



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

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

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2000 Annual Reviews (AR). No change report for the 2002 AR.		
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Malaysian Employers' Federation (MEF) and the Malaysian Trade Union Congress (MTUC), through communication of the Government's report.		
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2007 AR: Observations by the MEF.		
	Workers' organizations	2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU) (late observation for the 2006 AR). 2001 AR: Observations by the ICFTU.		
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Malaysia ratified the Forced Labour Convention, 1930 (No. 29) (C.29) in 1957, and the Abolition of Forced Labour Convention, 1957 (No.105) (C.105) in 1958. However, it denounced C.105 in 1990 «due to divergences with the ILO in the interpretation of national legislation with regard to this Convention».	
		Ratification intention	NIL 2001 AR: The ICFTU mentioned that the Government should provide legal guarantees for protection against forced labour and again ratify C.105.	
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES 2001 and 2004 ARs: The Federal Constitution of Malaysia provides that no forced labour is allowed, except as provided for by national law according to article 6 of the Constitution. Under this provision: (1) no person shall be held in slavery; (2) all forms of forced labour are prohibited, but Parliament may, by law, provide for compulsory service for national purposes; and (3) incidental work to the serving of sentence of imprisonment imposed by a court of law shall not be taken to be forced labour.	
		Policy, legislation and/or regulations	• Policy 2007 AR: According to the MEF: There is no prison labour in Malaysia. Prisoners are taught living skills	

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>while undergoing their imprisonment term so that it is easier for them to go back to society when they are released from prison. Importing skills to the prisoners should not and cannot be considered as forced labour even though some of the skills training may be carried out in collaboration with the private sector employers.</p> <p>2001 AR: According to the Government: A prison labour scheme has been implemented by the Malaysian Prisons Department for the purpose of reformation and rehabilitation of offenders. About 8,000 prisoners have been involved in the vocational programme. Moreover, measures have been taken to provide better working conditions to inmates. With a view to promoting effective vocational training and rehabilitation, a new approach has been initiated, consisting in joint venture schemes with the private sector.</p> <ul style="list-style-type: none"> • Legislation <p>2003-2005 ARs: According to the Government: Although there are no definitions of forced or compulsory labour in national legislation or judicial decisions, all forms of forced or compulsory labour are prohibited, except those provided by the Law.</p>
		Basic legal provisions	The Federal Constitution of Malaysia (article 6).
		Definition of forced or compulsory labour	NIL
		Judicial decisions	NIL
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Exercise of the principle and right	Special attention to particular situations and human trafficking	NIL
		Information/Data collection and dissemination	2006 AR: According to the Government: the number of cases of abuse reported to the Labour Department has decreased.
	Prevention/Monitoring, enforcement and sanctions mechanisms	<p>2006 AR: The Government stated that the Ministry of Human Resources was responsible for enforcing the labour laws.</p> <p>2003-2005 ARs: According to the Government: The following measures have been implemented to realize the principle and right (PR) of the elimination of all forms of forced or compulsory labour: (i) legal reform; (ii) inspection/monitoring mechanisms; (iii) penal sanctions; (iv) civil or administrative sanctions; and (v) special institutional machinery.</p>	
	Involvement of the social partners	NIL	
	Promotional activities	<p>2003-2005 ARs: According to the Government: The following measures have been implemented to realize the PR: (i) awareness-raising/advocacy; (ii) capacity building; (iii) employment creation/income generation; (iv) educational programmes; (v) rehabilitation following removal from forced labour; (vi) international cooperation programmes or projects; and (vii) tripartite examination of related issues.</p> <p>2001 AR: According to the Government: Rehabilitation programmes are organized for prisoners.</p>	
	Special initiatives/Progress	2003-2005 ARs: According to the Government: Clause 3 of article 6 of the Malaysian Federal Constitution was amended in 2001 regarding work or service as consequence of a conviction of guilt in a court of law (11 January 2001).	
CHALLENGES IN REALIZING THE	According to the social partners	Employers' organizations	NIL

PRINCIPLE AND RIGHT		Workers' organizations	2001 AR: The ICFTU raised the following challenges: (i) the extremely abusive treatment of migrant workers; (ii) the existence in Malaysia of compulsory prison labour for the expression of views in opposition to the established political, social or economic order.
	According to the Government		2006 AR: The Government reiterated that all the workers, local and foreigners, were subject to the same laws. 2001 AR: In response to ICFTU's comments, the Government raised the following observations: (i) all the workers, local and foreigners, are subject to the same labour laws; the Ministry of Human Resources is responsible of enforcing the labour laws; (ii) the allegation that migrant workers face an extremely abusive situation is baseless and actions will be taken by the Government against the violators if there is proof of any such abuses; (iii) the incidence of employers retaining passports of migrant workers is not a common occurrence; it applies only for the purpose of safe keeping and these passports are replaced with special identification cards issued by the Immigration Department and returned to the workers upon completion of their contract of service; (iv) no compulsory labour is imposed, in any form, either within or outside the prison grounds.
TECHNICAL COOPERATION	Request		NIL
	Offer		NIL
EXPERT-ADVISERS' RECOMMENDATIONS			2008 AR: The ILO Declaration Expert-Advisers were concerned that the governments of Malaysia (and another government), which earlier denounced C.105, had not yet opened a dialogue with the Office and its employers' and workers' organizations with a view to reconsidering its decision. They urged Malaysia to take action in this regard (Cf. Paragraph 42 of the 2008 Annual Review Introduction – ILO: GB.301/3). 2007 AR: The IDEAs reiterated their hope that Malaysia, which denounced C.105, would open a dialogue with the Office and its national tripartite partners with a view to reconsidering this decision (Cf. Paragraph 40 of the 2007 Annual Review Introduction – ILO: GB.298/3). 2006 AR: The IDEAs reiterated their hope that Malaysia, which denounced C.105, would open a dialogue with the Office and its national tripartite partners in order to reconsider this decision (Cf. Paragraph 44 of the 2006 Annual Review Introduction – ILO: GB.295/5). 2005 AR: The IDEAs hoped that Malaysia, which denounced C.105, would reconsider its position in this respect (Cf. Paragraph 185 of the 2005 Annual Review Introduction – ILO: GB.292/4).
GOVERNING BODY RECOMMENDATIONS			NIL