



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2008)¹: CHINA

THE ELIMINATION OF ALL FORMS OF FORCED OR COMPUSORY LABOUR (FL)

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2001 Annual Review (AR).		
	Involvement of Employers' and Workers organizations in the reporting process	YES, Involvement of the China Enterprise Confederation (CEC) and the All-China Federation of Trade Unions (ACFTU) by means of consultations and communication of Government's reports.		
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the CEC. 2007 AR: Observations by the CEC.		
	Workers' organizations	2008 AR: Observations by the ACFTU. 2001 AR: Observations by the International Confederation of Free Trade Unions (ICFTU).		
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	China has ratified neither the Forced Labour Convention, 1930 (No. 29) (C.29), nor the Abolition of Forced Labour Convention, 1957 (No. 105) (C.105).	
		Ratification intention	NIL	
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES The Constitution of the People's Republic of China provides in article 37 that «Personal freedom of citizens of the People's Republic of China is inviolable ... Unlawful detention or deprivation or restriction of citizens' personal freedom by other means is prohibited, and unlawful search of the person of citizens is prohibited». The protection of personal freedom implies the elimination of all forms of forced or compulsory labour.	
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy <p>2005 AR: According to the Government: There is a national policy to realize the principle and right (PR) of the elimination of all forms of forced or compulsory labour, but the Government would appreciate receiving ILO assistance in this respect.</p> <ul style="list-style-type: none"> • Legislation <p>(i) The Labour Law (sections 32 and 96); (ii) the Criminal Law (sections 240-244); (iii) the Law</p>	

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention, please see: www.ilo.org/ilolex

			<p>on the Protection of Rights and Interests of Women (sections 37-39).</p> <p>2008 AR: The Government indicated that the Labour Contract Law was adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on 29th June 2007, which will enter into force on 1st January 2008. Article 38 provides that <i>if an employer uses violence, threat or unlawful restriction of personal freedom to compel an employee to work, or if he is instructed in violation of the rules and regulations or peremptorily ordered by his employer to perform dangerous operations which threaten his personal safety, the employee may terminate his employment contract forthwith without giving prior notice to the employer.</i></p> <p>Article 88 stipulates that if an employer: (a) uses violence, threat or unlawful restriction of personal freedom to compel an employee to work, (b) instructs in violation of rules and regulations or peremptorily ordered by his employer to perform dangerous operations which threaten his personal safety, (c) insults, corporally punishes, beats, illegally searches or detains an employee; or (d) provides odious working conditions or a severely polluted environment, resulting in serious harm to the physical or mental health of employees, it shall be subjected to administrative punishment; if the said conduct constitutes a criminal offense, criminal liability shall be pursued according to the law; if the employee suffers harm as a result of the said conduct on the part of the employer, he will be liable for damages.</p> <p>• Regulation</p> <p>The Regulation Forbidding The Use of Child Labour (section 11).</p>
		Basic legal provisions	(i) Constitution of the People's Republic of China (article 37); (i) The Labour Law (sections 32 and 96); (ii) the Criminal Law (sections 240-244); (iii) the Law on the Protection of Rights and Interests of Women (sections 37-39); and (iv) the Regulation Forbidding The Use of Child Labour (section 11).
		Definition of forced or compulsory labour	<p>2007 AR: According to the Government: the definition of forced labour is found in section 244 of the Criminal Law which provides that an employer would be in violation of the laws and regulations on labour administration should he compel his employees to work by restricting their personal freedom.</p> <p>2003 AR: According to the Government: The Labour Law defines forced or compulsory labour as follows: «to force labourers to work by resorting to violence, intimidation or illegal restriction of personal freedom».</p>
		Judicial decisions	Judicial Explanation of the Supreme Court, 2001 (section 15).
	Exercise of the principle and right	Special attention to particular situations and human trafficking	2003 AR: According to the Government: Special attention is given to the situation of women and girls.
		Information/Data collection and dissemination	2004-2005 ARs: The Government indicated that it was planning to collect statistics or other relevant information on the PR.
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Monitoring, enforcement and sanctions mechanisms	<p>2008 AR: According to the Government: A Special Action Plan on Punishing the Illegal Employment and Combating the Relevant Infringements and Crimes was elaborated by various Ministries and the All-China Federation of Trade Unions (ACFTU) in order to protect substantively the rights and benefits of workers in rural and urban areas as well as the young professionals.</p> <p>2007 AR: According to the Government: Under Article 11 of the Regulation on Forbidding The Use of Child Labour 2002, the act of forcing children to work may be punished according to the Criminal Law. Following the Judicial Explanation of the Supreme</p>	

		<p>Court, 2001 (section 15), in instances where the worker proposes to discharge the labour contract, the employer should pay for the remuneration and may pay for compensation. Under section 4 of the Method of Administrative Punishment for the Violation of the Labour Law 1994, in instances where the employer does not consult the trade unions and the worker and forces the latter to extend the working time, a warning should be given to the employer who may also be required to provide compensation, and a 100 Yuan fine for every hour of overtime performed by each worker.</p> <p>2005 AR: According to the Government: In instances where the Government finds that the PR has not been respected, the Labour Law provides that the offender shall be taken into custody for a maximum of 15 days, or fined, or given a warning by a public security organ. In addition, criminal responsibilities against the offender shall be investigated if the action constitutes a crime (section 96 of the Labour Law). Under the Criminal Law (section 244), employers who are directly exacting forced labour on workers in violation of labour management laws and regulations are subject to a fine, a maximum of a three-year imprisonment, or criminal detention.</p> <p>2003-2004 ARs: According to the Government: Measures taken for the enforcement of the PR include: inspection/monitoring mechanisms, penal sanctions, civil/administrative sanctions, employment creation/income generation, educational programmes, international cooperation programmes and tripartite examination of related issues. Moreover, legal reform and capacity building are envisaged.</p> <p>2000 AR: According to the Government: Labour inspections have increased to detect and deal with cases of forced labour.</p>
	<p>Involvement of the social partners</p>	<p>2005 AR: According to the Government: The Legal Work Committee of the National People’s Congress, the ACFTU, the All-China Federation of Youth and the All-China Federation of Women are responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour.</p> <p>2003-2005 ARs: According to the Government: The ACFTU has been involved in the development and implementation of Government measures.</p>
	<p>Promotional activities</p>	<p>2008 AR: According to the Government: a Special Action Plan on Punishing the Illegal Employment and Combating the Relevant Infringements and Crimes was elaborated by the Ministries of Labour and Social Security, Public Security, the Inspection, Civil Affairs, Land and Resources, Health, State Administration of Work Safety and the ACFTU in order to substantively protect the legislative rights and benefits of workers in rural and urban areas as well as the young professionals. The Government added that the plan also aims to strengthen all the relevant forces so as to focus on the rural small brick kilns, coal mines, mines and workshops during the months of July and August 2007.</p> <p>Furthermore, series of seminars and awareness raising activities have been conducted in the Zhejiang, Fujian and Jilin provinces and a major technical cooperation project entitled CP-TING on prevention of trafficking of young girls and women is currently ongoing.</p> <p>The CEC indicated that it would publish, in collaboration with the ILO, a guide on forced labour for employers. It added that there was a session organized on forced labour during the 4th China Employment Forum in October 2006.</p> <p>2007 AR: The CEC mentioned that it had held two seminars on International Labour Standards and Forced Labour in Beijing City and Guangzhou City in March 2006, in cooperation with ILO.</p> <p>2006 AR: According to the Government: In cooperation with the ILO, the Government has conducted a study on Chinese legislation concerning trafficking, illegal migration and forced labour (from November 2004 to March 2005). It has also conducted a high level study tour on trafficking to Australia and Japan (January 2005); a national seminar on trafficking and forced labour in Beijing (April 2005); a field study in projects in Yunnan and Hunan provinces (June 2005); a field study on trafficking and forced labour in Fujian province (August 2005); and a Provincial seminar on trafficking and forced labour in Jilin province (August 2005).</p>

		<p>2005 AR: According to the Government: In January 2004, a seminar was held in Beijing on C.29 and C.105.</p> <p>2003-2004 AR: According to the Government: The All-China Federation of Women has cooperated with the ILO in the Mekong Sub regional Project to Combat Trafficking in Children and Women. Other governmental bodies also cooperated with UNICEF on actions against trafficking.</p> <p>2003 AR: According to the Government: In realizing the PR, the following measures have been implemented: awareness raising/advocacy; employment creation/income generation; educational programmes; and international cooperation programmes/projects.</p> <p>2000 AR: The Government indicated that it promotes the relevant legislations and regulations, strengthens the enforcement of the laws, increases cooperation with the ILO and widely disseminates international labour standards. The ILO has held many seminars in China on international labour standards in which it promotes the PR.</p>	
	<p>Special initiatives/Progress</p>	<p>2008 AR: The ACFTU indicated that the protection of workers is more comprehensive in China and sanctions pertaining to forced labour are more severe. It added that the country was undertaking a national special action on the issue of illegal employment, including forced labour.</p> <p>2007 AR: According to the Government: In order to reform rehabilitation through Labour mechanism (Laojiao), the 19th Meeting of the Standing Committee of the 10th National People's Congress held on 29th December 2005, proposed to formulate a «Law on Correction of Minor Offences», and had included the proposal into its national legislation plan.</p> <p>According to the CEC: The CEC delegates at the International Labour Conference (June 2006) discussed a possible cooperation with the ILO Special Action Programme to Combat Forced Labour (ILO/SAP-FL), and have decided to undertake a survey on working time and wages in China.</p> <p>2005 AR: According to the Government: The major change concerning this PR relates to the cooperation started with the ILO in the form of a study tour concerning minor offences in 2003 and a seminar on forced labour in 2004.</p> <p>2003 AR: According to the Government: The major changes concerning the PR are as follows: (i) the Government initiated large-scale actions on the struggle against trafficking of women and children through the country (1995, 1999 and 2000); (ii) the Ministry of Public Security issued an «Opinion on Issues Concerning Law and Policy Applicable to Action Against Trafficking» (2000) and several departments issued a «Circular on Issues Concerning Trafficking» (2000); and (iii) the Supreme Prosecutor issued a «Circular on the Active Participation in the Action Against Trafficking» (2000).</p>	
<p>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the social partners</p>	<p>Employers' organizations</p>	<p>2008 AR: The CEC indicated the following challenges: (i) awareness on human rights is lacking, (ii) productivity is not very high and (iii) economic development is not well balanced in some regions.</p>
		<p>Workers' organizations</p>	<p>2001 AR: The ICFTU made observations on the following issues: (i) forced or compulsory labour is defined by China's legal context as occurring exclusively in the context of an employment relationship; (ii) legislation does not cover, for instance, servitude or slavery; (iii) forced labour is frequently found in factories producing various consumer goods for export, such as textiles, footwear, radios, television and sporting equipment, handbags, bicycles and many other consumer items; (iv) attempts to organize independently or to strike are said by workers to lead automatically to severe prison sentences; (v) penalties provided for in the law are either inadequate or are not enforced in practice.</p>

	According to the Government	<p>2008 AR: The Government indicated the following challenges: (i) the capacity building of the Labour Inspection Department is still needed; (ii) public awareness activities should be sustained; and (iii) inter-institution cooperation and dialogue should be strengthened.</p> <p>2005 AR: The main difficulties encountered in realizing this PR in the country are the lack of information and capacity as well as data, capacity of responsible government institutions with regard to forced labour due to trafficking. Moreover, the Government encounters difficulties with respect to regulations on rehabilitation through labour.</p>
TECHNICAL COOPERATION	Request	<p>2008 AR: The Government indicated that ILO assistance is needed for the capacity building of the labour inspection Department. The CEC requested ILO assistance on awareness raising projects.</p> <p>2007 AR: The Government reiterated its previous request for continuing ILO technical cooperation (i.e., legal reform, awareness raising, training, etc.)</p> <p>2005 AR: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in the country, in the following priority areas: (1) legal reform (labour law and other relevant legislation); (2) awareness-raising, legal literacy and advocacy; and (3) assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the PR.</p> <p>2003-2004 ARs: The Government expressed its intention to adopt a national policy to realize the PR and requested ILO assistance in this regard.</p>
	Offer	ILO and ILO/SAP-FL (policy advice, awareness raising activities and case studies).
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries such as in China (as well as in the Gulf States and new member States in the South Pacific) had made important efforts during this process. However, according to them, more needed to be done. The IDEAs were also concerned that China (and another State) had not yet expressed their intention to ratify C.29 and/or C.105. However, they welcomed the adoption of new laws relating to forced or compulsory labour in China (and another State). Finally, while understanding that in China the provisions of the Labour Contract Law and the Criminal Law also cover the State as an employer, the IDEAs reminded all the governments that it was of their primary responsibility to ensure that forced labour does not exist in their countries for any reason (Cf. Paragraphs 12, 42, 43 and 44 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs welcomed the significant increase in the reports of action to combat forced labour in several countries, including China, and noted that an increasing number of States were recognizing that forced labour does exist in their country [...]. For the IDEAs, such recognition was indispensable to combating forced or compulsory labour, as it was undoubtedly the first step in what is a daunting but essential task (Cf. Paragraph 41 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The IDEAs noted that China was working with the ILO on the issue of the elimination of all forms of forced or compulsory labour. They commended China for its continuing dialogue with the Office and hoped that the positive measures taken would be expanded upon. They also expressed satisfaction concerning the concrete information received on progress made in the elimination of all forms of forced or compulsory labour in China in cooperation with the ILO (Cf. Paragraph 192 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs stated that they were glad to receive concrete information on activities carried out by the Special Action Programme to Combat Forced Labour (SAP-FL). They noted that the dialogue and engagement with the Government of China continued in this area, on the basis of seminars and study tours on this subject (Cf. Paragraph 113 of the 2004 Annual Review Introduction – ILO: GB.289/4).</p> <p>2003 AR: The IDEAs commended China for requesting the ILO's technical cooperation, through the Annual Review process (paragraph 4 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>	

GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL
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