above-mentioned views. It maintains the position already stated in the general survey on forced labour made in 1962 [1], on the basis of the text of the Abolition of Forced Labour Convention, 1957, and the preparatory work leading to the adoption of that Convention, namely that the Convention prohibits the use of " any form " of forced or compulsory labour (including forced or compulsory labour resulting from a conviction in a court of law) in the five cases enumerated in Article 1 of that instrument. On the other hand, the Convention is not concerned with labour imposed as a consequence of a conviction in a court of law in circumstances not falling within any of these five cases. More detailed indications on this matter will be found in paragraphs 81 to 88 of the present survey.

[1] Op. cit., paras. 10 and 11.

CHAPTER II

FORCED OR COMPULSORY LABOUR FOR THE PURPOSE OF PRODUCTION OR SERVICE

MEASURES CALLED FOR BY THE CONVENTIONS ON FORCED LABOUR[1]

19. The basic undertaking entered into by States which ratify the Forced Labour Convention, 1930, is to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. 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 specific conditions and guarantees laid down in the Convention.[2] The Convention contains a general definition of forced or compulsory labour, but provides that, for the purposes of the Convention, five kinds of work or service shall be excluded from this definition : compulsory military service, certain civic obligations, certain forms of prison labour, work exacted in emergencies and minor communal services.[3] The definition and exceptions to it will be considered in greater detail later. The position under the Convention is thus as follows :

(a) Certain forms of compulsory service, covered by the exceptions to the definition of forced or compulsory labour, remain entirely outside the scope of this Convention.

(b) Certain other forms of compulsory service must be immediately abolished, either because of express prohibitions or because they fall outside the circumstances in which the Convention exceptionally permits recourse to forced or compulsory labour during the transitional period. This category includes forced or compulsory labour for the benefit of private individuals, companies or associations[4], forced or compulsory labour exacted from women, from men under 18 years or over 45 years, or from disabled persons[5], compulsory cultivation otherwise than as a precaution against famine or a deficiency of food supplies[6], forced or compulsory labour for work underground in mines[7],

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[1] The substantive Articles of the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957, are reproduced in Appendix I to this survey.

[2] Article 1.

[3] Article 2.

[4] Articles 4 and 6.

[5] Article 11.

[6] Article 19.

[7] Article 21.

and forced or compulsory labour exacted by persons or authorities to whom under the terms of the Convention such power should not be granted.[1]

(c) Lastly, certain forms of forced or compulsory labour may be used as an exceptional measure for public purposes only during the transitional period, subject to the conditions and guarantees laid down in the Convention. These conditions and guarantees aim at limiting the power to exact the work or service in question to specified authorities[1], to ensure that labour is exacted only in cases of present or imminent necessity for work of important direct interest to the community called upon to perform it[2], to safeguard the social and physical conditions of the population[3], and to ensure the observance of certain minimum standards as regards hours of work, weekly rest, remuneration, workmen's compensation, health and welfare.[4] Special conditions are laid down with regard to compulsory porterage and compulsory cultivation.[5]

20. With a view to ensuring the effective implementation of its provisions, the Convention provides that complete and precise regulations shall be issued governing the use of forced or compulsory labour (including rules for the lodging and consideration of complaints).[6] Measures must be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied and to bring the regulations to the knowledge of persons affected.[7] Full information must also be supplied to the I.L.O. regarding the extent to which recourse has been had during each reporting period to forced or compulsory labour.[8]

21. The Forced Labour Convention also lays down that the illegal exaction of forced or compulsory labour must be punishable as a penal offence, and that the penalties imposed by law must be really adequate and be strictly enforced.[9]

22. As the Committee has previously had occasion to point out[10], the undertaking by ratifying States " to suppress the use of forced or compulsory labour in all its forms within the shortest possible period " precludes them from introducing new forms of forced or compulsory labour within the scope of the Convention and also from having recourse to any forms of such labour which, while existing at the time of entry into force of the Convention for the country concerned, had in the meantime been abolished. Having regard to this effect of the undertaking arising out of ratification and also to the nature of the forms of compulsion to be found in some existing laws, relatively few of the countries bound by the Convention are still in a position to avail themselves of the transitional arrangements permitted by this instrument.[11]

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[1] Articles 7 and 8.

[2] Articles 9 and 10.

[3] Articles 9-12.

[4] Articles 13-17.

[5] Articles 18 and 19.

[6] Article 23.

[7] Article 24.

[8] Article 22.

[9] Article 25.

[10] R.C.E., 1962, Part Three, para, 69 ; R.C.E., 1964, pp. 72, 74 and 79.

[11] See, for example, Burundi (decree of 14 July 1952 on native political organisation, Ordinance No. 21/86 of 10 July 1953, and decree of 10 May 1957 on native districts), Congo (Kinshasa) (Labour Code of 9 August 1962, section 2, and decree of 10 May 1957 on native districts), Fiji (Fijian Affairs Regulations), Kenya (Native Authority Ordinance (Cap. 128), section 13), Malaysia (Sarawak) (Local Authority Ordinance), Sudan (Local Government Ordinance, First Schedule, para. 15 A).

23. The Abolition of Forced Labour Convention, 1957, requires ratifying States to secure the immediate and complete abolition of the use of any form of forced or compulsory labour in five specified cases. In the present chapter, only two of these cases will be examined. They relate respectively to any form of forced or compulsory labour " as a method of mobilising and using labour for purposes of economic development " (Article 1 *(b)* of the Convention) and any form of forced or compulsory labour " as a means of racial, social, national or religious discrimination " (Article 1 *(e)*).[1]

24. The preceding indications bring out the difference of approach adopted in the two Conventions. The Forced Labour Convention, 1930—subject to specified exceptions—requires the abolition, either immediately or after a transitional period, of forced or compulsory labour in all its forms.[2] The Abolition of Forced Labour Convention, 1957, provides for the abolition of the use of forced or compulsory labour in a defined number of cases; such abolition must be immediate, without any transitional period.

Definition of "Forced or Compulsory Labour" in the Forced Labour Convention, 1930, and Exceptions

25. For the purposes of the Convention of 1930, the term " forced or compulsory labour " is defined to 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 ".[3] Apart from the express exceptions to be considered later, the Committee has had occasion in examining governments' reports to consider certain aspects of this definition to distinguish certain cases falling within the scope of the Convention from others which could be regarded as being beyond its purview.

26. In the first place, the definition refers to " work or service ". 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 recognised in international standards as a means of securing the right to education[4], and it is also provided for in several I.L.O. instruments.[5] A similar distinction is to be found in existing international labour standards between work and vocational training.[6] The Committee has also pointed out, in relation to the Forced Labour

[1] This case will be considered here only in relation to the exaction of forced or compulsory labour for the purpose of production or service. It will be further considered in the next chapter in relation to forced or compulsory labour as political coercion or education or as punishment in various other circumstances.

[2] The reference in the 1930 Convention to suppression of forced or compulsory labour " in all its forms " appears to relate both to the manner and to the purpose of exaction of the labour. The reference in the introductory part of Article 1 of the 1957 Convention to " any form " of forced or compulsory labour relates to the manner of exaction, the ends for which that Convention prohibits recourse to compulsion being defined in the succeeding paragraphs of that Article—see I.L.O. : *Record of Proceedings*, International Labour Conference, 40th Session, Geneva, 1957, p. 709, para. 10.

[3] Article 2, para. 1.

[4] Universal Declaration of Human Rights, article 26; International Covenant on Economic, Social and Cultural Rights, articles 13 and 14.

[5] Provisions concerning the prescription of a school-leaving age—paras. 1, 2 and 4 of the Unemployment (Young Persons) Recommendation, 1935 (No. 45); Article 19, para. 2, of the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82); Article 15, para. 2, of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117).

[6] The Unemployment Young Persons) Recommendation, 1935 (No. 45), provides for compulsory attendance by unemployed juveniles at continuation courses combining general

Convention, that a compulsory scheme of vocational training, by analogy with and considered as an extension of compulsory general education, does not constitute compulsory work or service within the meaning of the Convention.[1] This distinction may have considerable importance in relation to a number of schemes to be mentioned later in this chapter. It needs to be borne in mind that vocational training normally includes a certain amount of practical work. It is by reference to the different aspects of systematic organisation necessarily involved in the provision of training that it becomes possible to determine whether a particular 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 ".[2]

27. To fall within the definition of " forced or compulsory labour " in the 1930 Convention, work or service must be 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.[3] This may occur, for instance, where persons who seek to terminate their employment in contravention of legislative restrictions may not be taken into employment by another undertaking, being thus impelled to continue in particular work under the menace of being deprived of the right to free choice of employment.

28. Compulsory labour as defined in the 1930 Convention may be distinguished from obligations imposed in certain cases on occupiers of land in connection with land use. For instance, where holders of irrigated land are required to participate in the maintenance of irrigation channels from which they derive direct benefit, their obligations—provided that these are commensurate with the benefits enjoyed—may be regarded as a form of consideration due from the land holder.[4] The obligations in this case arise directly in relation to the occupiers' use of their own land, and are to be distinguished from obligations which may be imposed on holders of land to render services to other persons for purposes unconnected with the use of their own land. Several governments have in their reports on the Forced Labour Convention, 1930, mentioned measures to abolish labour services of the latter type.[5]

29. Apart from distinctions arising from the terms of the definition of " forced or compulsory labour " mentioned in the 1930 Convention, the latter provides that, for the purposes of the Convention, the definition shall not include specified forms of

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and vocational education (paras. 8 and 9). The instrument also provides for the establishment of special employment centres the principal object of which is not to give vocational training but to provide work ; it states that attendance at such centres should be strictly voluntary (paras. 19 and 20).

[1] R.C.E., 1965, p. 140.

[2] Ibid. Reference may be made to various aspects of training dealt with in the Vocational Training Recommendation, 1962 (No. 117).

[3] *Record of Proceedings*, International Labour Conference, 14th Session, Geneva, 1930, p. 691.

[4] For example, India (Punjab Minor Canals Act, 1905, sections 26 and 27 ; Central Provinces Irrigation Act, 1931, as amended, sections 69 and 72). The position is different if the obligations also cover persons who do not derive benefit from the works concerned, e.g. India (Punjab Compulsory Service Act, 1961, sections 3-5).

[5] See Report III (Part I), International Labour Conference, 48th Session, Geneva, 1964, p. 74 (India) ; R.C.E., 1965, p. 61 (Peru). See also the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, Article 1 *(b)*, and the draft Recommendation concerning the conditions of life and work of tenants and share-croppers submitted to the Conference for second discussion in Report IV (2), 52nd Session, Geneva, 1968.

compulsory service.[1] These forms, which would otherwise have fallen within the general definition of " forced or compulsory labour ", are thus excluded from the scope of the Convention. Most of the exceptions are made subject to the observance of certain conditions. The Committee is therefore obliged to verify in all cases where countries bound by the Convention have recourse to the excepted categories of compulsory service that the conditions set by the Convention are observed. The various cases will be considered below.

Compulsory Military Service

30. The Convention excepts from its provisions " any work or service exacted in virtue of compulsory military service laws for work of a purely military character ".[2] The discussions which occurred while the draft Convention was under consideration by the Conference help to explain both the purpose and scope of this exception. There was general agreement that compulsory military service as such should remain beyond the purview of the Convention. Considerable discussion however took place in regard to 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 to sanction this form of labour implicitly by excluding it from the scope of the Convention would be to sanction a system which ran counter to the avowed purpose of the Convention—namely the abolition of forced or compulsory labour in all its forms, for public purposes as well as for private employers. It was also stressed that the reason and justification for compulsory military service was the necessity for national defence, and that no such reason or justification existed for imposing compulsory service obligations for the execution of public works. The Conference accordingly decided that compulsory military service should be excluded from the Convention only if used for work of a purely military character.[3]

31. The preparatory work leading to the adoption of the 1930 Convention contains certain other indications which clarify the bearing of the Convention on work performed during compulsory military service. In the first place, it was recognised that the Convention would permit the employment of soldiers in the same way as other citizens in cases of emergency.[4] The use of conscripts in such circumstances for non-military purposes would be covered by the separate exception in respect of work or service exacted in cases of emergency (considered below). Conscripts performing their military service may, for example, be used in the event of natural disasters, or where on account of insurgency or other threats to national security the armed forces assume responsibility for various services which under normal conditions are entrusted to civil authorities.

32. It was also accepted that the Convention, in limiting compulsory military service to work of a purely military character, would not affect the labour of military engineers, pioneers or other arms which is performed as a part of their military training or for the defence of the national territory.[4]

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[1] Article 2, para. 2.

[2] Article 2, para. 2 *(a)*.

[3] Report I, International Labour Conference, 14th Session, Geneva, 1930, pp. 137-140; *Record of Proceedings*, International Labour Conference, 14th Session, Geneva, 1930, Vol. I, p. 301.

[4] Report I, International Labour Conference, 14th Session, Geneva, 1930, p. 138.

33. Frequently, apart from training which is intended for defence purposes, conscripts undergoing military service are provided with general education and vocational training intended to facilitate their subsequent resettlement in civilian life. They may even be organised, for this purpose, in formations distinct from the armed forces. In these cases, provided that the arrangements present the objective characteristics of training schemes, they may be considered as lying outside the scope of the Convention, on the basis of the distinction between " work and service " and education and training previously mentioned.[1]

34. Many countries provide in their compulsory military service laws for the exemption from military service of conscientious objectors, but may require them to perform alternative service of a non-military character. While the 1930 Convention—unlike certain subsequent international instruments[2]—does not refer specifically to this matter, the Committee has considered that in such cases conscientious objectors are in a more favourable position[3] than in countries where their status is not recognised and where refusal to serve is punishable with imprisonment.

35. The preceding paragraph deals with a case of a special concession granted to certain individuals. The question has been raised whether, in countries where part of the contingent liable to call-up under compulsory military service laws may be used for work of a non-military character, the fact that a choice is given between military service proper and non-military work affects the application of the Convention. While the existence of a choice may provide a useful safeguard, the Committee has considered that this does not in itself exclude the application of the Convention, since the choice between different forms of service is made within the framework and on the basis of a compulsory service obligation. It has contrasted such a situation with bona fide exemptions from military service which are provided for in most countries (even in time of war) on account of the importance of certain occupations.[4]

36. It should be remembered that the restrictions on the execution of non-military work resulting from the provisions of the Convention considered in the preceding paragraphs apply only in relation to persons called up for compulsory military service. The Convention does not deal with the utilisation of persons who are serving in the armed forces on a voluntary basis.

Normal Civic Obligations

37. The Forced Labour Convention excepts from its provisions " any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country ".[5] The Convention itself—in other exceptions to its provisions—refers to certain forms of work or service which constitute normal civic obligations : compulsory military service, work or service in cases of emergency, and minor communal services. Other examples of normal civic obligations are compulsory jury service, the duty to assist a person in danger or to assist in the enforcement of law and order. The Committee has had occasion to point out that

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[1] See para. 26 above.

[2] International Covenant on Civil and Political Rights, article 8 ; European Convention for the Protection of Human Rights and Fundamental Freedoms, article 4.

[3] Article 19, para. 8, of the I.L.O. Constitution.

[4] R.C.E., 1964, pp. 75-76.

[5] Article 2, para. 2 *(b)*.

this exception 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.

Prison Labour

38. The Convention excepts 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 ".[1] Unlike the other exceptions provided for in the Convention, which are concerned with cases of calling up persons for the purposes of performing particular work or services, this case relates to the consequences of punishment imposed as a result of the conduct of the individuals concerned. It will accordingly be considered in greater detail in the next chapter. Two of the conditions laid down in regard to the exaction of prison labour are however of significance also in the context of the present chapter, concerned with forced or compulsory labour for the purpose of production or service. These are that prison labour may be imposed only as a consequence of a conviction in a court of law and that the persons concerned should not be placed at the disposal of private individuals, companies or associations. Both are important guarantees against the administration of the penal system being diverted from its true course by coming to be considered as a means of meeting labour requirements.[2] It is significant that the imposition of labour by non-judicial authorities frequently relates to vagrancy laws or analogous legislation designed to enforce an obligation to work.[3]

Emergencies

39. The Convention excepts 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 ".[4] It should be recalled that, where forced labour is exacted for public purposes as an exceptional measure during the transitional period pending complete suppression, the Convention provides that it must be for work " of present or imminent necessity ". The permanent exception in respect of emergencies applies in more limited circumstances where a calamity or threatened calamity endangers the existence or well-being of the whole or part of the population. The concept of emergency—as indicated by the enumeration of examples in the Convention[5]—involves a sudden, unforeseen happening calling for instant

[1] Article 2, para. 2 *(c)*.

[2] See, for example, the Report of the U.N.-I.L.O. Ad Hoc Committee on Forced Labour, op. cit., para. 369, and R.C.E., 1965, p. 120 (Dominican Republic). See, further, paras. 77-79 below.

[3] These cases are examined in para. 99 below.

[4] Article 2, para. 2 *(d)*.

[5] This enumeration was retained in the Convention as " an indication of a restrictive character as to the nature of cases of emergency "— see Report I, International Labour Conference, 14th Session, Geneva, 1930, pp. 142-143.

counter-measures.[1] 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. 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.[2] The Committee, in examining reports from countries bound by the Convention, is accordingly concerned to satisfy itself that both law and practice with regard to the exaction of work or service in cases of emergency remain within these limits.[3]

Minor Communal Services

40. The Convention excepts 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 ".[4] The Committee has had occasion to draw attention to the criteria which determine the limits of this exception and serve to distinguish it from other forms of compulsory service which, under the terms of the Convention, should be abolished (such as forced labour for general or local public works). 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 " representatives (e.g. the village council) must " have the right to be consulted in regard to the need for such services ".[5]

MEANING OF " FORCED OR COMPULSORY LABOUR " IN THE ABOLITION OF FORCED LABOUR CONVENTION, 1957

41. As has already been noted, whereas the Forced Labour Convention, 1930, aimed at the suppression of forced labour generally, subject to specified exceptions,

[1] Direct request to Chad, 1965, in which the Committee pointed out that the exception in respect of cases of emergency provided for in the Convention does not cover the exaction of labour intended to deal with a general condition of underdevelopment. The state of development may however affect the relative gravity for a community of a particular happening, and thus determine whether in the given circumstances it creates an emergency within the meaning of the Convention.

[2] A similar approach has been adopted, for example, in the International Covenant on Civil and Political Rights, article 4 of 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.

[3] For example, R.C.E., 1949, p. 28 ; R.C.E., 1957, p. 113 (where the Committee stated that it assumed that the disappearance of the exceptional circumstances which had justified the adoption of emergency regulations would enable the Government to apply the letter as well as the spirit of the Convention).

[4] Article 2, para. 2 *(e)*.

[5] R.C.E., 1961, p. 256 ; R.C.E., 1964, p. 72.

the Abolition of Forced Labour Convention, 1957, provides for the abolition of forced or compulsory labour in a defined number of cases. In view of this difference of approach, while a general definition of " forced or compulsory labour ", accompanied by an enumeration of exceptions, was considered necessary for the purposes of the earlier Convention, no definition was included in the Convention of 1957 [1]. The instrument bans the use of " any form of forced or compulsory labour " in the five cases which it enumerates.

42. It has nevertheless been necessary for the Committee to determine, within the framework of its examination of reports on the application of the Abolition of Forced Labour Convention, whether particular arrangements instituted for a purpose falling within one of the specified cases constitute " forced or compulsory labour ". Neither the terms of the Convention nor the preparatory work leading to its adoption [2] have the effect of incorporating in it, as a matter of law, any of the provisions of the Convention of 1930. The Committee has however considered that, having regard to the general validity of the definition of the concept of forced labour contained in Article 2, paragraph 1, of the earlier Convention on the same subject, that definition can properly serve also to determine what constitutes " forced or compulsory labour " within the meaning of the 1957 Convention—namely " 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 ".

43. The Abolition of Forced Labour Convention is however concerned only with cases where the exaction of labour is for one of the purposes specified in Article 1 of that Convention. In regard to call up of labour for the purpose of production or service, it is to be noted that Article 1 *(b)* prohibits the use of forced or compulsory labour " as a method of mobilising and using labour for purposes of economic development ". This paragraph of the Convention accordingly applies only where recourse to forced or compulsory labour has a certain quantitative significance [3] and is used for economic ends.

44. A further question which the Committee has had to consider is whether compulsory services which are excepted from the scope of the Forced Labour Convention, 1930, may fall within the provisions of the Convention of 1957. As previously noted, the latter instrument does not, as a matter of law, incorporate any of the provisions of the earlier Convention. This is also true of the exceptions which are laid down in Article 2, paragraph 2, of the 1930 Convention " for the purposes of this Convention ". The question is rather whether the forms of compulsory service concerned would fall within the positively defined cases mentioned in the 1957 Convention. In so far as concerns Article 1 *(b)* of the 1957 Convention, it would appear that most of the categories of compulsory service excepted from the 1930 Convention—compulsory military service, normal civic obligations, labour in emergencies, minor communal services—would not, if remaining within the limits laid down in the 1930 Convention previously indicated in this chapter, constitute cases of " mobilising and using labour for purposes of economic development ".

[1] Report VI (2), International Labour Conference, 39th Session, Geneva, 1956, p. 72.

[2] In its report presenting the draft Abolition of Forced Labour Convention to the Conference in 1957, the Committee on Forced Labour stated that the Convention of 1930 and the new instrument were quite independent—*Record of Proceedings*, International Labour Conference, 40th Session, Geneva, 1957, p. 708, para. 6.

[3] The Conference declined to limit the prohibition in Article 1 *(b)* to the use of forced labour as a " normal " method of mobilising and using labour for purposes of economic development—*Record of Proceedings*, International Labour Conference, 39th Session, Geneva, 1956, p. 723, para. 11 ; ibid., 40th Session, Geneva 1957, p. 709, para. 11.

The same appears to be true in the great majority of cases of labour or service exacted as a consequence of a conviction in a court of law, although—as previously indicated [1]—it is necessary to consider national law and practice to ensure that systems of penal labour are not diverted into methods of mobilising and using labour for purposes of economic development.

45. In seeking to secure the abolition of any form of forced or compulsory labour as a method of mobilising 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 mobilisation of labour through certain indirect forms of coercion.[2] Reference was made, on the one hand, to the combination of various practices and institutions such as coercive methods of recruiting, the inflicting of heavy penalties for breaches of contracts of employment, the abusive use of vagrancy legislation, restrictions on freedom of movement, restrictions on the possession and use of land, etc., and, on the other, to various general measures involving compulsion in the recruitment, mobilisation and direction of labour which, taken in conjunction with other restrictions on freedom of employment and stringent rules of labour discipline, deprived the individual of the free choice of employment and freedom of movement.[3] Having regard to these considerations, the Committee has, in its examination of reports on the application of the Abolition of Forced Labour Convention, given attention, for example, to the safeguards against compulsion needed in countries where there still exists a significant volume of recruiting of workers who do not offer their services spontaneously to an employer or at an employment office.[4] It has likewise examined to what extent national legislation and practice relating to vagrancy might become a means of mobilising labour for purposes of economic development.[5]

The Abolition of Forced Labour Convention specifically prohibits the use of forced or compulsory labour as a means of labour discipline.[6]

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[1] See para. 38 above.

[2] Principles designed to avoid the use of indirect coercion had already been difined, at the time of the adoption of the Forced Labour Convention, in the Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35).

[3] Report of the U.N.-I.L.O. Ad Hoc Committee on Forced Labour, op. cit., paras. 554 and 558. A particular example considered by the Ad Hoc Committee related to the legislative system applicable to the African population of the Union of South Africa—ibid., paras. 329-375. This system, including its subsequent development, is further described in the *I.L.O. Programme for the Elimination of "Apartheid" in Labour Matters in the Republic of South Africa* (1964), paras. 36-72, and in the *Special Report of the Director-General on the Application of the Declaration concerning the Policy of "Apartheid" of the Republic of South Africa*, International Labour Conference, 49th Session, Geneva, 1965, pp. 8-19. As the Republic of South Africa is not now a Member of the I.L.O. and is not bound by either of the two Conventions dealing with forced labour, the situation in that country does not come within the scope of the present survey. In accordance with a decision taken by the Governing Body pursuant to the Declaration concerning the Policy of *Apartheid* of the Republic of South Africa, the South African Government had been requested in 1964 and 1965 to supply reports on the two Conventions concerned, under the provisions of article 19 of the I.L.O. Constitution, but failed to do so.

[4] See, for example, the *Special Report by the Committee of Experts on the Application of Conventions and Recommendations concerning the Measures Taken by the Government of Portugal to Implement the Recommendations of the Commission Appointed under Article 26 of the I.L.O. Constitution to Examine the Observance by Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105)*, in Report III (Part IV), International Labour Conference, 50th Session, Geneva, 1966, paras. 55-66.

[5] See para. 56 below.

[6] Article 1 *(c)*. Although this case will be considered in the next chapter, it should be borne in mind that it may form a component of a system of compulsory labour for purposes of production or service.

46. Article 1 *(e)* of the Abolition of Forced Labour Convention prohibits the use of any form of forced or compulsory labour as a means of racial, social, national or religious discrimination. In relation to the matters considered in the present chapter, it would require the abolition of any discriminatory distinctions on racial, social, national or religious grounds in the exaction of labour for the purpose of production or service. The prohibition applies to " any form of forced or compulsory labour ". As previously indicated, the provisions excepting certain forms of compulsory service from the scope of the 1930 Convention are not automatically applicable to the 1957 Convention. The Committee has considered that the prohibition laid down in Article 1 *(e)* of the latter instrument would extend to any discrimination on one of the stated grounds in relation to compulsory military service, labour exacted as part of normal civic obligations, labour exacted in emergencies, or compulsory minor communal services.[1]

Present-Day Problems in National Law and Practice

47. As has already been noted, the two forced labour Conventions are today in force in a very considerable number of countries. Taking account also of information supplied by governments of countries not bound by these instruments, this survey covers a total of 162 countries. In many of these countries, national legislation and practice do not authorise any form of forced or compulsory labour for purposes of production or service within the scope of the provisions considered in the present chapter. Guarantees of freedom of labour are frequently embodied in national constitutions, and—even in the absence of constitutional sanction—are made effective by provisions of criminal legislation punishing violations of individual liberty and by procedural safeguards through which individuals may seek redress 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 numerous countries, which have frequently drawn upon the terminology of the relevant Conventions. The Committee has also continued in recent years 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 Conventions under consideration. In one case, the Committee noted that, in order to implement the obligation to suppress forced labour in all its forms arising under the Forced Labour Convention, administrative instructions had been issued to discontinue recourse to compulsory porterage and compulsory labour for public works.[2] In other cases, measures have been taken to repeal provisions permitting recourse to forced labour for general or local public works[3], for compulsory cultivation[4], for porterage[5], for the rendering of personal services to chiefs[6], requiring persons completing certain kinds of studies

[1] Discrimination in relation to the exaction of labour as a consequence of a conviction in a court of law will be considered in the next chapter.

[2] R.C.E., 1962, p. 55 (Tanganyika ; the relevant statutory provisions remain to be repealed).

[3] R.C.E., 1962, p. 146 (North Borneo) ; R.C.E., 1964, p. 77 (Kenya), p. 171 (Fiji, Northern Rhodesia, Solomon Islands) ; R.C.E., 1966, p. 136 (Bechuanaland) ; R.C.E., 1968, pp. 52-53 (India).

[4] R.C.E., 1964, p. 171 (Fiji), pp. 184-185 (Southern Rhodesia).

[5] R.C.E., 1968, pp. 52-53 (India), pp. 132-133 (Fiji).

[6] R.C.E., 1962, p. 146 (Fiji) ; R.C.E., 1964, p. 170 (Bechuanaland) ; R.C.E., 1968, p. 51 (Cameroon (Western Cameroon)).

to work for a specified period in designated employment [1], or imposing penalties on workers in cases of termination of employment without official consent.[2] In the two cases in which Commissions of Inquiry were appointed under article 26 of the I.L.O. Constitution to examine the observance of the Conventions dealing with forced labour, a series of significant changes in legislation and practice were made at the time the inquiries were proceeding, and certain further measures have been noted by the Committee of Experts subsequently.[3]

48. However, certain problems still exist in a number of countries regarding the abolition of all forms of forced or compulsory service for purposes of production or service. The various forms of work or service concerned and their bearing on the implementation of the Conventions dealing with forced labour will be examined below.

General Powers to Call up Labour

49. In a limited number of countries, the public authorities enjoy extensive powers to impose compulsory labour subject to penal sanctions. In one case, with a view to ensuring the economic and social promotion of the nation, citizens of either sex may be called up for successive two-year periods to perform work or services of national interest.[4] In another country, all able-bodied men are required to work full time in " priority zones " of each village, sub-prefecture and prefecture to attain the objectives of the five-year plan of economic and social development.[5] Such legislation is clearly contrary to both the Convention of 1930 and that of 1957.

50. A very general power to direct labour may result where by law all persons, male and female, aged between 16 and 25 years are declared members of an organisation whose objectives are " to promote revolutionary education by work, vocational training and the mystique of liberation through work ", and " to ensure by revolutionary means the rapid liquidation of the technical and economic underdevelopment " of the country.[6]

51. Extended powers of imposing labour service may be granted by legislation relating to national security. Thus, in one country, all inhabitants of 14 years or

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[1] R.C.E., 1968, pp. 51-52 (Czechoslovakia).

[2] R.C.E., 1966, p. 56 (Bulgaria); R.C.E., 1967, p. 54 (Czechoslovakia).

[3] As regards observance by Portugal of the Abolition of Forced Labour Convention, 1957, see the report of the Commission of Inquiry in I.L.O.: *Official Bulletin*, Vol. XLV, No. 2, Apr. 1962, Supplement II, paras. 727-728, and the Special Report made by the Committee of Experts in 1966, op. cit., the Committee's conclusions being summarised in para. 67 of that report. As regards the observance by Liberia of the Forced Labour Convention, 1930, see the report of the Commission of Inquiry in *Official Bulletin*, Vol. XLVI, No. 2, Apr. 1963, Supplement II, paras. 417-418, and R.C.E., 1967, pp. 55-61.

[4] Upper Volta—Act No. 6/63/AN of 29 January 1963, as amended by Ordinance No. 45/PRES of 3 October 1966. The Act of 1963 originally provided that work might be in public or private employment. The ordinance of 1966 deleted these words, substituting a reference to work of " national interest ". A representative of the government concerned had stated before the Conference Committee on the Application of Conventions and Recommendations in 1965 that certain private undertakings, because of their importance to the country, were considered to be of national interest.

[5] Dahomey—Ordinance No. 62 of 29 December 1966; see also Act No. 62-21 of 14 May 1962, mentioned in relation to para. 55 below.

[6] Guinea—Decree No. 416PR of 22 October 1964. Information requested by the Committee concerning the nature and terms of service in this organisation remains to be supplied.

more who are not performing military service may be called up to satisfy the needs of national security when interests vital to the integrity of the State are threatened, interfered with or disturbed and when it becomes necessary to preserve internal order, the well-being of the community, and the normal and full development of activities and services which ensure the development of the nation or contribute to the preparation and maintenance of war effort.[1] These provisions—which, it will be noted, are additional to legislation on compulsory military service—appear to go far beyond the exception in respect of emergencies permitted by the Forced Labour Convention, 1930, and to permit the mobilisation of labour for purposes of economic development within the meaning of the Abolition of Forced Labour Convention, 1957.

52. In a number of other countries, legislation which according to the government is intended to permit the call-up of labour in cases of emergency is worded in terms which might permit its application in a wider range of circumstances. This is the case, for example, where labour may be called up to carry out shock work or work of extreme urgency which because of its importance cannot be carried out by other means (such as the use of voluntary labour)[2]; where the inhabitants of regions deprived of mechanised transport may be called up for work of public interest which becomes indispensable for the exercise of governmental authority or to meet the economic, health or social needs of the region concerned[3]; where the mobilisation of the civilian population may be ordered for the purpose of meeting abnormal situations of any kind which hinder the economic reconstruction of the country or disturb the machinery of the State and the social structure of the country[4]; where workers of all services or undertakings contributing to the provision of products and food necessary to meet the vital needs of the population may be called up[5]; or where compulsory labour service may be imposed in case of shortage of labour for carrying out important state work.[6] A similar situation may result where an ad hoc granting of emergency powers—whether through special legislation or as a consequence of the declaration of a state of emergency—authorises the exaction of labour in circumstances which do not constitute an emergency within the meaning of the relevant international standards. This appears to be the case where, *inter alia*, the power of mobilisation of the civil population is granted for a 12-month period because of evidence of infiltration into the country of persons

[1] Argentina—National Defence Act, No. 16970 of 6 October 1966 and Act No. 17192 of 2 March 1967 on civil defence service. The explanatory note published with Act No. 16970 justified the need for new legislation, *inter alia*, by the fact that the previous law did not take account of the interdependence of the security and the development of the nation.

[2] Czechoslovakia—Government Order No. 40 of 28 April 1953 concerning civilian labour service. The Government has stated in all reports on the Forced Labour Convention supplied since the entry into force of the Convention for Czechoslovakia that this Order has not been applied in practice.

[3] Congo (Brazzaville)—Act No. 24/60 of 11 May 1960 on requisitions, section 3.

[4] Greece—Act No. 1984 of 21-23 September 1939 concerning the organisation of civilian and economic mobilisation of the country, section 2 (7) (inserted by Emergency Act No. 450 of 7 July 1945).

[5] Tunisia—Decree of 7 August 1936 on civil requisitions. The Government has stated that the revision of this legislation is to be considered.

[6] Ukraine—Labour Code, section 11; U.S.S.R.—Labour Code of the Russian S.F.S.R., section 11. Both these countries have stated in their reports on the Forced Labour Convention that, except in rare cases of natural calamity, these provisions have not been used, and that new draft labour legislation under consideration would omit the possibility of imposing compulsory labour service.

with the intention of creating tension and subversion [1] or " because of uncertain conditions prevailing in the world today ".[2]

53. In certain other cases, powers to call up labour originally granted during a period of emergency appear to have been maintained in force for prolonged periods even after the immediate conditions which occasioned the emergency have ceased.[3]

54. As has already been indicated [4], in order to ensure that recourse to compulsory call-up of labour under emergency powers remains within the limits laid down in the Forced Labour Convention and does not develop into mobilisation of labour for purposes of economic development, certain conditions should be observed. Recourse to such call-up should be confined to cases where it is necessary to meet a calamity or threatened calamity endangering the existence or well-being of the whole or part of the population. The duration and extent of compulsory service, and the purposes for which it is used, should be limited to what is strictly required by the exigencies of the situation. In order to avoid any uncertainty as to the scope of national provisions or their compatibility with the applicable international standards, 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 this is not the case, and the country is bound by either of the two Conventions under consideration, appropriate amendments should be made. Where emergency powers are granted by ad hoc legislation, it is important that authority to impose compulsory labour should be given only in circumstances constituting an emergency within the meaning of the relevant international standards. In all cases, recourse to compulsory labour should continue only so long as strictly required to meet the emergency situation, and should then—unless automatically limited in duration—be terminated by a formal and public decision or declaration.

General Obligation to Work

55. Various national constitutions, particularly where they contain provisions concerning the rights and duties of citizens, refer to a duty to work. In many cases, this remains a general statement of principle not translated into precise legal obligations or supported by sanctions, and does not affect the application of the Conventions under consideration. In some countries, however, national legislation goes further and creates a legal obligation for all able-bodied citizens to engage in a

[1] Liberia—Act of 9 February 1966 to restore, supplement and enlarge emergency powers granted the President of Liberia. This Act gave authority to mobilise all able-bodied members of the civil population, male and female, for social, industrial and military work necessary for the defence of the Republic (section 1 *(d)*) and to mobilise and conscript all labour, manual mechanical or otherwise, for economic, social and industrial services for defence purposes (section 1 *(g)*).

[2] Liberia—Act of 21 March 1967 extending emergency powers granted the President of Liberia, containing the same powers to mobilise and conscript labour as the Act of 9 February 1966.

[3] Morocco—Dahir of 15 June 1946, keeping in force until further decision the powers of labour conscription provided for in the Dahir of 13 September 1938 on the general organisation of the country in time of war (as amended) ; Decree No. 2-063-436 of 6 November 1963, bringing the same provisions into force (without limitation of time) ; Pakistan—Control of Employment Ordinance, 1965, Control of Employment Rules, 1965, Defence of Pakistan Ordinance, 1965, and Defence of Pakistan Rules, 1965 (rule 126). Information requested by the Committee since 1963 remains to be supplied by Tanzania (Zanzibar) concerning the termination of a state of emergency declared in 1961 and measures which might have been taken by virtue thereof to impose compulsory labour.

[4] See paras. 39 and 44 above.

gainful occupation ; in the absence of being able to prove such an occupation, they are liable to compulsory direction to specific work, subject to penal sanctions.[1] The obligation to work in these cases thus constitutes a basis for the imposition of forced or compulsory labour incompatible with the standards laid down in the Conventions of 1930 and 1957.[2]

56. At the time of adoption of the Forced Labour Convention, attention was drawn to the fact that, where vagrancy offences were defined in an unduly extensive manner (for example, if they applied to persons by the mere fact of not being in employment and even to persons who might be holding and cultivating land for their own needs), the resulting situation might be similar to that existing in countries where the law imposed a general obligation to work.[3] In many countries, vagrancy is defined in relatively strict terms which tend to show that the dominant purpose of the legislation is to protect society against disturbance of public order and tranquillity.[4] Even in these cases, it is important that the legislation should be applied in a manner consistent with this purpose. In certain other countries, far more extensive definitions of vagrancy are to be found, which appear capable of being applied to persons by the mere fact of their having no employment and may even cover persons engaged in small-scale cultivation.[5] The possibility that such

[1] Central African Republic—Ordinances Nos. 4 of 8 January 1966 and 66/38 of 3 June 1966 (all persons, of either sex, aged between 18 and 55 years, who are not incapacitated from work or registered at an educational establishment, and who are unable to prove that they belong to one of eight specified categories of the active population, can be punished by imprisonment and fine and directed to work of general interest, particularly cultivation of land) ; Dahomey—Act No. 62-21 of 14 May 1962 (all able-bodied citizens between 18 and 50 years who are not able to give proof of engaging regularly in permanent and lawful employment providing normal resources can be called up for work of general interest ; the Government has stated in its reports that in practice these provisions have not been applied) ; Gabon—Ordinance No. 50/62 of 21 September 1962 (every citizen over 18 years must prove an occupation unless physically unfit or registered at an educational establishment ; any citizen without an occupation must accept any available employment indicated by the authorities ; the Government stated in 1966 that this legislation had never been applied and would be repealed) ; Malagasy Republic—Ordinance No. 62-062 of 25 September 1962, as amended by Act No. 65-006 of 7 July 1965, and Decree No. 63-268 of 15 May 1963 (all able-bodied men between 18 and 55 years who cannot give proof of regular work may be required to undertake agricultural work in accordance with officially prescribed conditions as to area of land, types of crops, etc.).

[2] Certain of the laws in question appear to make it possible to impose forced labour even in private employment, since they permit direction to " any available employment " (Gabon) or to " work of general interest " (Central African Republic, Dahomey). These laws are silent as to the duration of the compulsory service or the terms of employment.

[3] *Report on Forced Labour* to the International Labour Conference, 12th Session, Geneva, 1929, para. 365. See, further, para. 45 above.

[4] In a number of countries, a person can be convicted of vagrancy only if three elements are proved : lack of gainful occupation, lack of lawful means, and lack of fixed abode—see, for example, the Penal Codes of Chile (section 305), Rumania (section 339), Senegal (section 242), Syrian Arab Republic (section 600). In certain other countries, the test is absence of lawful means of subsistence, accompanied by wilful refusal or neglect to engage in any activity which will provide means of support—for example, Brazil (Minor Offences Act, section 59), Philippines (Penal Code, section 202), Trinidad and Tobago (Summary Conviction Offences Ordinance, section 50).

[5] For example, Costa Rica—Act No. 3550 of 20 October 1965 concerning vagrancy and begging, section 2 (defining as vagrants, *inter alia,* persons without known lawful means of subsistence who are fit for work in a useful occupation but do not work, this definition being intended, according to the Government, to cover all situations deriving from unemployment or underemployment) ; Dominican Republic—Penal Code, section 270 (defining as vagrants, *inter alia,* persons engaged in agriculture who do not have a permanent holding of at least 6,290 square metres of land in a good state of cultivation and are not employed by any person

legislation will become a means of compulsion to work is enhanced where, as in some of these cases [1], charges of vagrancy are tried by non-judicial authorities (a matter to be further considered in the next chapter). In countries bound by the Conventions under consideration where laws on vagrancy and assimilated offences are worded in such general terms as to lend themselves to application as means of direct or indirect compulsion to work, amendments should be made to bring the legislation within the narrower conception of vagrancy to which reference has been made above.

Imposition of Labour for Specified Purposes

57. In various countries, legislation authorises the imposition of labour within a more narrowly defined framework, in terms of the circumstances, purposes or duration of recourse to such labour. In a number of these cases, the conditions under which labour may be exacted correspond to those laid down in the Forced Labour Convention, 1930, as applicable where recourse is had to forced or compulsory labour as an exceptional measure during the transitional period pending its complete suppression. Having regard to the provisions of that Convention, it is proposed to examine these cases under the headings of general public works and services (which may involve the removal of the workers from their place of habitual residence), local public works (not involving such removal), transport, cultivation and miscellaneous purposes.

General public works and services.

58. In several countries, in the absence of a sufficient supply of voluntary labour, adult able-bodied men may be called up for limited periods for paid employment for the construction and maintenance of public buildings and roads, afforestation and irrigation works [2], for the conservation of natural resources [3], for public

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or company); Guatemala—Vagrancy Act (Decree No. 118 of 24 May 1945), section 2 (covering, *inter alia*, occupiers or holders of rural land who do not derive sufficient income from it (and from any other work) for their own and their family's subsistence, as well as peasants who do not personally engage in cultivation on their own account or for an employer according to their physical aptitudes and local conditions); Honduras—Police Act (Decree No. 7 of 8 February 1906) (Title III, Chapters I, XIV and XV, provides for extensive police control over artisans and labourers; persons not regularly engaging in an occupation, being absent from or deserting their work, not properly performing their work, or unable on demand by a police officer to produce a certificate of employment may be sentenced as vagrants, and persons without employment may be directed to employment by the police; provision is also made for pursuit and arrest by the police of workers who desert their employment for compulsory return to their employer. The Government stated in 1966 that these provisions were no longer applied).

[1] Costa Rica (by virtue of section 9 of Act No. 3550 of 1965, offences under Act are tried by police authorities); Dominican Republic (section 271 of the Penal Code makes communal mayors responsible for trying vagrancy cases); Honduras (under Title VI of the Police Act, offences against this Act are tried by officials and agents of the police).

[2] Congo (Kinshasa)—Decree of 10 May 1957 on native districts, section 73. Service is limited to 15 days, except where required by public health. In a report in 1966, the Government stated that these provisions remained necessary as a provisional measure. The Labour Code of 9 August 1967 did not expressly repeal the decree of 1957, and permitted compulsory labour for work of public interest as an exceptional and transitional measure as specified by presidential ordinance.

[3] Kenya—Native Authority Act (Cap. 128), sections 13-18. The work must be of present or imminent necessity and of direct interest to the community concerned. Call-up is limited to African men between 18 and 45 years, and to 60 days in any period of 12 months.

purposes [1], or for purposes of sanitation, education or construction. [2] In certain other cases, powers to call up labour—for example, for works of afforestation, irrigation or improvement of pastures [3], for the conservation of natural resources or the promotion of good husbandry [4], or for work essential to the well-being or preservation of the community, including the maintenance of communication [5]—are not dependent on the non-availability of voluntary labour and in certain other respects are also less closely regulated. In one case, in accordance with a recommendation made by a commission of inquiry, the position concerning the manner of obtaining labour for construction and maintenance of secondary roads and public works other than those executed under major contracts remains to be clarified.[6] On the other hand, the governments of several countries have stated in reports on the Conventions under consideration that the statutory powers mentioned above had never been used in practice or had fallen into disuse [7] and that it was intended to repeal them.[8] In the case of countries bound by the Abolition of Forced Labour Convention, 1957, all forms of forced labour for purposes of economic development should be abolished. In the case of countries bound only by the Forced Labour Convention, 1930, the powers in question should be used only as an exceptional measure during a transitional period pending complete suppression, and subject to precise regulations laying down the conditions and guarantees required by the Convention; moreover, full information on the extent of recourse to these powers should be included in governments' reports on the Convention.

Local public works.

59. In a few cases, legislation authorises the exaction of paid labour for local

[1] Laos—Decree of 21 August 1930 to regulate compulsory labour; order of 5 February 1932 to regulate recourse to compulsory labour for public purposes; decree of 30 December 1936 to regulate conditions of work of Natives of Indo-China and assimilated persons. The work must be of present or imminent necessity. Call-up is limited to men between 18 and 45 years, and to 60 days in any period of 12 months.

[2] Syrian Arab Republic—Legislative Decree No. 133 of 29 October 1952 concerning compulsory labour, sections 1-16. Inhabitants may be called up for not more than two months, and are then exempt from further call-up for a year. Under section 27, persons in certain professions may also be required to work in specific regions for defence purposes or for the provision of social services.

[3] Burundi—Decree of 14 July 1952 on native political organisation, sections 45-53, and Ordinance No. 21/86 of 10 July 1953. Able-bodied men may be called up for up to 40 days.

[4] Southern Rhodesia—African Land Husbandry Act, Part V, permitting the call-up of able-bodied male Africans aged between 21 and 55 years for up to 90 working days in any calendar year. In addition, the African Affairs Act, section 42, imposes the duty on every African to assist actively in measures taken in the district in which he lives for the conservation of natural resources, the improvement of grazing and farming land, etc.

[5] Sudan—Local Government Ordinance, 1951 (as amended), First Schedule, para. 15 A. The statutory power relates to the call-up of able-bodied males. There are no binding provisions to regulate the conditions of such call-up (for example, as to maximum duration, remuneration, age limits, etc.), these matters being the subject merely of a model local order for the guidance of local authorities. In addition, under the Defence of the Sudan (General) Regulations, 1958 (as amended), regulation 33 A, able-bodied persons who wilfully neglect to maintain themselves and their families may be called up for work which is necessary or expedient in the public welfare.

[6] Liberia—see R.C.E., 1967, pp. 58-59.

[7] Laos, Southern Rhodesia (report for 1961-63), Syrian Arab Republic.

[8] Southern Rhodesia (report for 1961-63), Syrian Arab Republic.

purposes.[1] More frequently, labour which has to be provided for local purposes is unpaid [2], being assimilated either expressly or implicitly to a form of taxation of the local population. In some of these cases, provision is made for commutation by a cash payment of the obligation to render services.[3] Certain governments have stated that the legislation in question is not being used in practice [4], applies only to a very limited extent [5], or is used only for minor services within the definition of " minor communal services " contained in the Forced Labour Convention. [6] In countries bound by this Convention, in so far as the exaction of services of this kind is not restricted to " minor communal services " (a restriction which should be made clear by the terms of the legislation), they should be progressively abolished.[7] At the time of adoption of the 1930 Convention, the solution envisaged, failing the outright abolition of compulsory labour for local purposes, was its replacement by a system of taxation in cash. In the case of countries bound only by the Abolition of Forced Labour convention, action would be required to abolish —by measures of immediate application—the call-up of labour for purposes of economic development.[8]

Transport.

60. In a few countries, legislative provisions still exist which authorise the imposition of compulsory labour for transport.[9] In a number of these cases, the

[1] Albania—Decree No. 747 of 30 December 1949, permitting the call-up of men between 18 and 45 years for road works, for up to six days a year ; Pakistan—Northern India Canal and Drainage Act, 1873 (section 65, last paragraph), authorising call-up of labourers for maintenance of irrigation works.

[2] Bulgaria—Act of 6 February 1958 and Ordinance No. 1 of 19 January 1968 concerning self-taxation of the population, permitting imposition of labour on men between 18 and 60 years and women between 18 and 55 years for local improvement schemes, for up to 40 hours (exceptionally 80 hours) a year ; China—National Labour Service Act of 4 December 1943, providing for service by men between 18 and 50 years for local works of public utility, for up to 80 (exceptionally 160) hours a year ; Denmark—Act No. 229 of 20 December 1929 concerning compulsory labour in communes, under which certain local authorities may impose compulsory labour for the construction and maintenance of local roads ; Fiji—Rotuma (Communal Services) Regulation (No. 18), permitting call-up of inhabitants of a district or village, *inter alia,* for building and repair of houses and work on roads through native coconut lands ; India—Uttar Pradesh Panchayat Act, 1947 (as amended), permitting call-up of men not over 45 years for work of general public utility undertaken by the local authority, for up to 96 hours in a year ; Punjab Compulsory Labour Act, 1961, permitting the call-up of men between 16 and 60 years for work in connection with the development or clearance of drainage works, for up to five days in three months ; Swaziland—Swazi Administration Proclamation (Cap. 60), authorising the making of orders in relation to anti-soil erosion works, road works and tribal or communal water supplies (section 9) ; Syrian Arab Republic—Decree No. 133 of 29 October 1952 concerning compulsory labour, permitting call-up of inhabitants of villages for road works and other works of local interest (section 28).

[3] Bulgaria, Denmark, Fiji, India (in the case of the Uttar Pradesh Panchayat Act).

[4] Albania, Fiji, India, Syrian Arab Republic.

[5] Denmark—according to the Government, Act No. 229 of 1929 is now in force in only a small number of rural communes, covering far less than 1 per cent. of the country's population.

[6] Swaziland.

[7] See Article 10.

[8] As to the scope of this provision, see para. 43 above. A distinction might be made between mere maintenance work and development or construction projects.

[9] Burma—Village Act (sections 7, 8, 11 *(d)* and Towns Act (section 9) ; Congo (Brazzaville)—Act No. 24/60 of 11 May 1960 on requisitions (section 3) ; Congo (Kinshasa)—Legislative Ordinance of 11 June 1940 on civil requisitions ; Fiji—Rotuma (Communal Services) Regulation (Rotuma Regulation No. 18) ; Laos—order of 6 February 1932 to consolidate regulations for the transport of staff and administrative stores ; Malaysia (Sarawak)—Local Authority (Provision of Transport) Regulations, 1949 ; Pakistan—Bengal Troops Transport and Travellers' Assistance Regulations, 1806.

government has however stated that these provisions have fallen into disuse [1] or are rarely used.[2] The abolition of this form of forced labour was expressly provided for in the Forced Labour Convention.[3]

Cultivation.

61. Legislative provisions permitting the imposition of compulsory cultivation vary considerably in scope. In a number of countries, such powers may be used only in the event of actual or threatened famine, and by reason of their character as emergency measures fall outside the scope of the international standards under consideration. In cases where powers to impose cultivation are not confined to emergency situations, they may be aimed at providing adequate subsistence for the communities directly concerned [4], or at securing the staple food needs of the population in general.[5] In a number of countries, compulsory cultivation extends to cash crops as well as food crops, sometimes within the framework of a general obligation for citizens to engage in a gainful occupation or under general powers to impose compulsory labour [6], sometimes by virtue of legislative provisions dealing specifically with cultivation. [7] Some governments have stated that the legislative provisions in question are not being used [8] or are to be repealed. [9] In other cases, according to the terms of the legislation itself or the information given by governments in their reports, compulsory cultivation is imposed within the framework of national development.[10] In certain other countries, it would appear from the legislation that an obligation is imposed on agricultural co-operatives to attain an officially determined volume of production, although the modalities of discharging this obligation are fixed by a contract concluded with the competent purchasing agencies.[11] Subject only to the above-mentioned exception relating to emergencies, all forms of compulsory cultivation—whether imposed by reference to prescribed areas of land or the production of prescribed quantities of commodities, and whether

[1] Burma, Fiji, Laos.

[2] Congo (Kinshasa).

[3] Article 18.

[4] Fiji—Rotuma (Lands Cultivation) Regulation and Rotuma (Communal Services) Regulation ; Kenya—Native Authority Act (Cap. 128), section 11 ; Malaysia (Sarawak)—Local Authority Ordinance (Cap. 117), section 30 ; Sierra Leone—Chiefdom Councils Act (Cap. 61), section 8.

[5] Malaysia (States of Malaya)—Malacca Lands Customary Rights Ordinance, Straits Settlements Rice Cultivation Ordinance and Rice Cultivation Rules, 1934, and Negri Sembilan Cultivation of Rice Enactment ; Malaysia (Sabah)—Native Rice Cultivation Ordinance.

[6] Central African Republic—see first foot note to para. 55 above ; Dahomey—see second footnote to para. 49 and first footnote to para. 53 above (in addition, Decree No. 239 of 1 June 1962 had provided for the maintenance in each village of collective fields in accordance with official directives as to area, crops, etc., but according to the Government collective fields are no longer organised) ; Malagasy Republic—see first footnote to para. 55 above (Decree No. 63-268 of 15 May 1963 provides for the annual determination for each rural commune of the minimum areas and crops to be cultivated).

[7] Burundi—Decree of 14 July 1952 on native political organisations ; Congo (Kinshasa) decree of 10 May 1957 on native districts, sections 71 and 72 ; Tanzania (Tanganyika)—Local Government Ordinance (as amended by Act No. 64 of 1962), section 52, subsection 1 (45).

[8] Dahomey (as regards Act No. 62-61 of 14 May 1962 and Decree No. 239 of 1 June 1962). Kenya.

[9] Sierra Leone.

[10] Dahomey (as regards Ordinance No. 62 of 29 December 1966), Malagasy Republic, Tanzania (Tanganyika).

[11] The questions arising in this connection are the subject of direct requests addressed to several countries.

affecting persons already holding land or persons directed to undertake cultivation—are incompatible with the Forced Labour Convention (Articles 1 and 19). In the case of countries bound only by the Abolition of Forced Labour Convention, the situation would be similar except where the scope of the obligations imposed is too limited to have significance for purposes of economic development (Article 1 *(b)*).

Miscellaneous purposes.

62. In several countries, forced labour may be imposed as a means of recovery of taxes.[1] Isolated cases are still to be found of compulsory services for chiefs.[2] In one country, workers may be called up, in case of need, to speed up the unloading of ships.[3] In another country, the government is still under contractual obligations to assist certain private companies to secure and maintain an adequate labour supply.[4]

National Service Obligations

63. In the cases considered hitherto, recourse to compulsion is based either on the enforcement of a general obligation to work or on the necessity to carry out particular work. In the former case, the obligation binds the members of the active population (in certain instances women as well as men) during their entire working lives. In the latter case, liability to call-up tends similarly to cover the entire male (occasionally also female) able-bodied adult population, but call-up is irregular in its incidence as regards the persons actually affected as well as in its periodicity. These cases may be distinguished from national service which is imposed for a fixed period on a given section of the population, defined in terms of age or educational status, and is considered as the satisfaction of a general obligation towards society. The most generalised form of such national service is compulsory military service. It has already been noted that such service, if confined to work of a purely military character, is excluded from the scope of the Forced Labour Convention, 1930, and in these conditions would likewise be unaffected by the Abolition of Forced Labour Convention, 1957.[5] Indications have also been given of certain activities by conscripts performing national service which have been recognised as not inconsistent with these Conventions, such as work in cases of emergencies, work performed by military engineering corps as part of their training or for defence purposes, and education and vocational training undertaken within the framework of or as an alternative to compulsory military service.[6] Recent years have witnessed the establishment of a number of schemes under which national service obligations have provided a basis not only for meeting defence needs, but also for training, employment and development works. As has already been noted, recent

[1] Chad—General Code of Direct Taxation, section *260bis* (inserted by Act No. 28-62 of 28 December 1962); Malagasy Republic—Ordinance No. 62-065 of 27 September 1962, section 10; Upper Volta—Act No. 25-60 of 3 February 1960, section 14 (as amended by Ordinance No. 43/PRES of 3 October 1966). Abolition of such labour is provided for in Article 10 of the Forced Labour Convention.

[2] Fiji—Rotuma (Personal Services) Regulation (Rotuma Regulation No. 17). Abolition of such labour is provided for in Article 7 of the Forced Labour Convention.

[3] Tunisia—Decree of 28 January 1946 on the operation of commercial ports, section 4. The revision of this legislation is reported to be under consideration.

[4] Liberia—see R.C.E., 1967, pp. 57-58. If acted upon, these obligations might involve contravention of Articles 4 and 6 of the Forced Labour Convention, as well as of Article 1 *(b)* of the Abolition of Forced Labour Convention.

[5] See paras. 30 and 44 above.

[6] See paras. 31-35 above.

research by the I.L.O. has led to the placing on the agenda of the Conference of the question of special youth employment and training schemes for development purposes. From the indications given by governments in their reports as well as from the recent research, it is apparent that considerable variance may exist between legislation and actual practice in this field. Conscripts performing military service may be used for development works without any specific provision to this effect in the legislation. Conversely, schemes which according to the relevant legislative provisions are aimed at the use of conscripts for general development works may in practice be used primarily for vocational training and may also, within the scope of the material possibilities, rely on voluntary enlistment rather than conscription. These factors need to be borne in mind in determining the extent and nature of present-day problems in relation to the existing forced labour instruments. These problems will be reviewed below in relation to the use for non-military purposes of persons performing compulsory national service respectively within the armed forces themselves and in distinct formations. Reference will also be made to provisions in force in some countries under which, apart from any compulsory military service obligations which may exist, persons who have received certain kinds of education or training are required to serve for a defined period in posts to which they are directed by the authorities.

Use of conscripts in the armed forces for non-military purposes.

64. In several countries with systems of compulsory military service, the functions of the armed forces are defined in the Constitution to include participation in national development.[1] Certain governments have provided information or development works in which the armed forces (including conscripts) have been engaged in recent times, including the opening up of remote regions, particularly by the construction of roads and land clearance, and work of a social nature, such as the provision of schools, housing, sanitation and water supplies.[2] In some countries, agricultural work and training are combined with military service.[3] A number of governments have stated that one of the objects of the schemes concerned is the acquisition of skills by conscripts which would facilitate their finding employment upon release from service. Arrangements appear to exist in these cases for a certain number of conscripts to receive training at vocational training centres ; however, for most of them facilities tend to be limited to training on the job in the course of execution of the various works schemes. Some governments have stressed the significance of the work undertaken in combating civil unrest in certain regions[4], or have stated that construction works of a non-military character are undertaken only in the absence of sufficient works of military importance, for the purpose of

[1] For example, Bolivia—article 208 of the Constitution ; Honduras—article 316 of the Constitution, which refers, *inter alia,* to work in agriculture, conservation of natural resources, road building, communications, and settlement schemes.

[2] For example, Colombia, France (Overseas Departments of French Guiana, Guadeloupe and Martinique), Honduras, Peru. Works of a similar character appear also to be undertaken by conscripts in various other countries—see I.L.O.: *International Labour Review,* Vol. 95, No. 4, Apr. 1967, p. 315.

[3] The Government of Guinea has referred to agricultural work undertaken by the army within the framework of the nation's economic development. In Israel, a provision under which all persons performing military service would undergo a period of agricultural training and work (Defence Service Law, 1959, section 16 *(a)*) has not yet been brought into operation, and the Government has stated that only volunteers are assigned to such activities—see R.C.E., 1964, pp. 75-77.

[4] For example, Colombia.

ensuring the practical training of engineering corps.[1] In some countries, compulsory military service laws which previously permitted the use of conscripts for works of national interest have recently been amended to abolish this possibility[2], or to limit it to exceptional circumstances.[3]

National service in formations distinct from the armed forces.

65. In a number of countries, persons liable to military service but not in fact called up for such service may be required to satisfy their national service obligations in alternative forms. In one country, where there exist treaty limitations on the size of the armed forces, persons who cannot be enlisted for military service are assigned to special labour services engaged in construction and agricultural work.[4] In other cases, although a similar use for persons surplus to military requirements is provided for in national legislation, the governments have indicated that the measures taken in practice have assumed a different form. Thus, where persons in excess of military needs or not fit for military service are assigned to groups for the execution of public works, the government has stated that these groups are in fact intended for works of a military character.[5] In some cases where national service legislation provides that persons not called up for military service may be conscripted for participation in economic or social development[6], or for work of general interest[7], the governments have stated that these powers have not in fact been used. In a number of countries, the objects of such alternative forms of national service, as defined in national legislation, refer both to general, civic and vocational training and to the execution of works of national interest or of economic and social development. The government of one of these countries has referred to the importance of such activities in meeting the needs of national development.[8] However, most of the governments concerned have indicated that the main emphasis has in practice been on training, with a view to providing the young with knowledge and skills which would permit them subsequently to engage in gainful

[1] Greece—Decree of 14-17 March 1928 on the assignment of military units for carrying out certain communal works.

[2] Niger—Act No. 62-010 of 16 March 1962 on the organisation of recruitment for the national armed forces, section 3 (as amended by Act No. 67-005 of 11 February 1967).

[3] Upper Volta—Act No. 49-AN of 21 December 1962 on recruitment for the national army, section 5 (as amended by Ordinance No. 44/PRES/DN of 3 October 1966). The Government of Norway has stated that, as a result of a decision taken by Parliament in 1963, the temporary use of conscripts for harvest work, pursuant to section 9 (2) *(b)* of the Military Service Act, 1953, has been discontinued, and that this provision would henceforth be used only in cases of quite unforeseen or extraordinary conditions.

[4] Bulgaria—Act of 1958 on compulsory military service (amended in 1959), section 3; decree of 27 March 1954 concerning Special Labour Services (amended in 1955), sections 2 and 3. See R.C.E., 1964, p. 71.

[5] United Arab Republic—Military and National Service Act, 1955, sections 31 and 32.

[6] Central African Republic—Act No. 62-304 of 8 May 1962 providing for civic service in the Organisation of National Youth Pioneers, section 4.

[7] Chad—Ordinance No. 2/PC/CM of 27 May 1961 on the organisation and recruitment of the armed forces, section 7, and Decree No. 9 of 6 January 1962 issued in application of this ordinance, section 4.

[8] Malagasy Republic—Ordinance No. 60-118 of 30 September 1960 to provide for the organisation of the defence of Madagascar and the creation of a national service (as amended by Ordinance No. 62-022 of 19 September 1962), section 5; Decree No. 62-623 of 28 November 1962 to provide for the experimental introduction of the civic service; Order No. 411 of 11 February 1963 to make provisional arrangements for the general organisation of the civic service. See Report III (Part I), International Labour Conference, 48th Session, Geneva, 1964, p. 76; ibid., 50th Session, Geneva, 1966, p. 91.

work.[1] In addition, in a number of cases, although the legislation would permit compulsory call up, it has been indicated that in practice enlistment is being organised on a voluntary basis.[2] In several countries where legislation originally envisaged the utilisation of conscripts for economic and social activities in the course of military service itself, the schemes were subsequently modified to separate these two forms of service.[3] Various legislative changes have also been undertaken or are stated to be under consideration with a view to clarifying the objects and nature of special youth service schemes.[4] Finally, it would appear from the available information that the schemes considered here have generally remained of relatively limited proportions, in view of the demands made by them in terms of material and administrative resources and technical and supervisory personnel.

66. The schemes mentioned above have as their aim the collective employment and training of young persons within the framework of national service obligations, frequently with a view to opening up new employment prospects for those who have had insufficient opportunities for education and training. In contrast, in some countries persons called up under national service laws who have had a secondary or higher education may be utilised to secure the provision of certain services to the community, in fields such as education, health and promotion of local community development.[5]

67. As has already been mentioned, in view of the proposal for the consideration by the Conference of the question of special youth employment and training

[1] Gabon—Act No. 19-61 of 12 May 1961 on the organisation of national defence. Decree No. 294/PR of 12 September 1963, section 7, Act No. 36-66 of 31 December 1966 providing for the creation of a national civic youth service, Order No. 415/PR-MENSC of 8 April 1967 to provide for the functioning and programme of the civic service, sections 8 and 9; Ivory Coast—Act No. 61-210 of 12 June 1961 on recruitment for the armed forces, section 2; Mali—Act No. 60-15 of 11 June 1960 to establish a rural civic service, Decree No. 247/P.G.-R.M. of 21 December 1963 to provide for the organisation, recruitment and conditions of service of the civic service, section 1; Senegal—Ordinance No. 60-54 of 14 November 1960 to provide for the general organisation of defence (amended by Act No. 65-08 of 4 February 1965), section 21, Act No. 65-21 of 9 February 1965 creating the national civic service of the youth of Senegal, sections 1 and 2.

[2] Central African Republic (as regards service in the National Youth Pioneers of young persons between 10 and 19 years under Act No. 62-304 of 8 May 1962), Ivory Coast (civic service), Mali (rural civic service), Senegal (as regards the civic service, Act No. 65-21 of 9 February 1965 has provided that in principle recruitment should be on a voluntary basis, but young persons without a regular occupation may be called up for service; Ordinance No. 60-54 of 14 November 1960 (as amended) still permits conscription for a defence service for the purpose, *inter alia*, of contributing to national construction, but it has been stated that in practice the volume of volunteers exceeds the number who can be enlisted in the defence forces).

[3] Dahomey (as regards agricultural work and training by persons liable to service under Act No. 63-5 of 26 June 1963 on recruitment), Ivory Coast (civic service), Senegal (civic service).

[4] For example, in Congo (Brazzaville), Acts Nos. 65-147 and 65-148 of 25 May 1965 provided for the replacement of the former civic service by a Rural Renovation Movement, the conditions of recruitment for which are to be determined by ministerial order; however, the possibility of call-up for service in national works would appear still to exist under Acts Nos. 16-61 and 17-61 of 16 January 1961 concerning the organisation of defence and the armed forces. The Government of the Central African Republic stated in 1965 that Act No. 62-304 concerning the Organisation of National Youth Pioneers would be amended to bring it into conformity with the Forced Labour Convention. The Government of the Ivory Coast has indicated its intention to provide in the legislation relating to the civic service that enlistment should be on a voluntary basis.

[5] For example, Iran—Legislative Decrees of the Council of Ministers of 26 October 1962 and 3 December 1963 regarding the creation of an Education Corps. See *International Labour Review*, Vol. 93, No. 5, May 1966, p. 521.

schemes, the Committee decided in 1966, pending such Conference discussion, to defer further comments on such schemes in relation to the application of the Conventions dealing with forced labour. It may, however, be useful to draw certain general conclusions from the review which has been made in the preceding paragraphs of various forms of national service used for purposes which are not of a directly military character. Where the employment of conscripts in such schemes is organised as part of military service itself, four objectives may be in view : contribution to national development, reinforcement of national security by works which may have strategic utility or may contribute to stabilisation of conditions in regions affected by unrest, the training of military engineering units, and vocational training of conscripts. Several of these objectives may be pursued at the same time, without a clear predominance of one or the other among them. Thus, where vocational training is among the stated objectives, it tends frequently to take the form of learning on the job in the course of execution of development works. Similarly, schemes stated to be aimed at security or the training of military engineers may in practice contain a significant component of general development works. In the case of national service in formations distinct from the armed forces, the statutory definition of their objectives generally refers both to the execution of works of national interest and to training. In some countries, emphasis has been placed on the direct contribution of such schemes to the realisation of development projects. However, in many cases such service appears in practice to be directed primarily to providing participants with general, civic and vocational education and training, as evidenced by the programmes and practical organisation of the schemes concerned. A number of governments have indicated that, although legislation provides authority for compulsory call-up for such schemes, in fact the number of volunteers exceeds the places available. It may be noted in this connection that various other countries have introduced analogous youth service schemes on the principle of voluntary enlistment.[1] In general, where legislative provisions do not reflect the true nature of schemes, either as regards their objectives or as regards the manner of recruitment, it would appear desirable to make appropriate amendments. This would serve to avoid misunderstanding and uncertainty, and at the same time eliminate certain extensive powers of compulsory call-up of labour which are recognised not to correspond to present needs and realities.

Obligations of service in relation to or on completion of studies.

68. In a number of countries, apart from any general national service obligations which may exist, persons who have completed certain kinds of studies may be required to work for a specified period in employment to which they are directed by the authorities. Sometimes such an obligation applies only to a narrow range of professions, particularly in the medical field.[2] In other cases, more general obligations may be imposed, for example where university graduates are liable to com-

[1] For example, Ghana, Jamaica, Kenya, Zambia—see document G.B.170/2/1 (Appendix III).

[2] Hungary—Legislative Decree No. 46 of 1957 to repeal provisions relating to compulsory professional service, as amended by Legislative Decree No. 31 of 1958 (maintaining service obligations only for the medical and nursing professions) ; Norway—Temporary Act of 21 June 1956 concerning compulsory service for dentists, as prolonged by Acts of 29 June 1962 and 25 June 1965 (the Government has stressed the provisional nature of this legislation, pending adoption of longer-term solutions—see R.C.E., 1966, p. 63) ; United Arab Republic —Act No. 183 of 1961 concerning requisitioning of new doctors, pharmacists and dentists (under section 3 of this Act, the initial two-year period of service may be renewed for similar periods).

pulsory public service of up to five years' duration [1], or where persons completing studies at higher or specialised secondary educational establishments are required to work in officially designated employment for a period of three years, during which other undertakings are prohibited from taking them into employment.[2] Where an obligation of service in connection with studies applies only to certain specified professions, it appears to arise out of concern to ensure the provision of an essential service to the population in general, particularly in rural or remote areas for which recruitment otherwise proves difficult. On the other hand, in certain countries persons completing their studies who have received their education and accommodation without payment are made to discharge their obligation to society by working in a specific sphere. The questions arising in this field will no doubt receive attention within the framework of the proposed Conference discussion of special youth employment and training programmes.[3]

69. It may be of interest to note arrangements adopted in some countries with similar objectives but without involving the imposition of similar obligations. In one country, for example, members of certain professions may normally not practise in urban areas unless they have practised for at least two years in rural areas.[4] In another case, admission of graduates of universities and secondary vocational schools to employment with a central or regional authority or an institution for scientific research or development is conditional on their having worked for three years in certain kinds of employment.[5]

Restrictions on Freedom of Workers to Terminate Employment

70. In several countries, restrictions are placed on the freedom of workers to terminate contracts of employment of indefinite duration. In one case, official consent is required for the termination of an employment relationship unless such termination is by mutual consent or there exist circumstances of such a nature that the employee cannot reasonably be expected to allow the employment to continue.[6] In another country, persons in any kind of government employment may not terminate their employment without the employer's consent.[7] In one

[1] Ceylon—Compulsory Public Service Act, No. 70 of 1961.

[2] Bulgaria—Ordinance respecting the allocation and placement of young specialists finishing their training in higher educational establishments, intermediate-level institutes, technical colleges and specialised secondary and technical trade schools, approved by Resolution No. 159 of the Council of Ministers of 24 September 1962, as amended by Resolution No. 188 of the Council of Ministers of 23 November 1962 (the allocation system, however, does not apply to trades or professions considered, on the basis of annual assessment, to be sufficiently represented in the labour force—section 2 of the ordinance); U.S.S.R.—Rules for the placement of young specialists graduating from higher and specialised secondary educational establishments, approved by Decision No. 302 of the Minister of Higher and Specialised Secondary Education of 1 October 1963.

[3] See para. 138 below.

[4] Syrian Arab Republic—Legislative Decree No. 15 of 22 January 1967 prohibiting doctors, dentists and pharmacists from practising in the principal towns of certain provinces, regions and districts.

[5] Czechoslovakia—Government Ordinance No. 38 of 29 March 1967 respecting the placement of persons completing their studies at universities, conservatoires and secondary vocational schools.

[6] Netherlands—Extraordinary (Labour Relations) Decree, 1945, section 6. These provisions do not apply to employees of a public body, teachers, etc. (section 2). The Government has stated that their repeal is envisaged.

[7] Pakistan—Pakistan Essential Services (Maintenance) Act, 1952, section 5, West Pakistan Essential Services (Maintenance) Act, 1958 (applicable also to employees of any agency set

case, persons employed in utilities and institutions of public interest, undertakings manufacturing or trading in food or medical supplies, or transport undertakings may not leave their employment without the consent of the civil defence authorities.[1] Although in such cases the employment initially results from a freely concluded agreement, the effect of the statutory restrictions preventing termination 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. The Committee has accordingly considered such obligations to be incompatible with the Conventions relating to forced labour. It should moreover be noted that the protection of workers against arbitrary dismissal by the imposition of certain restrictions on termination by employers—as advocated in the Termination of Employment Recommendation, 1963 (No. 119)—provides no justification for depriving a worker of his right to free choice of employment.

71. In the case of several countries where the possibility for members of agricultural co-operatives to take up wage-earning employment appears to be subject to certain administrative requirements, the Committee has requested fuller information to ascertain whether analogous restrictions to those considered above are operative.

Discrimination in the Imposition of Labour for Purposes of Production or Service

72. In various countries, liability to peform certain services is limited to a part of the population defined in terms of race.[2] This appears mainly to be the result of legislative distinctions made during a period of colonial administration. Several countries have indicated their intention to repeal the provisions in question.[3] There are also rare cases of distinctions in call-up based on social position.[4] As has previously been indicated, under Article 1 *(e)* of the Abolition of Forced Labour Convention, distinction in the axaction of labour based on racial, social, national or religious grounds should be eliminated, even where the abolition of the particular form of compulsory service would not otherwise be required by that Convention or the Forced Labour Convention.[5]

Effective Enforcement of the Prohibition of Forced or Compulsory Labour

73. To ensure the effective observance of the Conventions relating to forced labour, it is important not only that any possibility of exacting services within the scope of these instruments should be removed from national legislation, but also

up by the West Pakistan Government, a local authority, or any service relating to transport or civil defence), East Pakistan Essential Services (Second) Ordinance, 1958. Further restrictions on termination of employment may be imposed under the Control of Employment Rules, 1965, Rule 10, adopted as an emergency measure but still in force.

[1] Iraq—Civil Defence Law, No. 5 of 1962, section 4. The Government stated in 1965 that measures would be taken to ensure that these provisions would be limited to cases of emergency as defined in the Forced Labour Convention.

[2] For example, Kenya—Native Authority Act; Malaysia (Sabah)—Native Rice Cultivation Ordinance; Sierra Leone—Chiefdom Councils Act; Southern Rhodesia—African Land Husbandry Act, African Affairs Act; Swaziland—Swazi Affairs Proclamation. As regards the Republic of South Africa, see second footnote to para. 45 above.

[3] Sierra Leone, Southern Rhodesia (report for 1961-63).

[4] For example, India—Orissa Compulsory Labour Act, 1948 (amended by Act No. 10 of 1955), making distinctions between labouring and other classes as regards call-up for work to prevent or repair damage by flood or inundation.

[5] See para. 46 above.

that guarantees be established against any *de facto* imposition of labour. It is with this aim that the Forced Labour Convention requires the illegal exaction of labour to be made punishable as a penal offence and calls for measures to ensure that the penalties imposed by law are really adequate and are strictly enforced. While in the great majority of cases appropriate legal provisions exist in this regard, there are some countries in which the necessary penal provisions have not yet been adopted [1] are insufficient in their scope [2], or do not impose really adequate penalties.[3]

74. The public authorities should ensure not only that there exists legislation prescribing adequate penalties for the illegal exaction of labour, but also that such legislation is strictly enforced. Wherever abuses are known to have occurred, active measures should be taken to ensure their elimination.[4] In this connection, particular importance attaches to the existence of effective labour inspection services and to measures in the manpower field designed to promote the spontaneous offer of labour free from any risk of undue pressure or coercion.[5]

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[1] Haiti, Liberia (see R.C.E., 1967, pp. 55-56), Surinam, Syrian Arab Republic.

[2] Morocco—Penal Code, section 195 ; United Arab Republic—Penal Code, sections 117 and 131. These provisions do not cover illegal exaction of labour by persons other than public officials.

[3] For example, Laos—Decree of 30 December 1936 to regulate conditions of work of natives of Indo-China and assimilated persons, sections 3 and 116, imposing a maximum fine of 10 francs.

[4] See R.C.E., 1965, p. 61 (Peru), concerning measures to ensure the strict enforcement of legislation to eliminate certain remaining forms of exploitation and unpaid services.

[5] See, particularly, the Committee's special report (in R.C.E., 1966) on the measures taken by the Government of Portugal to implement the recommendations of the Commission appointed under article 26 of the I.L.O. Constitution, op. cit., paras. 50-66, and R.C.E., 1967, pp. 59-60 (Liberia).

CHAPTER III

FORCED OR COMPULSORY LABOUR AS POLITICAL COERCION OR EDUCATION OR AS PUNISHMENT IN VARIOUS OTHER CIRCUMSTANCES

75. Whereas in the previous chapter consideration has been given to forced or compulsory labour imposed in circumstances where the primary emphasis has been on the work or service to be obtained, the present chapter will review international standards and national legislation and practice relating to the imposition of labour with primary emphasis upon the coercive, educative or punitive effect to be produced on the individuals concerned.

Standards Laid down in the Conventions on Forced Labour

Forced Labour Convention, 1930

76. It will be recalled that the Forced Labour Convention sought to deal with the suppression of forced or compulsory labour generally, subject only to stated exceptions. One of these exceptions relates to prison or penal labour, defined as " 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 ".[1] It follows from the terms of this exception that compulsory labour imposed as correction or punishment falls outside the scope of the 1930 Convention only if certain conditions are met.

77. In the first place, the labour must be imposed " as a consequence of a conviction ". It follows that persons who are in detention but have not been convicted—such as prisoners awaiting trial or persons detained without trial should not be under an obligation to perform labour (as distinct from certain limited obligations intended merely to ensure cleanliness). The Convention of course does not prevent work from being made available to such prisoners at their own request, to be performed on a purely voluntary basis. It also follows from the reference to a " conviction " that the person concerned must have been found guilty of an offence ; in the absence of such a finding of guilt, compulsory labour may not be imposed, even as a result of a decision by a court of law.

78. Secondly, the labour must be imposed as a result of a conviction " in a court of law ". Compulsory labour imposed by administrative or other non-judicial bodies or authorities is not compatible with the Convention. In stipulating a decision by a court of law, the Convention aimed at ensuring that penal labour would not be imposed unless the guarantees laid down in the general principles of law recognised

[1] Article 2, para. 2 *(c)*.

by the community of nations were 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, non-retroactivity and clear definition of criminal law.[1]

79. Thirdly, the work must be carried out under the supervision and control of a public authority and the prisoner must not be hired to or placed at the disposal of private individuals, companies or associations. In 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.[2] It is, for example, not sufficient to limit the use of prison labour to works of public interest, since such works may be carried out by private undertakings. However, in certain countries, selected 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 contributions, consent of trade unions, etc. 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.[3]

80. The Convention of 1930 also provides that " 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 ".[4] From the terms of the Convention and from the preparatory work leading to its adoption [5], it would appear that this provision is applicable whether or not the punishment is imposed by a court of law.

Abolition of Forced Labour Convention, 1957

81. As previously noted, the Abolition of Forced Labour Convention requires the abolition of the use of any form of forced or compulsory labour in five specified cases. Three of these relate to the use of forced or compulsory labour as political coercion or education or as punishment, namely " 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 " [6], " as means of labour discipline " [7], and " as a punishment for having participated in strikes ". [8]

82. The Committee has already pointed out that, in order to determine whether particular arrangements fall within the scope of the Convention of 1957, it is necessary to answer two questions : do they involve " forced or compulsory labour " and,

[1] See, in this connection, the Universal Declaration of Human Rights, articles 7-11, and the International Covenant on Civil and Political Rights, articles 14 and 15.

[2] *Record of Proceedings,* International Labour Conference, 14th Session, Geneva, 1930, pp. 305-308.

[3] R.C.E., 1955, p. 43.

[4] Article 20.

[5] *Forced Labour,* Questionnaire I, International Labour Conference, 14th Session, Geneva, 1930, pp. 36-37.

[6] Article 1 *(a).*

[7] Article 1 *(c).*

[8] Article 1 *(d).*

if so, is it used in circumstances falling within one of the categories defined in the Convention ? [1]

83. As regards the first of these questions, as previously indicated, the Committee has found it appropriate to refer to the criteria contained in the definition of " forced or compulsory labour " in Article 2, paragraph 1, of the earlier instrument, namely " 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] This approach has not given rise to any practical difficulties. A number of governments have, however, experienced difficulty in appreciating the extent to which the Convention of 1957 would cover labour exacted from persons sentenced by a court of law, notwithstanding certain earlier explanations which have been provided by the Committee. It may accordingly be useful briefly to restate the situation.

84. It was pointed out in the previous chapter that the exceptions laid down in Article 2, paragraph 2, of the 1930 Convention, for the purposes of that Convention, do not automatically apply to the later instrument, and that it is necessary rather to determine whether the particular forms of compulsory service would fall within one of the positively defined cases mentioned in the Convention of 1957. [3] It has been seen, for instance, that discrimination in the exaction of labour on racial, social, national or religious grounds would be incompatible with Article 1 *(e)* of the Abolition of Forced Labour Convention, even if the abolition of the particular form of compulsory service would not otherwise be required by either of the two Conventions under consideration (for example, discrimination in the imposition of labour in emergencies). [4]

85. Labour imposed on persons as a consequence of a conviction in a court of law will in the great majority of cases have no relevance to the application of the Abolition of Forced Labour Convention. This is the case, for example, for persons convicted of crimes of violence, damage to property, fraud, theft and numerous other offences ; although labour is exacted from them under the menace of a penalty and on an involuntary basis, it is not imposed for any of the reasons enumerated in the Convention. On the other hand, if labour is exacted from a person because he holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, there is nothing in the terms of the Convention to suggest that its applicability to the circumstances in question should vary according to whether the exaction of labour is or is not the consequence of a conviction in a court of law. [5]

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[1] See paras. 42 and 43 above.

[2] Certain explanations concerning the scope of this definition have been given in paras. 26-28 above.

[3] See para. 44 above.

[4] See para. 72 above.

[5] It will be recalled that the Convention was adopted following inquiry by the U.N.-I.L.O. Ad Hoc Committee on Forced Labour, which had found that one of the major systems of forced labour existing 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 its general conclusions the Committee referred, by way of example, to cases " where a person may be sentenced to forced labour for the offence of having in some way expressed his ideological opposition to the established political order " (para. 549 of the report of the Ad Hoc Committee). It was also pointed out in the preparatory work leading to the adoption

86. Some governments have raised the question whether the Abolition of Forced Labour Convention may apply to ordinary prison labour, as distinct from cases of sentences of hard labour. This appears to have arisen partly from a terminological difficulty, " hard labour " (that is, a particular type of punishment imposed under criminal law) and " forced labour " (the expression used in the Convention) being in certain languages rendered by the same or similar expressions. In this connection, reference should be made to the terms of the definition of " forced or compulsory labour " previously quoted, from which it will be seen that no distinction is made between labour to be performed under a sentence of " hard labour " and compulsory labour which has to be performed as a result of any other type of sentence.[1] It is the objective characteristics of the obligations resulting from a particular type of sentence, rather than the terminology employed in individual legal systems, which have to be taken into consideration. Accordingly, when national legislation lays down punishment in circumstances which may fall within one of the paragraphs of Article 1 of the Abolition of Forced Labour Convention, the Committee's practice is to ascertain whether an obligation to perform labour is imposed on persons undergoing the type of punishment concerned.

87. In certain cases, governments have suggested that, because labour imposed on convicted persons was intended to reform or rehabilitate them, it should not be regarded as coercion or punishment within the meaning of the 1957 Convention. The Committee has, however, observed that the obligation to perform labour was invariably laid down as an essential incident of punishment. Moreover, Article 1 *(a)* of the Convention applies, *inter alia,* to any form of forced or compulsory labour as a means of political education, so that in the case of persons convicted on account of holding or expressing political views, etc., an intention to reform or rehabilitate them through labour would in itself be covered by the express terms of the Convention. It should, however, be re-emphasised that these considerations apply only where labour is or may be imposed in one of the specific circumstances enumerated in the 1957 Convention, and that in most cases the exaction of labour from convicted persons is of no relevance to this Convention.

88. It needs to be borne in mind that the Abolition of Forced Labour Convention is not an instrument to guarantee freedom of thought or expression or other civil liberties as such, or to regulate questions of labour discipline or strikes in general. It is concerned only with one particular aspect of special concern to the I.L.O., namely that no form of forced or compulsory labour should be used in the circumstances specified in the Convention. Where the penalties applicable to offences in relation to the expression of views, etc., labour discipline or strikes do not involve any obligation to perform labour, the substantive provisions governing these offences are outside the scope of the Committee's work in evaluating the implementation of the Aboltion of Forced Labour 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 prison labour obligation.[2] The Committee is concerned in such cases merely to see that the scope of the exemption is sufficiently wide to cover matters which may arise in relation to the Con-

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 " (Report VI (I), International Labour Conference, 39th Session, Geneva, 1956, p. 17).

[1] See, for example, R.C.E., 1966, pp. 116 and 117.

[2] For example, Cuba—Fundamental Law of 7 February 1959, section 26 ; France—Code of Criminal Procedure, sections D.99 and D.490 to D.496 (exemption applies automatically

vention. In several countries, provisions has also been made for exemption from prison labour of persons convicted under certain provisions relating to labour discipline or strikes.[1]

89. In addition to the preceding indications relating to the scope of the 1957 Convention in general, reference may be made to a number of considerations which have to be borne in mind in evaluating the implementation of the individual clauses of the Convention which are being dealt with in the present chapter.

Political coercion or education and punishment on account of political or ideological views.

90. The 1957 Convention prohibits the use of forced or compulsory labour in general terms 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. Two kinds of questions have to be considered in this context. The first concerns the range of activities which, under this provision, must be regarded as protected from punishment involving forced or compulsory labour. For example, freedom of expression of political or ideological views may be exercised not only orally, but also through different communications media, particularly the press and other publications. Similarly, political coercion, while likely to affect the possibility of the free expression of views, may also affect the exercise by the citizen of various other generally recognized rights.[2] The second question concerns the limitations on the rights and freedoms concerned which must be accepted as normal safeguards against their abuse. Examples are laws on defamation, incitement to violence, civil strife or race hatred, restrictions on meetings and demonstrations in public places for the purpose of maintaining public order, etc. 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 enumerated in it " for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just require-

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to persons sentenced to " detention ", and in other cases may be granted on application to the Minister of Justice) ; Gabon—Act No. 55-59 of 15 December 1959 concerning the organisation of the prison services, section 67 (as amended by Ordinance No. 42/PR of 30 September 1965) ; Ivory Coast—Order No. 134 of 20 April 1951 concerning the prison system, section 87 ; Malagasy Republic—Decree No. 59-121 of 27 October 1959 to organise the prison services, sections 58 and 60 ; Mali—Act No. 59-17 of 23 January 1959 to organise the prison services, section 50 ; Morocco—Dahir of 26 June 1930 on the prison system, section 45 ; Portugal—Legislative Decree No. 26,643 of 28 May 1936 on the organisation of the prison services, sections 26, 141 and 143 (as amended by Legislative Decree No. 45,610 of 12 March 1964) ; Senegal—Criminal Procedure Code, section 692, and ministerial circular of 31 October 1925. In some countries the exemption from prison labour applies to persons convicted of certain offences of a political nature, for example, Brazil—Act No. 1802 of 5 January 1953 concerning offences against the State and against the political and social order, section 45 ; United Kingdom—Prison Rules for England and Wales (S.I.1703 of 1949), rule 136, and for Scotland (S.I.568 (S.18) of 1952), rule 144, providing exemption for persons convicted of seditious offences.

[1] Hong Kong—Prison Ordinance (Cap. 234), section 215, exempting from the requirement to work persons convicted under section 3 of the Illegal Strikes and Lockouts Ordinance (Cap. 61) ; Sierra Leone—Abolition of Forced Labour Convention, 1957 (Application to Merchant Seamen) Act, 1966, exempting persons convicted of certain disciplinary offences under the Merchant Shipping Act from the requirement to perform any labour.

[2] See R.C.E., 1965, p. 152 (Southern Rhodesia), where the Committee referred to the prohibition of " normal peaceable political activity " as constituting a form of political coercion.

ments of morality, public order and the general welfare in a democratic society ".[1] It appears appropriate to take account of corresponding criteria in evaluating national law and practice in fields relevant to Article 1 *(a)* of the 1957 Convention.

91. In the course of examination of the compatibility of national legislation and practice with these provisions of the Abolition of Forced Labour Convention, a great variety of situations arise where it is necessary to determine whether limitations are acceptable on the basis of the criteria mentioned in the preceding paragraph or, on the contrary, may infringe the Convention. Frequently, it is not possible, solely on the basis of the legislative texts, to arrive at a definite conclusion as to whether particular provisions may affect the application of the Convention. The Committee has accordingly found it necessary in many cases to seek information on the practical application of such provisions. In a number of instances, governments have provided valuable clarification in their reports, particularly by reference to judicial interpretation.[2]

92. Apart from the proper limits within which particular rights are to be exercised under normal circumstances, freedom of expression and other rights relevant to the Convention may during certain exceptional periods be subjected to more general restrictions. The need for exceptional recourse to such measures is recognised in the Covenant on Civil and Political Rights, under which " in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed ", derogations from the provisions of the Covenant may be made " to the extent strictly required by the exigencies of the situation ".[3] The Committee has adopted a similar approach in regard to emergency measures having a bearing on the application of Article 1 *(a)* of the Abolition of Forced Labour Convention. As in the case of the exaction of forced labour for purposes of production or service[4], recourse to such exceptional powers should be had only in strict cases of emergency, and the nature and duration of the measures taken should be limited to what is strictly required by the exigencies of the situation.

Labour discipline.

93. Forced or compulsory labour as a means of labour discipline 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) or of punishment for breaches of labour discipline with penalties involving an obligation to perform work. In the latter case, the Committee has however considered it appropriate to distinguish 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 arising out of an act constituting a breach of labour discipline. A distinction of this kind had already been recognised by the Conference at the time of the adoption of earlier standards relating to penal sanctions for breaches of contracts of

[1] Article 29.

[2] For example, Belgium, Canada, Denmark, Gilbert and Ellice Islands, Malta, Netherlands and Philippines. Information concerning judicial decisions has also been included in the report by the United States supplied under article 19 of the Constitution, and in the comments by the General Council of Trade Unions of Japan on the report by the Government of Japan.

[3] Article 4.

[4] See para. 39 above.

employment.[1] Accordingly, no incompatibility with the Convention is considered to arise where penalties (even if involving compulsory labour) are imposed for breaches of labour discipline in certain circumstances, such as breaches impairing the operation of essential services or breaches committed in certain posts essential to safety or in circumstances where life or health are endangered. However, in such cases there must exist an effective danger, not mere inconvenience. Furthermore, the workers concerned must remain free to terminate their employment by reasonable notice.

Punishment for participation in strikes.

94. The Abolition of Forced Labour Convention contains a generally-worded prohibition of the use of any form of forced or compulsory labour " as a punishment for having participated in strikes ". The reports of the Conference Committee which considered the draft Convention, however, indicated agreement that " in certain circumstances penalties could be imposed for participation in illegal strikes and that these penalties might include normal prison labour " [2], and that in particular such penalties might be imposed where " national laws prohibited strikes in certain sectors or during conciliation proceedings ", or where " trade unions volontarily agreed to renounce the right to strike in certain circumstances ".[3] In its evaluation of the varied national legislation concerning strikes, the Committee has considered it appropriate to take due account of these indications concerning the intentions of the Conference. It has also considered, where appropriate, the conclusions reached by it in the examination of reports on the application of the Conventions dealing with freedom of association and the right to organise and the conclusions of other I.L.O. supervisory bodies competent in this field (namely the Govering Body Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association).

95. In the light of the foregoing indications, it appears not incompatible with the Convention, for example, to impose penalties (even if involving an obligation to perform labour) for participation in strikes in essential services, provided that such provisions are applicable only to essential services in the strict sense of the term (that is, services whose interruption would endanger the existence or well-being of the whole or part of the population) and that compensatory guarantees in the form of appropriate alternative procedures for the settlement of disputes are provided.[4] Similar restrictions may be imposed, even in other undertakings or services, on persons occupying certain posts essential from the point of view of safety.[5] A

[1] See *Record of Proceedings*, International Labour Conference, 38th Session, Geneva, 1955, p. 670, para. 30, confirming that standards on the abolition of penal sanctions for breaches of contracts of employment by indigenous workers were not intended to cover penal sanctions which " were essentially directed against acts or omissions of a kind warranting sanctions in national law in the general public interest and irrespective of whether any question of a contractual relationship was involved ".

[2] *Record of Proceedings*, International Labour Conference, 40th Session, Geneva, 1957, p. 709, para. 14.

[3] Ibid., 39th Session, Geneva, 1956, p. 723, para. 12.

[4] Reference may be made to similar conclusions reached by the Governing Body Committee on Freedom of Association (54th Report, para. 188 *(e)* ; 74th Report, paras. 220, 230 and 231) and in the Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan, *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, Special Supplement, para. 2139.

[5] See, for example, Governing Body Committee on Freedom of Association, 12th Report, para. 81 ; 82nd Report, paras. 26 and 44-46.

further case in which strikes may be prohibited is in emergencies, provided that the duration of the prohibition is limited to the period of immediate necessity.[1] In other cases, where strikes themselves are not prohibited, certain procedural requirements—such as previous notice—may be imposed, or the right to resort to strike action may be suspended during conciliation and arbitration proceedings.[2] Where temporary restrictions of the latter kind exist, the procedures should however be adequate, impartial and speedy.[3] Such temporary restrictions must also be distinguished from systems of compulsory arbitration under which, because of the binding nature of the award, lawful strike action in practice becomes impossible, and which accordingly should be confined to sectors and types of employment where—in accordance with the principles mentioned above—restrictions may properly be imposed on the right to strike itself.[4] Finally, reference may be made to the case, specifically alluded to in the preparatory work which led to the adoption of the Abolition of Forced Labour Convention, where trade unions have voluntarily agreed to renounce the right to strike in return for certain advantages in relation, for example, to negatiation, representation and settlement of disputes.[5]

96. It should however be borne in mind that the Abolition of Forced Labour Convention is concerned only with the use of any form of forced or compulsory labour as a punishment for having participated in strikes. Where the penalties for strikes do not involve any form of forced or compulsory labour (for example, where they take the form of civil sanctions, such as damages or dismissal), the Convention can have no application. The principles mentioned in the preceding paragraph serve only to determine whether cases of punishment for strikes which do involve an obligation to perform labour may nevertheless be regarded as outside the scope of the 1957 Convention because of the presence of certain special circumstances envisaged by the Conference at the time of its adoption. It is also evident that nothing in the Convention would prevent the punishment of breaches of the peace (such as assault or destruction of property) committed in connection with a strike.

Discrimination.

97. The Abolition of Forced Labour Convention also prohibits the use of any form of forced or compulsory labour " as a means of racial, social, national or religious discrimination ".[6] The bearing of this provision on the exaction of labour for purposes of production or service has been considered in the previous chapter. In the present chapter, two further forms of forced or compulsory labour contrary to his clause of the Convention are considered namely where labour is imposed as a punishment for disregard of national legislation designed to create or maintain racial, social, national or religious discrimination, and where penalties involving an obligation to perform labour are applicable only to certain groups defined in racial, social, national or religious terms.

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[1] See, for example, Governing Body Committee on Freedom of Association, 17th Report, para. 72 ; 78th Report, paras. 82-85.

[2] Ibid., 41st Report, para. 157 ; 99th Report, para. 89.

[3] Ibid., 58th Report, para. 111 ; 99th Report, para. 89.

[4] Ibid., 76th Report, para. 285 ; 99th Report, para. 39.

[5] Ibid., 2nd Report, para. 22.

[6] Article 1 *(e)*.

Present-Day Problems in National Law and Practice

The Limitations Applicable to Prison Labour in General

98. In the majority of countries, the conditions laid down in the Forced Labour Convention for the imposition of prison labour appear to be respected. In recent years the Committee has noted a number of instances in which legislative changes relevant to these provisions have been made, for example, by eliminating certain possibilities of imposition of prison or penal labour on the basis of decisions by non-judicial authorities [1] or in the case of persons in detention pending trial [2], or by the repeal of provisions which had permitted the hiring out of prisoners to private undertakings.[3] In one case, legislation permitting the exaction of labour as a means of collective punishment was repealed.[4]

99. In a number of countries, however, legislation is not fully in conformity with the provisions in question. Labour may, for example, be imposed on persons who have been detained, but have not been convicted.[5] In other cases, labour may be imposed as a consequence of a decision by bodies or authorities of a non-judicial nature, either under general penal provision [6] or under special legislation such as laws concerning vagrants and other categories of persons whose conduct is deemed to be of an anti-social character [7], laws concerning public assistance [8] or tax

[1] R.C.E., 1964, p. 73 (Czechoslovakia), p. 80 (Ukraine, U.S.S.R.), R.C.E., 1966, p. 64 (Sweden).

[2] R.C.E., 1965, p. 123 (Portugal).

[3] R.C.E., 1966, p. 63 (Niger), p. 136 (Bermuda).

[4] R.C.E., 1964, p. 171 (Northern Rhodesia).

[5] Malawi—persons detained under the regulations (Government Notice No. 43 of 1965) issued under the Preservation of Public Security Ordinance (Cap. 51); Nigeria—persons detained under the State Security (Detention of Persons) Decree, 1966, and various further decrees issued for this purpose subsequently, which apply to detainees the conditions imposed on persons duly convicted of an offence in a court of law; Portugal—persons subject to security measures imposed in the absence of a conviction, under Decree No. 40,550 of 12 March 1956, section 8, or where sentences or security measures are extended independently of any conviction under the Penal Code, sections 67-73, Decree No. 34,553 of 30 April 1945, sections 41-46, or Decree No. 40,550, section 7. According to the Government of Poland, the possibility of imposing labour on vagrants pending trial, provided for in an ordinance of 14 October 1927 (section 28) has never been applied, as the institutions contemplated for this purpose have never been established.

[6] Costa Rica—Criminal Procedure Code, section 684 (as amended by Act No. 2322 of 12 March 1959); Honduras—Police Act (Decree No. 7 of 8 February 1906), sections 4, 5, 406, 411, 423 and 424.

[7] Austria—Vagrancy Act, 1885, section 4; Bulgaria—Decree No. 325 of 4 August 1962 to intensify the campaign against persons evading socially useful work and leading an anti-social, parasitic type of life, sections 1, 6 and 7; Costa Rica—Act 3550 of 2 October 1965 concerning vagrancy, section 9; Dominican Republic—Penal Code, section 271; Haiti—Penal Code, section 230; Switzerland—various cantonal laws, e.g. Basle-Town: Act of 21 February 1901 concerning placement in forced labour or corrective institutions, section 2, St. Gallen: Act of 1 August 1872 concerning the placement of idle and disorderly persons in forced labour institutions, section 3 (as amended by Act of 18 May 1965); Tunisia—Legislative Decree No. 62-17 of 15 August 1962 concerning rehabilitation through work, section 3; U.S.S.R.—Ukase of 4 May 1961 of the Presidium of the Supreme Soviet of the R.S.F.S.R. to intensify the campaign against persons evading socially useful work and leading an anti-social, parasitic type of life (as amended by Ukase of 20 September 1965), sections 1 and 2; Venezuela—Decree No. 24 of 22 December 1950 concerning vagrants and rogues, sections 17 to 23. In certain of these cases it would also appear that the decisions by virtue of which labour is imposed do not have the character of "convictions" within the meaning of the Convention.

[8] Finland—Welfare Assistance Act, 1956, section 25; Iceland—Penal Code, section 180.

laws.[1] Several governments concerned have stated that amendments with a view to bringing this legislation into conformity with the Convention are under consideration.[2]

100. There are also a number of cases where the legislation permits hiring out of prisoners to private employers.[3] Most of the governments concerned have stated that in practice prisoners are not hired out to private persons or undertakings and that the necessary amendments will be made.[4]

Forced or Compulsory Labour as a Punishment for Holding or Expressing Views or as a Means of Political Coercion or Education

101. Many governments have referred in their reports, in relation to Article 1 *(a)* of the Abolition of Forced Labour Convention, to constitutional and legislative guarantees of a variety of individual rights and freedoms, such as freedom of thought and expression, freedom of peaceful assembly, freedom of association, freedom from arbitrary arrest, 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. In this context the interdependence of human rights is particularly evident. Even the most perfect legislative guarantees are of no avail unless the individual who suffers improper impairment of his rights can in practice obtain redress from an independent and impartial judiciary scrupulously intent upon upholding the rules of legality. In all cases, it remains necessary to ascertain the precise legal effect of the relevant constitutional or other guarantees, and to examine to what extent they are subject to qualifications, either in the instruments laying down the guarantees themselves or in separate legislation regulating in greater detail the exercise of particular rights.[5]

[1] Congo (Kinshasa)—Act of 10 July 1963 regarding income tax, Annex I, section 160, Ordinance No. 344 of 17 September 1965 concerning the prison system, sections 9 and 64 ; Malagasy Republic—Ordinance No. 62-065 of 26 September 1962, section 8 ; Malawi—Taxation Act, 1966, section 15.

[2] Austria, Finland, Haiti, Tunisia.

[3] Canada—Dominion Prisons and Reformatories Act, section 89 ; Dominica—Prison Rules, 1954, rule 61 ; Federal Republic of Germany—Penal Code, sections 15 and 362 and the prison regulations of the various Länder ; French Polynesia—Order No. 1074/APA of 25 August 1951 concerning the prison system, section 87 ; Ivory Coast—Order No. 134 of 20 April 1951 concerning the prison system, sections 92 and 100 ; Jersey—Prison Rules 1961, rule 56 ; Laos—Order No. 219/PC of 25 June 1954 to regulate the central prison of Vientiane and provincial prisons, sections 123 and 125 ; Liberia—Criminal Procedure Law, sections 733 and 734 ; Malagasy Republic—Decree No. 59-121 of 27 October 1959 to organise the prison services, section 70 ; Mali—Act No. 59-17 of 23 January 1959 to organise the prison services, sections 62 and 64 ; Morocco—Dahir of 26 June 1930 on the prison system, sections 45-48 ; Norway—Vagrancy Act, 1900, section 5 ; Senegal—Order No. 3653 APA/1 of 22 October 1947 to regulate the prison system, section 93 ; Tunisia—Decree of 17 December 1942 regarding employment of prison labour outside penal establishments ; Upper Volta—Order of 4 December 1950 to issue prison regulations, sections 91 and 99.

[4] Canada, Federal Republic of Germany (in practice prisoners are stated to work for private employers only on a voluntary basis), Ivory Coast, Morocco, Norway, Senegal, Tunisia, Upper Volta. The reports of Dominica, French Polynesia and Mali have stated that the provisions in question are not applied in practice.

[5] For example, in some countries constitutionnal guarantees of freedom of expression, freedom of the press, freedom of meeting, etc., are not expressed in unqualified terms, but are referred to as means of strengthening the established order. In such cases, however, it remains necessary to ascertain to what extent contrary ideologies are subject to penal sanctions involving an obligation to perform labour.

102. Having regard to the significance of guarantees of the above-mentioned rights and freedoms in securing the protection aimed at in Article 1 *(a)* of the 1957 Convention, their suspension as a result of a declaration of an emergency, state of siege, martial law or otherwise, generally has a direct bearing upon the observance of the Convention. [1] In all such cases occurring in countries bound by the Convention, the Committee is concerned to ascertain that they have been occasioned by circumstances of extreme gravity constituting an emergency and that all measures taken which are relevant to the provisions of the Convention are limited in scope and time to what is strictly necessary to meet the specific emergency situation. Countries bound by the Convention should, in their reports, provide full information on measures taken in such exceptional circumstances and upon the effect of such measures on the application of the Convention. In the case of a State in which over a period of seven years numerous constitutional guarantees relevant to the Convention have been suspended each year for from six to eight months for such purposes as preventing the slowing-up of economic processes and permitting prompt and energetic political and economic measures, the Committee has considered that the effective observance of the Convention was not safeguarded. [2]

103. It has already been pointed out that the relevant international instruments recognise that, even in normal times, individual rights and freedoms may have to be subject to certain limitations, essentially for two purposes : to ensure respect of the rights and freedoms of others, and to meet the just requirements of morality, public order and the general welfare in a democratic society. In all countries, limitations of this kind exist, such as laws on defamation, sedition and subversion, public order and security, etc. The Committee is concerned to see, in all cases where the Abolition of Forced Labour Convention is in force, that the offences laid down in these laws 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 education or as punishment for the expression of political views or views ideologically opposed to the established political, social or economic system.

104. In many countries, laws on sedition or subversion appear to be intended essentially to punish incitement to violent action or civil strife. In addition, they frequently contain express safeguards to permit criticism of official policies and action, laws, etc., the advocacy of change, and discussion of matters tending to produce conflict or strife.[3] Even in these cases, since the line of division between what is considered legitimate comment and what is seditious ultimately depends on judicial interpretation and appreciation, information on the practical application of the legislation may be desirable.

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[1] For example, in Greece, upon the declaration of a state of siege by Royal Decree No. 280 of 21 April 1967, various constitutional provisions were suspended, including guarantees of freedom from arbitrary arrest and trial by the courts of law, the rights of meeting and association, and freedom of expression and the press. By proclamation of the same date, censorship was imposed ; under proclamations of 26 April 1967 and 2 September 1967, all public meetings of more than five persons and all private meetings (except for certain cultural, social or business purposes) are prohibited.

[2] R.C.E., 1967, pp. 110-111 (Haiti). Among the constitutional provisions suspended in this case were articles guaranteeing individual liberty, trial by the courts established by the Constitution and the law and the right of peaceful assembly, reserving jurisdiction over cases involving civil or political rights to the courts of law, prohibiting the trial of political offences *in camera*, and requiring the courts to enforce orders and regulations made by the public authorities only to the extent that they conformed to the law.

[3] For example, Cyprus—Criminal Code, section 47 ; New Zealand—Crims Act, section 118. section 118.

105. In other cases, more severe limitations exist on the possibilities of comment or criticism, subject to penalties involving an obligation to perform labour. Thus, in one case, criticism of governmental policies and action is permitted only if it is made " fairly, temperately, with decency and respect and without imputing any corrupt or improper motive ".[1] In another country, criticism of public employees or officials is lawful only if based on acts or facts which would constitute an offence punishable by law.[2] In certain cases, it is an offence to publish any information calculated to weaken the government or which injures the State or its establishments[3], to disseminate views or information of a nature to prejudice the public interest[4], to disseminate tendentious information calculated to disturb the constitutional or legal order or the economic system[5], or for a national outside the country to disseminate any tendentious information liable to harm the prestige of the State or to exercise any activity which will prejudice national interests.[6] Such provisions would seem to lend themselves to application as a means of punishment for the expression of views within the scope of the Abolition of Forced Labour 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 engage in agitation or propaganda with a view to impairing or weakening the authority of the State, including the dissemination of defamatory news disparaging the political and social system[7], to publish or disseminate matter provoking or encouraging tendencies calculated to impair the integrity of the State or to suppress, revoke or undermine certain basic constitutional principles[8]; publicly to deride or depreciate the régime of the State[9]; or to make propaganda to destroy or diminish national sentiment.[10]

106. 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 exact bearing on the Convention. This is the case of provisions relating to insults to

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[1] Southern Rhodesia—Law and Order (Maintenance) Act (Cap. 39), section 34. This section also omits a saving clause included in earlier legislation for statements drawing attention to matters tending to produce ill-will or enmity between different sections of the community.

[2] Honduras—Decree No. 6 of 1 August 1958 on freedom of expression (as amended by Decree No. 26 of 1 July 1966), sections 8 and 38 (4).

[3] Iraq—Baghdad Penal Code Amendment Law, No. 8 of 1959, section 31; Press Law, No. 53 of 1964, section 23 (1).

[4] United Arab Republic—Penal Code, section 102*bis* (as amended by Act No. 50 of 21 April 1949).

[5] El Salvador—Legislative Decree No. 876 of 27 November 1952 concerning the defence of the democratic and constitutional order (as amended by Legislative Decree No. 907 of 17 December 1952), sections 1 (17) and 4.

[6] United Arab Republic—Penal Code, section 80 *(d)* (as amended by Act No. 112 of 19 May 1957). A corresponding provision in the Penal Code of Italy (section 269) has to be considered in the light of the legally enforceable right to freedom of expression now provided for in article 21 of the national Constitution. It may be noted that article 19 of the Universal Declaration of Human Rights provides that the right to freedom of opinion and expression includes the right to seek, receive and impart information and ideas regardless of frontiers.

[7] U.S.S.R.—Penal Code of the R.S.F.S.R., section 70; see also section 190-1 (added by Ukase of 16 September 1966).

[8] Federal Republic of Germany—Penal Code, section 93.

[9] Poland—Decree of 13 June 1946 respecting particularly dangerous offences during the reconstruction of the State, section 29.

[10] Italy—Penal Code, section 272.

various holders of public office, provisions punishing the dissemination of false news, and frequently also legislation for the safeguarding of official secrets.

107. In a number of countries, there exist provisions which lay down punishments involving compulsory labour in respect of the expression or dissemination of ideological views. In some cases, this legislation appears to make illegal the publication of any views which call into question the established political and social system, for example, where it prohibits any propaganda or publications contrary to the principles of the National Movement, declared permanent and unalterable [1], or where it punishes any propaganda aimed at a change in the established social order or form of government.[2] In several countries, it is prohibited to disseminate or advocate doctrines tending to destroy or disrupt the social, political, legal or economic order. [3] In a number of cases, there exist prohibitions relating to the expression, publication or dissemination of views favouring specific ideologies, such as communist or anarchist views [4], or to attacks upon particular institutions, such as criticism of the hereditary system of government [5], statements contrary to a specified religion [6], or statements attempting to shake the legal concepts of property. [7]

108. The preceding paragraphs have dealt with cases in which sanctions involving an obligation to perform labour may be imposed as a direct consequence of the expression of particular views, and in which, on account of the nature of these sanctions, difficulties in the application of the Abolition of Forced Labour Convention may arise. The imposition of compulsory labour within the meaning of the Convention may also result indirectly from more general restrictions on freedom of expression, such as certain systems of licensing of publications or censorship.[8] In a number of countries, various forms of expression or publication are subject to prior authorisation granted by the authorities at their discretion, violations being

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[1] Spain—Penal Code (as amended by Act No. 3 of 8 April 1967) sections 164*bis (a)* and 165*bis (b)*.

[2] Rumania—Penal Code, section 209 (2).

[3] Honduras—Legislative Decree No. 206 of 3 February 1956 on the defence of the democratic system, section 4 ; El Salvador—Legislative Decree No. 876 of 27 November 1952 concerning the defence of the democratic and constitutional order (as amended by Legislative Decree No. 907 of 17 December 1952), sections 1 (7) and 3 ; Turkey—Penal Code, section 142.

[4] Argentina—Decree No. 8161 of 13 August 1962 concerning communism, sections 2 and 4 ; Legislative Decree No. 4214 of 25 May 1963, sections 2, 3 and 8 ; Act No. 17401 of 22 August 1967, section 11 (in addition, Peronist ideological affirmations are punishable under Decree No. 4161 of 5 March 1956, sections 1 and 3 ; Dominican Republic—Act No. 1443 of 14 June 1947 to prohibit organisations contrary to the Constitution, section 2 ; Guatemala—Legislative Decree No. 9 of 10 April 1963 promulgating the Act for the defence of democratic institutions, sections 4 and 5 ; Haiti—Legislative Decree of 19 November 1936 on communist activities, sections 2, 3 and 6 ; Honduras—Decree No. 95 of 7 March 1946 concerning totalitarian activities, sections 1 and 2 ; El Salvador—Penal Code (as amended by Decree No. 145 of 20 September 1962), section 139-A ; Spain—Act of 1 March 1940 on the prohibition of freemasonry and communism, sections 3 and 5.

[5] Libya—Code of Criminal Law, section 194.

[6] Peru—Press Law, section 45.

[7] Austria—Penal Code, section 305. The Government has stated that this provision is no longer applied in practice and will be omitted from a new Code which is being prepared.

[8] It may be recalled that the Universal Declaration of Human Rights refers to freedom of expression " through any media ". A number of national constitutions, in guaranteeing freedom of expression, specifically exclude any system of press licensing or censorship—for example, Italy—Constitution of 27 December 1947, article 21 ; Mexico—Constitution of 1 May 1917, article 7.

subject to sanctions involving compulsory labour. [1] Such a system of prior authorisation may relate to all periodical publications [2], to the publication of newspapers [3], to engaging in journalism [4], or to the possession of any printing press.[5] In several countries, the government may prohibit (subject to sanctions involving compulsory labour) all publications by specified persons, if it considers that such publications might contain matter contrary to the national or public interest [6] or to the interests of public safety or security.[7] Alternatively, censorship may be imposed on similar grounds.[8] The salient feature of these various systems, as far as the Abolition of Forced Labour Convention is concerned, is that they may be the basis for depriving persons of the right to publish their views, either completely or in the forms subject to authorisation, 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 judicial review. In so far as the relevant legislative provisions are enforced by penalties involving an obligation to perform labour, they may accordingly lead to the imposition of forced or compulsory labour as a means of political coercion or as a punishment for expressing political or ideological views. The same possibility may arise where the authorities enjoy wide powers to ban particular publications, for example, publications considered capable of prejudicing the edification of the nation [9] or likely to offend national sentiment.[10]

109. Most countries have laws which permit them to prohibit the importation of certain kinds of publications. These powers are frequently intended to deal with types of publications with which the Abolition of Forced Labour Convention is not concerned (such as obscene publications). They may however also provide a basis for prohibiting political and ideological writings. It is accordingly necessary to consider the terms in which the powers in question are granted and the manner in which they are applied in practice, since in many cases penalties involving compul-

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[1] Such systems are to 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 for the application of the 1957 Convention.

[2] Jordan—Press and Publications Act of 12 February 1967, sections 9, 19 and 70.

[3] Ghana—Newspaper Licensing Act, 1963, sections 1-3 ; Malaysia—States of Malaya : Printing Presses Ordinance, 1948 (as amended by Ordinance No. 32 of 1957), sections 7, 7A, 7B and 17, Sabah : Printing Presses Ordinance (Cap. 107), sections 7 and 15 ; Singapore—Printing Presses Ordinance (Cap. 226, as amended by Ordinance No. 11 of 1960), sections 7, 7A, 7B and 17 ; Syrian Arab Republic—Press Act (Legislative Decree No. 53 of 1949, brought into force again by Legislative Decree No. 16 of 5 June 1962), sections 15, 16 and 55 ; United Arab Republic—Decree No. 156 of 24 May 1960 concerning the organisation of the press, sections 1 and 11.

[4] United Arab Republic—Decree No. 156 of 24 May 1960, sections 2 and 11.

[5] Hong Kong—Control of Publications Consolidation Ordinance, 1951, sections 8 and 17. The requirement of a licence for possessing a printing press is also laid down in the above-mentioned press legislation of Jordan, Malaysia and Singapore.

[6] Malaysia—Internal Security Act 1960, sections 22, 24 and 25 ; Singapore—Undesirable Publications Ordinance (Cap. 124), sections 3 and 4, Internal Security Act, 1960 (extended to Singapore by L.N. 231 of 14 September 1963), sections 22, 24 and 25.

[7] Southern Rhodesia—Law and Order (Maintenance) Act (Cap. 39), sections 18 and 19.

[8] Ghana—Criminal Code, section 183.

[9] Chad—Act No. 35 of 8 January 1960 concerning the prohibition of subversive publications, section 1.

[10] Libya—Publications Act, No. 11 of 1959, sections 26 and 39. Powers to prohibit particular publications also exist under the provisions mentioned in footnotes 6 and 7 above.

sory labour are laid down for such offences as possessing, distributing or reproducing prohibited publications or extracts from them.

110. Administrative restrictions on the right of individuals to seek, receive and impart information and ideas, while most frequently affecting written matter, may also take other forms, such as prohibitions to attend and address meetings or gatherings [1] or generally to take part in any political activities.[2] Such provisions likewise would appear to permit the imposition of penalties involving compulsory labour in circumstances falling within the scope of the 1957 Convention. It is also necessary to consider the effect of laws permitting preventive detention, banishment, compulsory residence, etc. Although in these cases generally no direct labour obligations appear to be imposed [3] punishments involving compulsory labour may be laid down in respect of incidental restrictions on freedom of expression and political activity. In evaluating the implementation of the 1957 Convention, both the terms and the practical application of such laws therefore need to be examined.

111. An examination of the legislation consulted in the context of the present survey brings out the close relationship which may exist between provisions regulating publications and those dealing with meetings and associations. Thus, where particular views or ideologies are prohibited [4], 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 law. Conversely, where particular organisations are prohibited, the legislation normally lays down penalties for the pursuit of their activities, *inter alia*, through meetings and publications. The Committee has accordingly considered it appropriate to examine the possible bearing which national provisions relating to associations and meetings may have upon the application of the Abolition of Forced Labour Convention.

112. In many countries, associations may be freely established and may develop their activities without interference from the authorities. Certain formal requirements relating to registration may exist, but without having the effect of making an association subject to prior approval. Although associations may become illegal if they engage in specific criminal activities, the relevant penal legislation is not worded in terms which would prevent either individuals or groups of individuals from expressing their views or engaging in peaceable political activity.

113. In a number of countries, however, restrictions of varying severity exist on the possibility for individuals to constitute organised groups. In some countries, all political parties and activities of a party-political nature have been prohibited, subject to penalties involving an obligation to perform labour. [5] In certain other cases,

[1] Southern Rhodesia—Law and Order (Maintenance) Act (Cap. 39), sections 13, 17 and 51; African Affairs Act (Cap. 93), sections 46 and 47.

[2] Malaysia—Internal Security Act, 1960, sections 8 and 44 (permitting also more specific prohibitions to address public meetings); Singapore—same provisions (applied to Singapore by L.N. 231 of 14 September 1963).

[3] See, however, p. 219, footnote 5.

[4] See paras. 105 and 107 above. These cases are accordingly not reviewed individually in the following paragraphs dealing with associations and meetings.

[5] Syrian Arab Republic—Legislative Decree No. 2 of 12 March 1958, in conjunction with sections 327 and 328 of the Penal Code (the Government has stated that, although still in force, the legislative decree of 1958 is not applied in practice); United Arab Republic—Legislative Decree No. 37 of 18 January 1953.

a similar prohibition applies to all parties or associations of a political character other than a specified national movement or party.[1] Legislation may also prohibit particular kinds of groups or associations, for example, those aimed at impairing the existing social order[2], or associations or groups of a communist character.[3] In so far as these various provisions are enforced by penalties involving an obligation to perform labour, their practical application might permit the imposition of forced or compulsory labour within the meaning of the 1957 Convention. This possibility may also arise where the public authorities enjoy wide discretionary powers to prohibit associations[4] on general grounds such as national interest, public policy, welfare or good order.[5] It is to be noted that the legislation in question sometimes contains very extensively worded penal provisions for activities related to a prohibited organisation.[6] Even where the dissolution of associations is pronounced by a court and in accordance with due process of law, it may be necessary to obtain information on the practical application of the relevant provisions and on the consequences which the prohibition of a particular party or association may have on the right of individuals to express ideological and political views and to engage in peaceable political activity, so as to ensure that no penalties involving any form of forced or compulsory labour may be imposed in circumstances covered by the Convention.

114. As in the case of freedom of expression and freedom of association, limitations on the right of meeting may be of two kinds : those resulting from specific penal provisions and those resulting from administrative control. Certain prohibitions constitute normal measures for the protection of public order which are unaffected by the Abolition of Forced Labour Convention. This is true, for example, of provisions laying down penalties in regard to violent or disorderly meetings, meetings inciting to violence, race hatred, disobedience of the laws, etc. Other prohibitions are imposed as a consequence of restrictions on freedom of expression

[1] Central African Republic—Act No. 63-411 of 17 May 1963 concerning the " M.E.S.A.N. " National Movement, sections 1 and 4 ; Tanzania (Zanzibar)—Afro-Shirazi Party Decree, 1965, sections 4, 5 and 8.

[2] United Arab Republic—Act No. 32 of 12 February 1964 on private associations and foundations, sections 2 and 92.

[3] Portugal—Legislative Decree No. 40550 of 12 March 1956, sections 7 and 8. In this case, security measures may be imposed, which may take the form of internment in a workhouse or an agricultural settlement (Penal Code, section 70). Since security measures may be imposed in the absence of a conviction, it would appear that persons made subject to such measures do not enjoy the exemption from productive work applicable to persons *convicted* of political offences, referred to in paragraph 88 above.

[4] Such discretionary powers may arise under a general system of authorisation of associations or under legislation permitting particular associations to be declared unlawful.

[5] Brunei—Societies Enactment (Cap. 66), sections 9, 10 and 16-18 ; Congo (Brazzaville) —Act No. 19-60 of 11 May 1960 making obligatory the registration of associations and authorising the dissolution of associations considered contrary to the national interest, sections 8 and 9 ; Hong Kong—Societies Ordinance (Cap. 151), sections 5 and 10-12 ; Kenya—Societies Act (Cap. 108), sections 6 and 15-17 ; Malaysia—Societies Act, 1966, sections 7, 13 and 42-48 ; Portugal—Legislative Decree No. 39660 of 20 May 1954 to supplement the provisions regulating the exercise of the right of association, sections 1 ,2, 4 and 6 (it appears from the Government's reports that persons convicted under this legislation do not have the status of political offenders) ; Singapore—Societies Ordinance (Cap. 228, as amended by Ordinance No. 37 of 1960), sections 4, 11 and 12 ; Southern Rhodesia— Unlawful Organisations Act (Cap. 89), sections 3 and 10 ; United Arab Republic—Act No. 32 of 12 February 1964, sections 12 and 92.

[6] For example, the Unlawful Organisations Act of Southern Rhodesia makes it an offence, *inter alia,* to carry on any activity in the direct or indirect interests of an unlawful organisation in which it was or could have engaged prior to becoming an unlawful organisation (section 10).

and freedom of association. The problems which may arise in the application of the 1957 Convention from the prohibition of particular views or associations have already been reviewed ; any consequential prohibitions affecting meetings are liable to give rise to corresponding difficulties. There are also some cases where the prohibition of particular kinds of meetings may lead to the imposition of penalties involving an obligation to perform labour in circumstances falling within the scope of the Convention.[1] As regards measures of administrative control, in a number of countries, previous authorisation or notification is required for the holding of meetings in public places (streets, squares, public parks, etc.). Such provisions, which are aimed essentially at the maintenance of public order and do not prevent the holding of meetings elsewhere, create no problem for the application of the 1957 Convention, even if they might in certain circumstances be applied in a discriminatory manner. In certain cases, more extensive restrictions can temporarily be imposed on meetings, for example, in the event of civil disturbances, even if no general state of emergency is declared. Where such powers exist in countries bound by the 1957 Convention, information on their practical application should be included in the reports on the Convention. In some countries, meetings in private premises are even in normal times subject to various kinds of administrative control. This may take the form of the need for prior authorisation [2], of the presence of a police officer or other public official at meetings with extensive powers to stop the proceedings [3], or of wide powers to prohibit meetings.[4] Having regard to the extent of the discretionary powers enjoyed by the authorities and the range of meetings affected, such provisions—even if aimed primarily at the preservation of public order—may provide a basis for undue interference with normal rights of assembly and discussion. In so far as they are enforced by penalties involving an obligation to perform labour, the possibility arises of their being applied in a manner incompatible with the 1957 Convention.

115. Apart from provisions of general application concerning the expression of views, associations and meetings, which have been considered above, restrictions may affect particular classes of persons. In most countries, for example, civil servants engaged in the administration of the State are required not to undertake political activity, with a view to preserving their impartiality and the confidence of

[1] For example, Syrian Arab Republic—Penal Code, section 336, making illegal meetings of seven or more persons in a place to which the public has access in order to protest against any decision or measure taken by the public authorities.

[2] Kenya—Public Order Act (Cap. 56), sections 2 and 5 (a licence is required for any meeting which the public or more than 50 persons are permitted to attend) ; Southern Rhodesia—African Affairs Act (Cap. 92), section 46 (written permission is normally required for any meeting in a reserve or tribal area at which 12 or more Africans are present).

[3] Jordan—Public Meetings Act, No. 60 of 1953, sections 2-8 (applicable to any meeting called to discuss questions of a political nature ; the meeting may be stopped by the representative of the authorities, *inter alia,* if discussion is not confined to matters mentioned in the prior notification which has to be addressed to the authorities) ; Southern Rhodesia—Law and Order (Maintenance) Act (Cap. 39), section 17 (a police officer may enter and remain on any premises other than a private domestic residence at which three or more persons are gathered, and may forbid persons from speaking, *inter alia,* if he believes that a seditious or subversive statement is likely to be made). In Pakistan, the Full Bench of the High Court decided in 1965 that a law which empowered police officers to enter any premises where a meeting was being held in order to report on the proceedings violated the constitutional guarantees of freedom of assembly and association and was therefore void.

[4] Somali Republic—Public Order Law, section 13 (the power to prohibit meetings for reasons of safety, order or security, extends to meetings which, though convened as private meetings, are deemed not to be private because of the locality in which they are held, the number of persons, or their purpose, and also to regional or national meetings or congresses of political or other associations).

the population in the public administration.[1] Violation of this rule generally gives rise only to disciplinary sanctions, which do not include any kind of forced or compulsory labour.[2] However, one government has indicated in its report that national public employees who engage in political activity are punishable with penal servitude (involving an obligation to perform labour).[3] In so far as civil servants engaged in the administration of the State are concerned, for the reasons indicated above, such provisions may not be incompatible with Article 1 *(a)* of the Abolition of Forced Labour Convention, but they would appear to permit the imposition of a form of forced or compulsory labour as a means of labour discipline within the meaning of Article 1 *(c)* of that Convention. Moreover, to the extent that such a prohibition applied to persons who are not civil servants engaged in the administration of the State, the imposition of penalties involving any form of compulsory labour would also be incompatible with Article 1 *(a)* of the Convention.

116. In a number of countries, various forms of criticism of the government, laws or acts of the public authorities by ministers of religion are prohibited, subject to penalties involving an obligation to work.[4] Without prejudice to the wider question of the separation of Church and State, these provisions appear to permit the imposition of compulsory labour as a punishment for the expression of views within the meaning of the 1957 Convention.

Forced or Compulsory Labour as a Means of Labour Discipline

117. The problems arising in connection with the prohibition in the Abolition of Forced Labour Convention of any form of forced or compulsory labour as a means of labour discipline may be considered under three main headings : provisions of general application, provisions applicable to public services, and provisions governing labour discipline among seamen. It is appropriate to bear in mind that, as previously indicated, the Convention does not prevent the imposition of penal sanctions for breaches of labour discipline (even if involving compulsory labour) in certain circumstances, such as breaches impairing the operation of essential services or breaches committed in certain posts essential to safety or in circumstances where life or health is endangered.[5]

118. It appears from the available information that national legislation today provides only in relatively few cases for recourse to forms of forced or compulsory labour as a general method of maintaining labour discipline. Normally, breaches of discipline give rise only to sanctions of a disciplinary or monetary character not

[1] Some constitutions, in guaranteeing freedom of expression, assembly and association, specifically reserve the possibility of imposing upon public officers restrictions which are reasonably justifiable in a democratic society, for example, Zambia—Constitution of 1964, articles 22 and 23.

[2] For example, Canada—Public Service Employment Act, 1967, section 32.

[3] Japan—National Public Service Law (No. 120 of 1947), articles 102 and 110, and Rule 14-7 of the National Personnel Authority (1949). It appears from the National Public Service Law (article 2) and the Public Corporation and National Enterprise Labour Relations Law (article 40) that these provisions would apply to national public employees of such services as postal services, state-owned forests, state printing and minting services, and the alcohol monopoly. Comments on these matters have been communicated by the General Council of Trade Unions of Japan.

[4] Belgium—Penal Code, section 268 ; Dominican Republic—Penal Code, section 201 ; Haiti—Penal Code, sections 162 and 165 ; Turkey—Penal Code, section 241 ; United Arab Republic—Penal Code, section 201.

[5] See para. 93 above.

involving any obligation to perform labour. However, in a few countries, penalties involving compulsory labour may still be imposed in respect of a wide range of breaches of labour discipline, such as failure to carry out a contract of employment, negligence in the performance of work, absence without just cause, desertion, etc.[1] In some countries, the failure by the individual worker to comply with obligations arising out of an industrial agreement or award is punishable with similar sanctions.[2] Such sanctions may also sometimes be imposed for refusal or failure by a worker to comply with a court order for the due fulfilment of his contract.[3] In certain cases, penalties involving an obligation to perform labour are laid down for failure to exercise care in the use of machinery, to avoid waste of raw materials, or to comply with general production plans.[4] Similar penalties may also be laid down for more limited kinds of breaches of labour discipline.[5] These various provisions appear to permit the imposition of a form of forced or compulsory labour within the meaning of the Convention.

119. It is particularly with regard to persons employed in public services that special penal provisions designed to protect the public interest are to be found. Thus, in the case of public officials, it may be considered necessary to protect the citizen against abuse of authority. Provisions punishing abuse of authority have indeed been referred to by various governments as one means of preventing the illegal exaction of forced labour. Other examples of provisions designed to prevent the improper use of official position are those punishing corruption and the unauthorised revelation of official secrets. In the case of essential services, such as services for the supply of water, gas and electricity, fire and health services, etc., it may similarly be considered appropriate to punish certain breaches of discipline which impair or are liable to impair their proper functioning.[6] For the reasons previously stated, penal provisions of this kind may be considered as not incompatible with the Abolition of Forced Labour Convention.

120. In a number of cases, penal provisions applicable to persons employed in public services are worded in more general terms, and accordingly appear to fall within the scope of the 1957 Convention. This is the case, for example, of provisions laying down sanctions involving compulsory labour for neglect of duty by

[1] Honduras—Police Act (Decree No. 7 of 8 February 1906), see p. 199, footnote 1, above ; Southern Rhodesia—African Labour Regulations Act, section 23, Masters and Servants Act, section 30.

[2] Portugal—Legislative Decree No. 23870 of 18 May 1934, sections 11 and 12 ; Trinidad and Tobago—Industrial Stabilisation Act, 1965, sections 16 (7) and 26 (under section 4 of this Act, similar penalties may also be incurred by a worker who terminates his employment for certain reasons connected with the making of an award or agreement, such as dissatisfaction with its terms).

[3] Australia—Masters and Servants Act, 1878, of South Australia, section 4 ; Kenya—Employment Act (Cap. 226), sections 41 (1) and 45 (1) *(b)* ; Nigeria—Labour Code Act (Cap. 91), section 216 (1) *(b)* ; Tanzania (Tanganyika)—Employment Ordinance, 1955, section 144 *(b)* ; Uganda—Employment Act (Cap. 192), section 61 (1) *(b)*.

[4] Poland—Decree of 13 June 1946 respecting particularly dangerous offences during the reconstruction of the State, sections 39 and 41 ; Syrian Arab Republic—Economic Penal Code (Legislative Decree No. 37 of 16 May 1966), sections 10, 11, 13 and 19.

[5] For example, Dominican Republic—Act No. 3143 of 11 December 1951, sections 2 and 3 (failure to carry out agreed work by the agreed date or within the time necessary for its execution, where an advance payment has been made) ; Iraq—Penal Code, sections 305A and 305 C (failure to perform a contract for the transport of persons or property or to act as a servant during a journey, and failure to perform a contract not exceeding two years' duration, where the worker has been brought to the workplace at the employer's expense).

[6] These special provisions should however be limited to essential services in the strict sense ; see para. 126 below.

public employees.[1] Sometimes, such penal sanctions apply only to specific kinds of breaches of discipline, for example, the undertaking of political activities by public employees[2] or the membership or support by public employees of any workers organisations based on the class struggle.[3] In some countries, postal workers are punishable with sanctions involving an obligation to perform labour if they leave their employment without permission or without a month's previous notice.[4] Sometimes, provisions designed to punish breaches of contract liable to interrupt the operation of essential services are worded in such a way as to prohibit even individual termination of employment[5]; a restriction of this kind cannot be considered as compatible with the Convention.

121. In a considerable number of countries, legislation governing conditions of work of merchant seamen and fishermen contains provisions permitting the imposition of penal sanctions involving compulsory labour in respect of various breaches of labour discipline. Some of these provisions relate to acts tending to endanger the ship or the life or health of persons on board; with these the Convention is not concerned. However, other sanctions relate to breaches of labour discipline as such, for example, desertion, absence without leave or disobedience, and are supplemented by provisions under which seamen may be forcibly returned to their ship.[6] In its previous general review of the application of the Conventions dealing with forced labour, in 1962, the Committee already drew attention to the existence of such special provisions relating to seafarers. It then suggested that governments of countries bound by the 1957 Convention should undertake a review of their legislation concerning conditions of employment of seamen, if possible in consultation with the shipowners and seamen of their countries, with a view to bringing the legislation into conformity with the Convention. A review of the kind suggested has been undertaken in many of the countries concerned, frequently as part of a more general review of the merchant shipping laws. In some cases, certain measures have

[1] Italy—Penal Code, sections 328, 357 and 358 (applicable to public officials and persons engaged in a public service, including, for example, employees of public savings banks, concessionary transport undertakings, tourist offices, etc.); Poland—Penal Code, sections 286 and 292, as extended by decree of 13 June 1946 respecting particularly dangerous offences during the reconstruction of the State, section 46 (applicable to officials and employees of the State, autonomous public administrations, state undertakings, officials of co-operatives, etc.); Syrian Arab Republic—Economic Penal Code (Legislative Decree No. 37 of 16 May 1966), section 7 (applicable to employees of the State).

[2] See para. 115 above.

[3] Greece—Act No. 4879 of 6 March 1931 respecting organisations of public employees, sections 2 and 6 (as amended by Act No. 5403 of 18 April 1932). The prohibition covers officials, non-manual and manual workers in public employment.

[4] Iraq—Post Office Law, No. 6 of 1930, section 48; Singapore—Post Office Ordinance (Cap. 105), section 60.

[5] Uganda—Trades Disputes (Arbitration and Settlement) Act, 1964, section 16.

[6] United Kingdom—Merchant Shipping Act, 1894, sections 221-224 and 225 (1) *(b)* and *(c)*. These or corresponding provisions are also in force in a number of other countries, for example, Australia, Canada, Cyprus, Guyana, Ireland, Malaysia, Nigeria, Singapore, Trinidad and Tobago and various non-metropolitan territories of the United Kingdom. In a number of other countries, abandonment or desertion of the ship is punishable with sanctions involving compulsory labour, for example, Argentina—Commercial Code, section 990; Gabon—Merchant Marine Code, section 169; Ghana—Merchant Shipping Act, 1963, sections 122 and 147 (1) *(b)* and *(c)*; Greece—Penal and Disciplinary Code for the Merchant Marine, sections 28 and 29; Panama—Commercial Code, section 1120; Senegal—Merchant Marine Code, section 223. Provisions for the forcible return of deserting seamen to their ship also exist in Denmark—Seamen's Act of 7 June 1952, section 52; Finland—Seamen's Act of 30 June 1955, section 52; India—Merchant Shipping Act, 1958, section 193; Norway—Seamen's Act of 17 July 1953, section 52; Pakistan—Merchant Shipping Act, 1923, sections 101 and 102; Sweden—Seamen's Act of 30 June 1952, section 52.

already been taken [1], and further legislative action to deal with the matter appears likely in the next few years.

Forced or Compulsory Labour as a Punishment for Having Participated in Strikes

122. Before proceeding to examine the problems which may arise in the implementation of Article 1 *(d)* of the Abolition of Forced Labour Convention—prohibiting the use of forced or compulsory labour as a punishment for having participated in strikes—it may be useful to recall two factors which delimit the area in which such problems may arise. The Conference recognised that recourse to strike action might be made subject to certain limitations, whose nature has been previously indicated.[2] In so far as national restrictions on strikes remain within corresponding limits, the implementation of the Convention is not affected. This is likewise the case where limitations on strikes—whatever their nature—are enforced by sanctions not involving any form of forced or compulsory labour.[3]

123. General prohibitions of strikes, enforced by sanctions involving an obligation to perform labour, appear to be in force in only a limited number of countries. Such a prohibition may refer expressly to strikes [4] or may result from more general penal provisions covering, for example, any action which stops the pursuit of an industry or commerce.[5] A number of provisions to which reference has been made earlier as permitting the imposition of forced or compulsory labour as a punishment for individual breaches of labour discipline appear capable of application also in the event of participation in strikes, for example, those punishing nonperformance of a contract of employment or failure to implement general production plans.[6]

124. The possibility of resort to strike action may be considerably affected by provisions regarding settlement of disputes by arbitration. As has been previously pointed out, there are certain cases in which the adoption of such a procedure to the exclusion of any recourse to strike action (even if enforced by sanctions involving compulsory labour) can be regarded as compatible with the Abolition of Forced Labour Convention, namely where it has been voluntarily accepted by the parties concerned or where, because of the special nature of the employment (such as employment in essential services) the right to strike may properly be replaced by alternative procedures. However, in a number of countries, provisions for compulsory arbitration—accompanied by the prohibition of strikes both during the arbitration proceedings and during the currency of the award—are not confined to such special cases, but are general in character and make it possible to render

[1] Provisions concerning the forcible conveyance of seamen on board ship were omitted from the Merchant Shipping Act adopted in Ghana in 1963 and were rpealed in Sierra Leone by the Abolition of Forced Labour Convention, 1957 (Application to Merchant Seamen) Act, 1966. The latter Act also exempted persons convicted of certain offences under the Merchant Shipping Act from the requirement to perform prison labour.

[2] See paras. 94 and 95 above.

[3] See para. 96 above.

[4] Portugal—Legislative Decree No. 23,870 of 18 May 1934 to prescribe penalties for the offence of engaging in a lockout or strike.

[5] Libya—Code of Criminal Law, section 363. However, section 81 of the Labour Act, promulgated by Royal Decree of 22 November 1962, permits workers to go on strike in case of failure by an employer to implement a settlement in their favour embodied in a conciliation board report, arbitration award or court judgment.

[6] See para. 118 above.

practically all strikes illegal, subject to penal sanctions involving an obligation to perform labour.[1] Such prohibitions accordingly fall within the scope of the 1957 Convention.

125. In certain cases, strikes have been made unlawful under emergency legislation or following a declaration of a state of siege, subject to penalties involving an obligation to perform labour.[2] A prohibition of this kind can be regarded as compatible with the Convention only if and for so long as it can be shown to be required to meet the exigencies of an emergency in the strict sense of the term—that is, where the existence or well-being of the whole or part of the population is endangered. Even if conditions exist which call for certain exceptional measures, it still needs to be considered whether they necessitate, in particular, the suspension of the right for workers to defend their interests by means of strike action. It should also be noted that some of the legislative provisions reviewed in the previous chapter[3], which permit the call-up of labour in circumstances not necessarily constituting an emergency, may be used to requisition workers in the event of a strike and—in so far as enforced by sanctions involving compulsory labour—minght therefore be applied in a manner inconsistent with Article 1 *(d)* of the Abolition of Forced Labour Convention.

126. The criteria by reference to which the temporary suspension of the right to strike in the event of an emergency may be justified—namely the need to safeguard the existence and well-being of the population—also constitute the basis for considering the compatibility with the 1957 Convention of provisions prohibiting strikes in the public service or other essential services. In a number of countries, the prohibitions laid down in this regard appear to be too general in scope to be compatible with the Convention, for example, where they apply to all persons in public employment, whatever the nature of their work[4], or where—in addition to essential services in the strict sense—they cover also industries and services whose interruption, in normal circumstances, does not necessarily endanger the existence or

[1] Ceylon—Industrial Disputes Act (Cap. 131), as amended, sections 4, 40 and 43; Dominican Republic—Labour Code, sections 377, 640, 678 (16) and 679 (3); Ghana—Industrial Relations Act, 1965, sections 21 and 22; Malaysia—Industrial Relations Act, 1967, sections 23 and 41-43; Syrian Arab Republic—Labour Code, sections 189-203 and 209, Penal Code, section 334 (in addition, strikes by agricultural workers are expressly prohibited under the Agricultural Labour Code, sections 160 and 262); Tanzania (Tanganyika)—Permanent Labour Tribunal Act, 1967, sections 4, 8, 11 and 27; Trinidad and Tobago—Industrial Stabilisation Act, 1965, sections 16, 25, 26 and 34.

[2] China—Labour Disputes Act, 1943, article 36, Regulations of 1 November 1947 for arbitration in labour disputes during the period of national mobilisation, article 8, Temporary Regulations of 1942 for the punishment of persons obstructing national mobilisation, article 5 (4); Greece—Proclamation of 21 April 1967.

[3] See paras. 51-53 above. In Argentina Act No. 17192 of 2 March 1967 specifically permits the requisitioning of workers in their normal activity (section 9), a power which might find application particularly in the case of strikes. In the case of Greece the Governing Body Committee on Freedom of Association noted that the powers of mobilisation of civilians under Act No. 1984 of 21-23 September 1939 (as amended by Emergency Act No. 450 of 7 July 1945) had in certain instances been used to requisition strikers in circumstances not constituting an emergency (93rd Report, paras. 268-275).

[4] Greece—Act No. 4879 of 6 March 1931 respecting organisations of public employees, sections 3 and 6; Japan—National Public Service Law, No. 120 of 1947, articles 98 and 110 (17), Local Public Service Law, No. 261 of 1960, articles 37 and 61 (see Report of the Fact-Finding and Conciliation Commission on Freedom of Association, op. cit., paras. 2134-2139); Pakistan—East Pakistan Service (Temporary Provisions) Ordinance, 1963 (various other strike prohibitions in force in Pakistan are punishable with forms of imprisonment which appear not to involve compulsory labour); United Arab Republic—Penal Code, sections 124, 124 *(a)*, 124 *(c)* and 374.

well-being of the population.[1] In certain cases, where strikes are prohibited in essential services, alternative procedures for the settlement of disputes appear not always to be provided.[2]

127. Where legislation provides for penal sanctions for breaches of labour discipline by seafarers[3], these sanctions are generally applicable likewise to strikes. It is necessary in this case also that any prohibitions enforced by sanctions involving any form of forced or compulsory labour should be confined to circumstances in which strike action would tend to endanger the ship, life or health. As previously indicated, the relevant legislation is generally being reviewed in the various countries concerned in the light of the provisions of the 1957 Convention.

128. In a number of countries, the legislation prohibits, subject to sanctions involving an obligation to perform labour, strikes called for political purposes, strikes having any object other than or in addition to the furtherance of a trade dispute in the trade or industry in which the strikers are engaged, or strikes of sympathy or solidarity.[4] Such prohibitions may cover widely varying situations, and their precise effect on the observance of the 1957 Convention would accordingly appear to depend on the practical application of the legislation in question.

Forced or Compulsory Labour as a Means of Discrimination

129. Instances in which the law permits forced or compulsory labour to be imposed by way of coercion or punishment as a means of racial, social, national or religious discrimination appear to be few[5]. There is a growing body of constitutional and legislative guarantees of equality of citizens, free from discriminations[6], and existing forms of discrimination are the result of practice and tradition rather than of any statutory requirement enforced by penal sanctions. In certain cases,

[1] For example, Dominican Republic—Labour Code, sections 370, 371, 678 (16) and 679 (3) (including transport services and any services which cannot be suspended without prejudice to the national economy); Kenya—Trade Disputes Act, 1965, section 28 and First Schedule (including public railway services, port and dock services, etc.); Netherlands—Penal Code, sections 358*bis* to 358*quater* (public railways); Trinidad and Tobago—Trade Disputes and Protection of Property Ordinance, section 8 (including railway, tramway, ship or other transport services); Turkey—Act No. 275 of 15 July 1963 respecting collective labour agreements, strikes and lockouts, sections 20 and 54 (including all forms of land, sea or air transport, educational establishments, lawyers' offices, etc.).

[2] For example, Malaysia—Industrial Relations Act, 1967, sections 23, 41 *(c)*, 42 and 43 (persons employed in any government service remain prohibited from resorting to strike action even after the Government has refused to refer a dispute to arbitration).

[3] See para. 121 above.

[4] For example, Bahamas—Trade Union and Industrial Conciliation Act, 1958, section 65; Brazil—Act No. 4330 of 1 June 1964 to regulate the right to strike, sections 22 and 29; Turkey—Act No. 275 of 15 July 1963, sections 17 and 54 (in so far as sections 7 and 19 of this Act reserve the right to negotiate collective agreements and to call a strike to organisations representing the workers concerned, any strike by unorganised workers would appear to be illegal).

[5] As regards the Republic of South Africa, see the indications given in footnote 3 on p. 193 above.

[6] For example, the report of the United States on the Abolition of Forced Labour Convention refers to a decision of the Supreme Court declaring unconstitutional and void certain state legislation mentioned in the Committee's earlier survey of 1962 which prohibited marriage and cohabitation between persons of different races, subject to penalties involving compulsory labour. Since the previous survey, the difference between Natives and non-Natives as regards liability to prison labour for non-payment of taxes which formerly existed in the British Solomon Islands has been abolished—see R.C.E., 1964, p. 184.

distinct laws are applicable to certain population groups or members of particular religious communities, but these appear generally to be either of a protective nature or intended to take account of the customs of the communities concerned.[1]

130. However, in some cases, punishment involving an obligation to perform labour may still be incurred for non-observance of laws affecting certain persons defined in terms of their race or social group in circumstances which must be considered to fall within the scope of the 1957 Convention. [2]

* * *

131. The Committee has sought in the present chapter to review the principal problems arising in the application of those provisions of the Abolition of Forced Labour Convention which deal with the use of any form of forced or compulsory labour (including labour imposed as a consequence of a conviction in a court of law) as a means of political coercion or education or as punishment in various other circumstances. As can be seen from the examples which have been mentioned, provisions of relevance to the application of the Convention in this regard may be contained in an extensive and varied body of legislation. The Committee seeks to examine all legislative texts which may have a bearing on the Convention. Its ability to do so depends to a considerable extent on the co-operation of governments in providing full information on relevant national legislation and frequently also in making this legislation available. A comprehensive assessment of the degree of implementation of the Convention in a particular country may accordingly become possible only some years after entry into force of the Convention there. There is also a continuing need to take account of current modifications in national legislation. In certain cases, the Committee has not yet been able to examine all the relevant laws even in countries bound by the Convention. In the case of countries not bound by the Convention, where the report due under article 19 of the I.L.O. Constitution has not been supplied, the Committee has not been able to take account of the situation in the country concerned, and a number of the reports which have been supplied have been too summary in nature to permit a sufficiently detailed appreciation of the position. For these various reasons, while the present survey has sought to provide as comprehensive an account of the existing situation as possible, it does not purport to constitute a complete and definitive enumeration of all cases where, on the national level, practices inconsistent with the terms of the Convention may exist. As pointed out in the introductory chapter, the references to national law and practice should be regarded as being illustrative rather than exhaustive in character.

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[1] It may be recalled that the Indigenous and Tribal Populations Convention, 1957 (No. 107), provides that to the extent consistent with the interests of the national community, the methods of social control practised by the populations concerned should be used as far as possible for dealing with crimes and offences committed by members of these populations (Article 8).

[2] For example, Kenya—Laibons Removal Ordinance (Cap. 59); Malaysia (Sarawak)—Local Authorities Ordinance (Cap. 117), sections 34 *(b)* and 59; Sierra Leone—Summary Conviction Offences Act (Cap. 37), section 23, Protectorate Vagrancy Act (Cap. 64), section 3; Southern Rhodesia—Africans (Registration and Identification) Act (Cap. 109), section 21, African Affairs Act (Cap. 92), sections 37 and 48.

CHAPTER IV

CONCLUSIONS

132. In calling for reports under article 19 of the I.L.O. Constitution on the Conventions concerning forced labour, the Governing Body sought to provide a renewed opportunity to those States which have not yet accepted the obligations of these Conventions to review their legislation and practice, to consider the possibilities of ratification and to decide upon such measures as might be necessary on the national level to permit the full implementation of the standards in question. The reports have also provided a basis for the I.L.O. to review, on the occasion of the International Year for Human Rights, the extent to which appeals made both by the United Nations and the I.L.O. for the ratification and effective implementation of international standards on the abolition of forced labour have met with response, the difficulties encountered, and the prospects of further progress.

133. As was pointed out in the introduction to this survey, the Conventions on forced labour are among the most widely ratified of all I.L.O. instruments, their obligations having been accepted in respect of 143 countries in the case of the Forced Labour Convention, 1930, and in respect of 112 countries in the case of the Abolition of Forced Labour Convention, 1957. It appears from the information given by governments in their reports that a number of additional ratifications are envisaged [1], while several other reports have stated that no difficulties stand in the way of ratification or application of the Conventions concerned.[2]

134. It is thus clear that the principles underlying the Conventions on forced labour find practically universal acceptance and endorsement. These instruments aim at guaranteeing to all human beings freedom from compulsion to labour, irrespective of the nature of the work or the sector of activity in which it may be performed. The 1957 Convention furthermore seeks to provide protection against the imposition of any form of forced or compulsory labour (including labour resulting from a conviction in a court of law) as a means of coercion or punishment for the expression of views or peaceable political activity, infringements of labour discipline and participation in strikes or as a means of discrimination. Given the wide-ranging scope of the protection sought by the two Conventions under consideration, it is understandable that their implementation should not in all cases be free from difficulty. However, the problems referred to in the course of this survey need to be viewed against the wide network of obligations already existing under these Conventions and the large number of countries included in the review.

135. The survey has shown that there still exist in the world today a variety of forms of *forced or compulsory labour for the purpose of production or service.* In

[1] As regards the Forced Labour Convention, 1930 : Colombia, Ethiopia, Kuwait ; as regards the Abolition of Forced Labour Convention, 1957 : Cameroon (Eastern Cameroon), Chile, Ethiopia, France, Sudan.

[2] As regards the Forced Labour Convention, 1930 : Thailand, Uruguay ; as regards the Abolition of Forced Labour Convention, 1957 : Lesotho, Mauritania, New Zealand, Nicaragua, Uruguay.

some cases, the laws providing for the compulsory call-up of labour appear to be vestiges from an earlier stage in the political and economic evolution of the countries concerned and are stated to have fallen into disuse and to be due for formal repeal. However, the survey has also shown that in some countries laws providing extensive possibilities of compulsory direction or call-up of labour have been adopted in recent years. Such laws are incompatible with the standards laid down in the forced labour Conventions and, where these instruments have been ratified, with the international obligations of the States concerned. In some instances, governments have stated that the powers to impose compulsory labour granted by such laws have not in fact been utilised. Even if this be the case, so long as the legislation continues in force, the possibility of its application remains. Its existence may constitute a continuing temptation to solve manpower problems by recourse to compulsion, as well as a basis for improper pressures or even certain forms of discrimination. In so important a field as freedom of labour, it is essential that both law and practice should be in full conformity with the relevant international standards.

136. Cases of call-up of labour in circumstances not compatible with the relevant I.L.O. Conventions may arise from an unduly wide recourse to emergency powers. The limits within which existing I.L.O. standards permit compulsory call-up of labour in emergencies have been indicated in this survey : such call-up should be confined to circumstances in which the existence or well-being of the whole or part of the population is endangered, and the duration, extent and nature of the compulsory service should be limited to what is strictly required by the exigencies of the situation. The survey has brought out that in some countries emergency powers for the call-up of labour may be or in practice have been invoked in more general circumstances. In others, where such powers were originally brought into operation during an emergency, they have been maintained in force for unduly prolonged periods. In these cases, both legislation and national practice may have to be revised to ensure compliance with the international standards concerning the abolition of forced labour.

137. A number of problems in the implementation of the Conventions on forced labour have arisen out of national service obligations. This matter was discussed by the Conference at the time of the adoption of the Forced Labour Convention of 1930, in relation to compulsory military service (which—as such—was specifically excluded from the scope of that instrument). Today, the question also arises in relation to various other forms of national service. The subject of special youth employment and training schemes is due to be considered by the Conference. In these circumstances, the Committee has confined itself in the present survey to reviewing certain aspects of such schemes which have a bearing on the implementation of the Conventions under consideration. The survey has brought out that there may exist considerable variance between the manner in which such schemes are defined in legislation and the way in which they actually develop in practice. In the light of information now available on their practical operation, a number of schemes appear in a very different light from what could be deduced from a mere reading of the basic legislation (which at the time of the Committee's previous survey of 1962 was generally the only source of reference for evaluating the nature of the schemes). It may be particularly significant that a number of schemes which according to their original legislative formulation appeared to be aimed at large-scale mobilisation of labour for development works have in practice become predominantly schemes for providing training in skills which would fit participants subsequently to find opportunities for gainful employment. Attention has been

drawn in the present survey to the distinction between compulsory participation in education or training schemes, on the one hand, and schemes involving the imposition of forced or compulsory labour within the meaning of the Conventions on forced labour, on the other. It may not be easy in all cases to draw a clear line between work-orientated and training-orientated programmes. A fundamental difference of approach may nevertheless be involved, which is likely to be reflected not only in the practical organisation of the programmes, but also in their ultimate impact on the prospects for the effective enjoyment of freedom of labour.

138. In contrast to programmes aimed at persons with inadequate vocational preparation, in some countries obligations are imposed on persons who have undergone certain forms of education or training. The survey has brought out the varying scope and purpose of such obligations. In some countries, they affect only a narrow range of professions and are imposed for the purpose of securing the provision to the population of certain essential services (particularly medical services). In other cases, such obligations are more general in scope. It is conceivable that, at a certain stage in a country's development, when special facilities for advanced study and training are made available to a small minority at considerable cost to the community, a certain period of service to that community should be required in return. However, bearing in mind the recognition of the right to education by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, the provision of educational facilities should be viewed as an aim of the wider promotion of human rights. The questions arising in this field will no doubt receive attention within the framework of the proposed Conference discussion of special youth employment and training programmes.

139. It should of course be remembered that the choice for governments does not lie between a purely passive attitude towards the labour market and compulsory mobilisation of labour. Apart from a series of incentives which may be utilised to meet particular manpower requirements, there is the need for an over-all employment policy which will seek to secure opportunities for productive, freely chosen employment to all through a variety of measures ranging from investment programmes and fiscal policies to vocational guidance and vocational training schemes. In the long term, a solution to existing imbalances in manpower utilisation is most likely to be found through the co-ordinated measures envisaged in the I.L.O.'s Employment Policy Convention and Recommendation. It is appropriate to recall that the Employment Policy Recommendation outlines not only the action to be taken within the area of responsibility of the national authorities of the countries concerned, but also indicates the international action which should be taken to promote employment objectives. Such action involves the responsibility of the world community both in the relations between nations and in collective action undertaken within the framework of international organisations. The I.L.O. in particular has a major role to play in this regard. Its responsibility has already been recognised in the emphasis given in the Organisation's operational programmes to activities in the field of human resources development, and intensified action may be expected to follow from the world programme for the development of jobs and skils proposed to be drawn up on the occasion of the I.L.O.'s 50th anniversary in 1969.

140. A distinct set of problems arises in connection with the abolition of *forced or compulsory labour as a means of political coercion or education or as punishment in various other circumstances.* The Forced Labour Convention, 1930, dealt only to a limited extent with this aspect, mainly by specifying the conditions subject to which work or service might be exacted from persons as a consequence of a

conviction in a court of law. The survey has indicated certain difficulties which still exist in this connection, particularly where penal labour is exacted in the absence of a conviction in a court of law or where prisoners may be hired to or placed at the disposal of private employers. The main provisions relating to forced or compulsory labour as political coercion or education or as punishment in various other circumstances are, however, to be found in the Abolition of Forced Labour Convention, 1957. The problems encountered in the implementation of these provisions arise almost exclusively from the exaction of penal or corrective labour from persons who have been convicted on account of certain actions or activities—such as the expression of views, breaches of labour discipline, or participation in strikes—in respect of which the 1957 Convention prohibits the imposition of any form of forced or compulsory labour.

141. As has been noted in the course of the survey, these particular provisions of the 1957 Convention embody certain concepts defined in very general terms. On some aspects additional indications concerning the intentions of the Conference are to be found in the preparatory work which preceded the adoption of the Convention. Nevertheless, a number of difficult questions remain to be considered when it becomes necessary to determine the extent to which the manifold situations arising under national legislation in fields of relevance to the Convention might involve the imposition of some form of forced or compulsory labour falling within one or other of its clauses. The Committee has sought, in the requests which it has over the years addressed to governments of countries bound by the Convention, to clarify these issues and in the first instance to ascertain from the governments themselves the measures which are taken or which they propose to take to ensure that particular legislative provisions may not lead to the use of any form of forced or compulsory labour within the scope of the Convention. In the further development of the Committee's work in relation to these standards, continuing dialogue of this kind will be necessary, and it is to be hoped that the present survey will itself help to clarify the nature of questions which can arise and of possible solutions to them.

142. The first of the clauses of the 1957 Convention considered in this context relates to the abolition of any form of forced or compulsory labour as a means of political coercion or education or as punishment for the holding or expression of views. It would appear from the legislation reviewed in the preceding chapter that in a certain number of cases there exist wide-ranging penal provisions which might permit the imposition of sanctions involving compulsory labour in circumstances falling within the scope of this clause. Some of these provisions appear to prohibit the manifestation of any political or ideological opposition, whereas others are aimed at particular ideological doctrines or tendencies. In a number of cases, problems in the application of the Convention appear to arise from the wide discretionary powers of preventive control, not subject to any judicial review, which the legislation has granted to the executive or various administrative authorities, and by virtue of which individuals may find themselves exposed to the application of penal sanctions involving compulsory labour as a means of political coercion or as a punishment for expressing views. In other cases, extensive or unduly prolonged recourse to emergency powers or suspension of constitutional guarantees may result in a similar possibility of the imposition of compulsory labour on account of activities falling within the scope of the 1957 Convention.

143. The restrictions in question are relevant to the application of the Abolition of Forced Labour Convention only in so far as their enforcement involves liability to any form of forced or compulsory labour. In a number of countries, special conditions apply to persons convicted of offences of a political nature, under which

they are exempted from the labour obligations normally imposed on persons serving prison sentences. While such a special prison régime may not resolve the wider questions of civil and political rights involved, it can remove the difficulties which would otherwise affect the observance of the Convention. Conversely, where liability to penal or corrective labour exists, it becomes necessary to examine to what extent limitations on freedom of expression and related rights are legitimate safeguards in a democratic society or on the contrary must be considered an undue impairment of the rights and freedoms in question. This is a field where it is appropriate to refer to other relevant international standards, and particularly the Universal Declaration of Human Rights and the international Covenants on human rights. The question of appropriate measures of international co-ordination is likely to arise in due course, when—as is to be expected and hoped for—the Covenants enter into force. The implementation in particular of the International Covenant on Civil and Political Rights will be of significance to the observance of the Abolition of Forced Labour Convention in the wider sense that, as noted in the present survey, the effective guarantee of freedom from forced labour as a means of coercion ultimately depends on respect for the rule of law.

144. The survey has brought out that sanctions involving any form of forced or compulsory labour exist only in a few countries as a general means of enforcing labour discipline. Problems exist, however, in a number of countries in regard to provisions governing labour discipline in public employment and among seamen. In regard to strikes, the survey has attempted, in the light of the expressed intentions of the Conference at the time of the adoption of the Abolition of Forced Labour Convention, to indicate the extent of the protection given by the Convention in relation to strike action. The survey has brought out the existence of a number of situations where participation in strikes is punishable with forced or compulsory labour within the meaning of the Convention. In some cases, strikes as such are subject to specific prohibitions. More frequently the prohibition is the consequence of the application of procedures for compulsory arbitration, which may have the effect of rendering almost all strikes impossible, enabling workers to resort to strike action in defence of their interests only when their employer or the competent authority chooses not to invoke the arbitration machinery. Problems in relation to the application of the 1957 Convention also arise in a number of instances from an unduly wide definition of essential services in respect of which all strikes are prohibited.

145. Just as in the case of abolition of forced or compulsory labour for economic purposes, difficulties in the implementation of the relevant international standards may be a reflection of general imbalances, so also the use of any form of forced or compulsory labour for political or social purposes may be a reflection of problems which arise in societies undergoing rapid change and development. Here again, the removal of difficulties is dependent not only on the action of national authorities, but also on that of the world community as a whole, thus re-emphasising the need for international solidarity in the promotion of human rights.

146. In conclusion, the present survey shows that the full implementation of the standards laid down in the Forced Labour Convention and the Abolition of Forced Labour Convention may still require 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. It is fitting that these problems should receive special attention on the occasion of the International Year for Human Rights, as a basis for consideration of further measures which may be necessary both on the national level and within the wider community of nations and as a spur to inten-

sified efforts to ensure the effective enjoyment of individual freedom and dignity. Discussion on these matters will in many instances be part of a wider issue, namely how to ensure balanced social and economic progress. With this consideration in mind, it has been sought in the present survey to indicate not only the nature of the protection which the Conventions on forced labour aim to provide, but also the limitations which may properly be imposed, in the wider interests of society, on the rights concerned. It is clear that, within these limits, a just and stable order must guarantee to the individual freedom from compulsion in his work and freedom from coercion through forced or compulsory labour in industrial relations and in the exercise of his rights as a citizen. The concept of freedom here involved is not a negative one, but presupposes the development of opportunities for all to participate fully and responsibly in the economic, social and political life of their community.

Appendix I. Texts of the Substantive Articles of the Conventions concerning Forced Labour

Forced Labour Convention, 1930 (No. 29)

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;

(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 sub-paragraph *(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.

ABOLITION OF FORCED LABOUR, CONVENTION, 1957 (No. 105)

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 means 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.

Appendix II. Particulars of Ratifications, Declarations of Acceptance or Application and Reports Available in Respect of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)

A. *States*

Country	Ratifications		Reports available on Convention No. 29		Reports available on Convention No. 105	
	Convention No. 29	Convention No. 105	Article 22 [a]	Article 19 [a]	Article 22 [a]	Article 19 [a]
Afghanistan	—	×	—	×	—	—
Albania	×	—	×*	—	—	—
Algeria	×	—	×	—	—	—
Argentina	×	×	×	—	×	—
Australia	×	×	×	—	×	—
Austria	×	×	×	—	×	—
Barbados	×	×	×	—	×	—
Belgium	×	×	×	—	×	—
Bolivia	—	—	—	×	—	×
Brazil	×	×	×	—	×	—
Bulgaria	×	—	×	—	—	×
Burma	×	—	×	—	—	—
Burundi	×	×	×*	—	—	—
Byelorussia	×	—	×	—	—	×
Cameroon	×	—	×	—	—	—
Eastern Cameroon	—	—	—	—	—	×
Western Cameroon	—	×	—	—	×	—
Canada	—	×	—	×	×	—
Central African Republic	×	×	×	—	×	—
Ceylon	×	—	×*	—	—	×†
Chad	×	×	×*	—	×*	—
Chile	×	—	×	—	—	×†
China	—	×	—	×	×	—
Colombia	—	×	—	×	×	—
Congo (Brazzaville)	×	—	×*	—	—	×†
Congo (Kinshasa)	×	—	×	—	—	×†
Costa Rica	×	×	×	—	×	—
Cuba	×	×	×	—	×	—
Cyprus	×	×	×	—	×	—
Czechoslovakia	×	—	×	—	—	—
Dahomey	×	×	×	—	×	—
Denmark	×	×	×	—	×	—
Dominican Republic	×	×	×*	—	×*	—
Ecuador	×	×	×*	—	—	—
Ethiopia	—	—	—	×	—	×
Finland	×	×	×	—	×	—
France	×	—	×	—	—	×
Gabon	×	×	×*	—	×	—
Federal Republic of Germany	×	×	×	—	×	—
Ghana	×	×	×	—	×	—
Greece	×	×	×	—	×	—
Guatemala	—	×	—	×	×	—

For footnotes see end of table B, p. 252.

Country	Ratifications		Reports available on Convention No. 29		Reports available on Convention No. 105	
	Convention No. 29	Convention No. 105	Article 22 [1]	Article 19 [2]	Article 22 [1]	Article 19 [2]
Republic of Guinea	×	×	×	—	×	—
Guyana	×	×	×	—	×	—
Haiti	×	×	×	—	×	—
Honduras	×	×	×*	—	×*	—
Hungary	×	—	×	—	—	×
Iceland	×	×	×*	—	×*	—
India	×	—	×	—	—	×
Indonesia	×	—	×*	—	—	×
Iran	×	×	×	—	×	—
Iraq	×	×	×	—	×	—
Ireland	×	×	×	—	×	—
Israel	×	×	×	—	×	—
Italy	×	×	×	—	—	×
Ivory Coast	×	×	×	—	×	—
Jamaica	×	×	×	—	×*	—
Japan	×	—	×	—	—	×
Jordan	×	×	—	—	×	—
Kenya	×	×	×	—	×	—
Kuwait	—	×	—	×	×	—
Laos	×	—	×*	—	—	—
Lebanon	—	—	—	—	—	—
Lesotho	×	—	×	—	—	×
Liberia	×	×	×*	—	×*	—
Libya	×	×	×*	—	×*	—
Luxembourg	×	×	×	—	×	—
Malagasy Republic	×	—	×*	—	—	—
Malawi	—	—	—	—	—	×
Malaysia	×	×	×	—	×	—
Republic of Mali	×	×	×	—	×*	—
Malta	×	×	×	—	×	—
Islamic Republic of Mauritania	×	—	×*	—	—	×
Mexico	×	×	×	—	×	—
Morocco	×	×	×	—	×	—
Nepal	—	—	—	×	—	×
Netherlands	×	×	×	—	×	—
New Zealand	×	—	×	—	—	×
Nicaragua	×	×	×	—	—	×
Niger	×	×	×	—	×	—
Nigeria	×	×	×	—	×	—
Norway	×	×	×	—	×	—
Pakistan	×	×	×	—	×	—
Panama	×	×	×*	—	×*	—
Paraguay	×	—	—	—	—	—
Peru	×	×	×*	—	×*	—
Philippines	—	×	—	×	×	—
Poland	×	×	×	—	×	—
Portugal	×	×	×*	—	×	—
Rumania	×	—	×	—	—	×
Rwanda	—	×	—	×†	×	—
El Salvador	—	×	—	—	×*	—
Senegal	×	×	×*	—	×	—
Sierra Leone	×	×	×*	—	×*	—
Singapore	×	×	×	—	×	—
Somali Republic	×	×	×*	—	×*	—
Spain	×	×	×	—	—	×
Sudan	×	—	×	—	—	×
Sweden	×	×	×	—	×	—

Country	Ratifications		Reports available on Convention No. 29		Reports available on Convention No. 105	
	Convention No. 29	Convention No. 105	Article 22 [1]	Article 19 [2]	Article 22 [1]	Article 19 [2]
Switzerland	×	×	×	—	×	—
Syrian Arab Republic	×	×	×	—	×	—
Tanzania	×	×	×*	—	×*	—
Thailand	—	—	—	×	—	×
Togo	×	—	×*	—	—	—
Trinidad and Tobago	×	×	×	—	×	—
Tunisia	×	×	×*	—	×*	—
Turkey	—	×	—	×	×*	—
Uganda	×	×	×*	—	×*	—
Ukraine	×	—	×	—	—	×
U.S.S.R.	×	—	×	—	—	×
United Arab Republic	×	×	×*	—	×*	—
United Kingdom	×	×	×	—	×	—
United States	—	—	—	×	—	×
Upper Volta	×	—	×*	—	—	×
Uruguay	—	—	—	×	—	×
Venezuela	×	×	×	—	×	—
Viet-Nam	×	—	×*	—	—	×
Yemen	—	—	—	—	—	—
Yugoslavia	×	—	×*	—	—	×
Zambia	×	×	×	—	×	—
Totals	99	80	97	15	74	32

B. *Non-Metropolitan Territories*

Countries and territories	Declarations of acceptance or application [1]		Reports available on Convention No. 29		Reports available on Convention No. 105	
	Convention No. 29	Convention No. 105	Article 22 [2]	Article 19 [3]	Article 22 [2]	Article 19 [3]
Australia						
New Guinea	×	×	×	—	×	—
Norfolk Island	×	×	×	—	×	—
Papua	×	×	×	—	×	—
Denmark						
Faroe Islands	×	×	× *	—	× *	—
Greenland	×	×	×	—	×	—
France						
Overseas Departments						
French Guyana	×	—	×	—	—	—
Guadeloupe	×	—	×	—	—	—
Martinique	×	—	×	—	—	—
Réunion	×	—	×	—	—	—
Overseas Territories						
Comoro Islands	×	—	×	—	—	—
French Polynesia	×	—	×	—	—	—
New Caledonia	×	—	×	—	—	—
St. Pierre and Miquelon	×	—	×	—	—	—
French Territory of the Afars and the Issas	×	—	×	—	—	—
Netherlands						
Netherlands Antilles	×	×	×	—	× *	—
Surinam	×	×	×	—	×	—
New Zealand						
Cook Islands	×	—	×	—	—	—
Niue	×	—	×	—	—	—
Tokelau	×	—	×	—	—	×
United Kingdom						
Antigua	×	×	×	—	×	—
Bahamas	×	×	×	—	×	—
Bermuda	×	×	×	—	×	—
British Honduras	×	×	×	—	×	—
British Virgin Islands	×	×	× *	—	× *	—
Brunei	×	×	×	—	×	—
Dominica	×	×	×	—	×	—
Falkland Islands (Malvinas)	×	×	×	—	×	—
Fiji	×	×	×	—	×	—
Gibraltar	×	×	×	—	×	—
Gilbert and Ellice	×	×	×	—	×	—
Grenada	×	×	×	—	×	—
Guernsey	×	×	×	—	×	—
Hong Kong	×	×	×	—	×	—
Jersey	×	×	×	—	×	—
Isle of Man	×	×	×	—	×	—
Monserrat	×	×	×	—	×	—
St. Christopher-Nevis-Anguilla	×	×	× *	—	× *	—

Countries and territories	Declarations of acceptance or application [1]		Reports available on Convention No. 29		Reports available on Convention No. 105	
	Convention No. 29	Convention No. 105	Article 22 [2]	Article 19 [3]	Article 22 [2]	Article 19 [3]
St. Helena	×	×	×	—	×	—
St. Lucia	×	×	×*	—	×*	—
St. Vincent	×	×	×	—	×*	—
Seychelles	×	×	×	—	×	—
Solomon Islands	×	×m	×	—	×	—
Southern Rhodesia	×	×	×*	—	×*	—
Swaziland	×	×m	×	—	×	—
United States						
American Samoa	—	—	—	×	—	×
Guam	—	—	—	×	—	×
Puerto Rico	—	—	—	×	—	×
Trust Territory of Pacific Islands	—	—	—	×	—	×
Virgin Islands	—	—	—	×	—	×
Totals	44	32	44	5	32	6

[1] Cases in which the Convention has been accepted or declared applicable subject to modifications, are indicated by [m]. All other cases refer to acceptance or application without modification.

[2] Reports supplied under article 22 of the I.L.O. Constitution by countries which have ratified the Convention. Cases in which no report has been supplied for the last reporting period but where reports for earlier periods have been available are indicated by an asterisk (*).

[3] Reports supplied under article 19 of the I.L.O. Constitution (reports on unratified Conventions). Reports received too late for inclusion in the Summary of Reports on Unratified Conventions (Report III, Part 2) are indicated by †.