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The Elimination of All Forms of Forced or Compulsory Labor (2003)

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The Elimination of All Forms of Forced or Compulsory Labor (2003)

Abstract

A compilation of reports submitted by various countries to the ILO by the year 2002, describing labor conditions and relevant laws, specifically relating to forced or compulsory labor.

Keywords

Bonded, Catherwood, Compulsory, Cornell, Economic, Europe, Forced, Global, Globalization, Globalisation, Human, ILO, ILR, Industrial, International, Labor, Labour, Law, Legal, Legislation, Library, Organization, Organisation, Portal, Relations, Rights, School, Standards, University, Work, Workers, Workplace

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The elimination of all forms of forced or compulsory labour

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The elimination of all forms of forced or compulsory labour

Bolivia

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is not recognized in Bolivia.

There are no definitions of forced or compulsory labour in national legislation or judicial decisions.

Not all forms of forced or compulsory labour are prohibited. The Bolivian law allows forced or compulsory labour for convicted prisoners serving a custodial sentence under the penal system, as a state policy for the reintegration of prisoners in society.

This is laid down in articles 48 and 50 of the Criminal Code, which state that work is compulsory for prisoners in the progressive system. This means prisoners in a system of which the essential objective is to seek their rehabilitation in accordance with the Law on Execution of Sentences and the Penal System, Chapter IV on Prison Labour, articles 73 to 84.

Article 73. Prison labour is part of the general system under the overall rules for the execution of custodial sentences, which offers greater practical effectiveness in the development of methods require by the reform of the prisoner.

The arrangements introduced in each establishment will be subject to special regulations, the uniformity of which ensures the unity of the penal system.

Other compulsory labour allowed by law is found in the Domestic and Family Violence Act, article 11 which provides for community service as an alternative to a fine or a custodial sentence.

*Article 11. The judge may suspend the sentence, and, depending on the nature of the offence and the personality of the offender, order psychological therapy or **the performance of community service.***

This principle does not apply to the category of persons serving custodial sentences.

There is no national policy to realize this principle. The Government does not intend to adopt such a policy.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

In instances where the Government finds that the principle of the elimination of all forms of forced or compulsory labour has not been respected, the following applies:

The Bolivian legislation abolished forced labour with the reforms to the Constitution and the introduction of the social system. The Constitution establishes principles, guarantees and rights, and entrusts them in article 229, as follows:

Article 229: The recognized by this Constitution may not be altered by laws which regulate the exercise of those rights where prior regulation is required for the implementation of those principles, guarantees and rights.

The guarantees recognized by the Constitution include, in Title I “fundamental rights and duties of persons”, article 5, which reads as follows:

Article 5: No form of servitude is permitted and no person may be compelled to provide personal services without their consent and in return for fair reward. Personal services may only be demanded when so laid down by law.

This is also consistent with article 7, paragraph (j)

Article 7: All persons have the following fundamental rights, in accordance with the laws that regulate the exercise of those rights ...

(j) Fair reward for their work to provide them and their families with a living worthy of a human being.

In Article 34, the Constitution provides that those who infringe constitutional rights and guarantees are subject to the ordinary law.

On this subject, article 291 of the Criminal Code, under the legal term of “subjection to servitude or similar state”, provides:

Article 291: Any person who subjects another person to servitude or similar state shall be punished by a custodial sentence of two to eight years.

With respect to the current factual situation, the most vulnerable groups in the Bolivian population, based on their state of need, are more exposed to exploitation, due to the introduction of a free market economy, rather than forced or compulsory labour. The groups exposed to this form of exploitation include children and young persons in the age range from 7 to 18 years.

The 1938 Constitution abolished any form of enslavement and other forms of forced or compulsory labour, and such practices were eradicated completely with the 1952 reforms. Therefore, no special government authority is responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour, no specific measures have been implemented or envisaged and the Government does not cooperate at the bilateral or multilateral level in relation to realizing the principle of the elimination of forced and compulsory labour.

Regarding the collection of statistics or other relevant information to the elimination of all forms of forced or compulsory labour, the Bolivian Government would undertake such eradication in the event of the occurrence of significant numbers of cases of violation of the principles enshrined in the Constitution concerning the inviolable human rights, which are recognized in turn in the Universal Declaration of Human Rights.

***Progress and achievements concerning
this principle and right***

The Bolivian Government cannot give a reply on any major changes concerning the principle since his last report, due to the fact that Bolivia has not ratified this Convention. As to legislation, there have been certain changes concerning forced or compulsory labour that prisoners are required to perform, as well as persons under non-custodial sentences, as set out in Law No. 2298 of 20 December 2001 on Execution of Sentences and the Penal System, Chapter I, Prison Labour, article 181.

***Difficulties concerning the realization
of this principle and right and priority
needs for technical cooperation***

The Bolivian Government and the ILO have neither undertaken any technical cooperation with a view to eliminating forced or compulsory labour, nor in the field of the constitutional changes and reforms described above. However, technical cooperation with the ILO to facilitate the realization of the principle of the elimination of forced and compulsory labour would be appreciated.

Report preparation

The report was submitted for information purposes to governmental authorities outside the Ministry, employers' and workers' organizations.

No comments on the report were received from the social partners.

A copy of the report was sent to the Bolivian Worker's Confederation, which is made up of representatives of workers in all sectors throughout the country, and the Organization of Private Entrepreneurs of Bolivia.

Canada

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Canada.

There are no definitions of forced or compulsory labour in national legislation or judicial decisions.

However, all forms of forced or compulsory labour are prohibited. Thus, trafficking of persons, including for forced labour, is prohibited under Canada's new Immigration and Refugee Protection Act. There are no specific legislative prohibitions with respect to forced labour or compulsory labour in Canada, but such practices, if they were to occur, could be subject to prosecution under the Criminal Code of Canada which prohibits crimes such as assault, sexual assault, abduction, unlawful confinement, kidnapping, extortion, uttering threats and bribery. All Canadian jurisdictions have legislation establishing minimum labour standards and minimum wage rates. In Canada, work by prisoners is

carried out under the supervision and control of public authorities, and their participation in work programs is voluntary.

The forms of forced labour, such as chattel slavery, bonded labour, trafficking of persons that involves forced labour, prison forced labour, are non-existent in Canada. Therefore specific legislative prohibitions are not required. When a few cases of trafficking for forced labour occurred, the Government of Canada acted quickly to adopt legislation criminalizing this specific practice.

In Canada, the principle of the elimination of forced or compulsory labour applies to all categories of persons or activities. However, there is no national policy for realizing this principle. Since there are few, if any, instances of forced labour in Canada, a national policy aimed at its elimination is not considered necessary.

***Efforts made or envisaged to ensure respect,
promotion and realization of this principle
and right***

In instances where the government finds that the principle has not been respected, the following applies:

Individuals involved in criminal practices resulting in forced labour may be subject to prosecution and if found guilty, would be subject to fines and/or imprisonment. Under Canadian labour legislation, there are mechanisms for employees to claim payment of minimum wages and other benefits. An employer found in violation of labour legislation can be subject to fines, and in some cases, imprisonment. The new Immigration and Refugee Protection Act, which came into force on 28 June 2002, provides for fines of up to Canadian \$1 million and imprisonment up to life for the trafficking of persons, including for forced labour.

Forced or compulsory labour is extremely rare in Canada. There have been reported instances where Canada has been used as a transit and destination point for the trafficking of persons, in particular women and children, into sexual exploitation and involuntary servitude or into other organized crime controlled businesses.

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following measures have been implemented:

- the new Immigration and Refugee Protection Act, which specifically criminalizes the trafficking of persons, including for forced labour, received Royal Assent in November 2001 and came into force on 28 June 2002;
- Canada ratified the Transnational Organized Crime Convention and its two Protocols on Trafficking and Smuggling on 14 May 2002;
- a pamphlet is being prepared for distribution to persons in other countries who apply to work in Canada. It warns of potential trafficking schemes and provides information on Canadian laws and protections;
- under the Customs Tariff Act and Regulations, the importation into Canada of goods manufactured or produced wholly or in part by prison labour is prohibited;
- penal sanctions are implemented; as well as

- international cooperation programmes or projects; and
- awareness raising/advocacy (and envisaged, too).

Moreover, the following activities have been carried out:

- research: Status of Women Canada's (SWC) Policy Research Fund has supported three independent policy research projects on the Canadian dimensions of trafficking in women, available at: www.swc-cfc.gc.ca/research/980901-e.html;
- support of action by women's organizations: The Women's Program (WP) of SWC has provided funding for the Canadian Association of Elizabeth Fry Societies to organize in October 2001 a national conference on "Women's Resistance: From Victimization to Criminalization" where the issues of prostitution and global trafficking of women and children were addressed. The WP has also funded the following:
 - (1) the Asian Society for the Intervention of AIDS (ASIA), as a local part of a larger international project examining the nature of trafficking of women from their countries of origin to their countries of destination by addressing the conditions faced by trafficked Asian women once they arrive in Canada;
 - (2) the Philippine Women Centre of British Columbia to examine international trafficking patterns, their connections to British Columbia and their impact on Filipino women. A major focus of this initiative is on determining to what extent cruise and cargo ships play a role in the trafficking of women;
 - (3) the Toronto Network Against Trafficking in Women and other groups to document the experiences of the trafficked women under "Operation Orphan" in Toronto in 1997. The results of this research were made public in April 2001 and are available at: http://citd.scar.utoronto.ca/MHSO/trafficking_women.html

Within these measures special attention is given to the situation of women and children.

Employers' and workers' organizations have not been involved in the development and implementation of government measures.

No specific government authority is responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour. However, the Canadian International Development Agency's (CIDA) Child Protection Action Plan focuses on child protection issues, in particular on children affected by armed conflict and child labourers, including children forced into military service and other worst forms of child labour. CIDA also supports a variety of initiatives through its Gender Funds and Canada Funds for Local Initiatives, including programs aimed at assisting women and children who are forced into the sex trade.

CIDA undertakes a large number of projects aimed at the reintegration of former child soldiers into their communities, for example, in Sierra Leone, and in the Democratic Republic of Congo where CIDA is partnering with UNICEF. CIDA has also funded a transit centre in Mali for children escaping forced and harmful child labour in the cocoa industry.

In addition, CIDA has committed over Canadian \$3 million to eliminate the trafficking of children into forced labour and support the rehabilitation of children who have been trafficked. A study of the activities of the various international donors and agencies in dealing with the problem of forced child labour is being undertaken. CIDA has also committed over Canadian \$4 million to support small cocoa and coffee producer cooperatives. These programs raise awareness of abusive forms of child labour with producers, local communities and children themselves.

In the Balkans, CIDA has provided funding to combat the trafficking of persons. Funds have supported a wide variety of activities including support for safe houses, facilitation of safe returns for rescued women and girls, awareness-raising campaigns targeting women, youth and government (with an emphasis on law enforcement officials), medical and psychological support and technical assistance for the preparation of legislative reforms.

Through the South East Asia Fund for Institutional and Legal Development, CIDA is supporting the Illegal Labour Movements: Trafficking in Women and Children project, which monitors the trafficking of women, girls and boys for the purpose of sexual exploitation, assists in the prosecution of offenders, targets law reform initiatives for victims and promotes awareness regionally and internationally. Other projects in the region have been supported in partnership with the Coalition Against Trafficking in Women and the South Asian Association for Regional Cooperation.

In addition, the Canada's Department of Foreign Affairs and International Trade (DFAIT), through its Human Security Fund, has provided financial assistance for the repatriation of Lord's Resistance Army (LRA) children in Sudan. Repatriation was conducted by the International Organization for Migration. A study on Trafficking of Human Beings in West Africa, conducted by the United Nations Centre for International Crime Prevention, was also funded.

Moreover, Customs and Immigration Canada (CIC) has provided funding to the International Organization for Migration to carry out individual case studies on "migrant trafficking" in Central American countries and the Dominican Republic. CIC also funded a Seminar on Migrant Women and Children, held in El Salvador and provided technical assistance to Costa Rica on migration management.

Multilaterally, the Government of Canada provides core funding to UNICEF and contributes to the ILO's International Programme for the Elimination of Child Labour (IPEC).

Given the few, if any cases of forced labour in Canada, the Government neither collects statistics or other information on the elimination of all forms of forced or compulsory labour nor plans to do so.

Progress and achievements concerning this principle and right

Since the last Government's report, the major change regarding the principle of the elimination of all forced forms of forced or compulsory labour concerns Bill C-11, the Immigration and Refugee Protection Act (Royal Assent: 1 November 2001), which entered into force on 28 June 2002. This Act creates a new offence covering "trafficking in persons". Penalties against human traffickers include fines of up to Canadian \$1 million and imprisonment up to life sentence.

***Difficulties concerning the realization
of this principle and right***

The most difficult aspect of combating trafficking for forced labour appears when the organized crime is international. Recipient countries like Canada must work with other countries, in particular those of origin, to stop what is a global problem.

Priority needs for technical cooperation

There is no need for ILO technical cooperation to facilitate the realization of the principle of the elimination of all forms of forced or compulsory labour in Canada.

Report preparation

In the preparation of the report, input was sought from Justice Canada, the Royal Canadian Mounted Police (RCMP), the Department of Foreign Affairs and International Trade, the Canadian International Development Agency, and Status of Women Canada.

No comments on the report were made by the employers' or workers' organizations.

A copy of the report was sent to the Canadian Employers' Council (CEC), the Canadian Labour Congress (CLC) and the *Confédération des syndicats nationaux* (CSN).

China

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in China.

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".

All forms of forced or compulsory labour are prohibited.

In China, the principle of the elimination of forced or compulsory labour applies to all categories of persons or activities. There is no national policy to realise this principle. However, the Government intends to adopt a policy on this subject and would appreciate receiving ILO assistance in this respect.

***Efforts made or envisaged to ensure respect
promotion and realization of this principle
and right***

In case of use of forced labour, the Labour Law provides that the person in charge shall be taken by a public security organ into custody for 15 days or less, or fined, or given a warning. In addition, criminal responsibilities shall be investigated against the person in charge if the act constitutes a crime (Art. 96, Labour Law).

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following measures have been implemented:

- awareness raising/advocacy;
- inspection/monitoring mechanisms;
- penal sanctions;
- civil/administrative sanctions;
- employment creation/income generation;
- educational programmes; and
- international cooperation programmes/projects.

Moreover, legal reform, capacity building, rehabilitation following removal from forced labour and tripartite examination of related issues are envisaged.

Within these measures special attention is given to the situation of women and girls.

In China, the Ministry of Labour and Social Security, the Legal Affairs Office of the State Council, the State Economic and Trade Commission, the Ministry of Public Security, the State Industrial and Commercial Administration, the Ministry of Education, the All China Federation of Trade Unions, 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.

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 organs also cooperated with UNICEF on actions against trafficking.

The Government plans to collect statistics or other information relevant to the elimination of all forms of forced or compulsory labour.

Progress and achievements concerning this principle and right

The major changes concerning the principle of the elimination of all forced forms of forced or compulsory labour are as follows:

- the Government initiated large-scale actions on the struggle against trafficking of women and children through the country (1995, 1999, 2000);
- the Ministry of Public Security issued an “Opinion on Issues Concerning Law and Policy Applicable to Action Against Trafficking” (March 2000);
- several departments issued a “Circular on Issues Concerning Trafficking” (March 2000);
- the Supreme Prosecution issued a “Circular on the Active Participation in the Action Against Trafficking” (March 2000).

Difficulties concerning the realization of this principle and right

The main difficulties encountered with respect to realizing the principle of the elimination of all forms of forced or compulsory labour are the lack of information and the lack of capacity of responsible government institutions concerning forced labour due to trafficking.

Priority needs for technical cooperation

The first three priority needs for technical cooperation have been identified as follows:

- (1) awareness raising, legal literacy and advocacy;
- (2) capacity building of responsible government institutions;
- (3) training of other officials (e.g. police, judiciary, social workers, teachers).

Report preparation

This report was prepared jointly, by the Ministry of Labour and Social Security and other governmental agencies concerned, the China Enterprise Confederation (CEC) and the All China Federation of Trade Unions (ACFTU).

A copy of the report was sent to the China Enterprise Confederation (CEC) and the All China Federation of Trade Unions (ACFTU).

Ethiopia

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Ethiopia.

According to article 18 of the Constitution, forced or compulsory labour is considered as an "... abusive control of one over the other or the denial of freedom for whatever purpose".

All forms of forced and compulsory labour are prohibited, including slavery, abduction, servitude and trafficking in human beings for whatever purpose (Art. 18/1,2,3 of the Constitution). However, the last paragraph of this Article (18/4) on provides that forced or compulsory labour shall not include:

- (1) any work or service normally required of a person who is under detention in consequence of a lawful order, or of a person during conditional release from, such detention;
- (2) in the case of conscientious objectors, any service exacted in lieu of compulsory military service;

- (3) any service exacted in case of emergency or calamity threatening the life or well-being of the community;
- (4) any economic and social development activity voluntarily performed by a community with in its locality.

The Government intends to adopt a national policy for realizing the principle of the elimination of all forms of forced and compulsory labour. It is currently working to adopt the Worst Forms of Child Labour Convention, 1999 (No. 182).

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

A number of court cases publicly reported through mass media have shown that traffickers and those who employ children as domestic workers (identified as forced labour) have been penalised (5-13 years of imprisonment).

The practice of forced labour (other than excluded by the Constitution) is not widespread in Ethiopia. There is no valid and up-to-date research report identifying the extent and feature of the problem group. However, women, children and the poor are believed to be the most vulnerable groups.

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following measures have been implemented:

- awareness raising/advocacy;
- inspection/monitoring mechanisms;
- penal sanctions;
- employment creation/income generation;
- education programme;
- rehabilitation following removal from forced labour; and
- international cooperation programme/projects.

Moreover, legal reform, capacity building, rehabilitation following removal from forced labour and tripartite examination of related issues are envisaged.

Within these measures special attention is given to the situation of women and children.

The following measures can be regarded as successful examples of the elimination of forced or compulsory labour:

- ratification of the UN Child Right Convention;
- ratification of the Minimum Age Convention, 1973 (No. 138); and
- ratification of most of ILO Core Conventions, in particular the Abolition of Forced Labour Convention, 1957 (No. 105).

The Ethiopian Employers Federation (EEF) and the Confederation of Ethiopian Trade Unions (CETU) often participate in the development and the implementation of labour measures.

No specific government authority is responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour. However, a child labour survey is under elaboration in collaboration with ILO. In addition, other activities focusing on children in difficult circumstances are being carried out in collaboration with UNICEF. Other technical assistance activities also relate to capacity building and awareness creation.

The Government does not collect statistics or other information. However, it plans to improve its capacity through the ongoing civil service reform.

***Progress and achievements concerning
this principle and right***

There is no major change concerning the principle in the regulatory, policy or institutional frameworks. However, a National Child Labour Survey is being finalised (2001-2002) by the Central Statistical Authority (CSA) of Ethiopia with the ILO technical support.

***Difficulties concerning the realization
of this principle and right***

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following difficulties have been encountered:

- lack of information and data concerning forced labour due to trafficking;
- social values and cultural traditions concerning rural areas and domestic work;
- social and economic circumstances concerning forced labour due to trafficking; and
- lack of capacity of responsible government institutions, employers' and workers' organizations concerning forced labour due to trafficking.

Report preparation

The report was communicated to the most representative employers' and workers' organizations, so as to enable them to make input. In this respect, no comments were made by the Ethiopian Employers' Federation (EEF) or the Confederation of Ethiopian Trade Unions (CETU).

Japan

Note from the Office

The Office received no report from the Government for the annual review of 2003. Reports were received for the annual review of 2000, 2001 and 2002.

**Observations submitted to the Office
by the International Confederation of
Free Trade Unions (ICFTU)**

Japan ratified, in 1932, the Forced Labour Convention, 1930 (No. 29), and has not ratified the Abolition of Forced Labour Convention, 1957 (No. 105).

Forced and bonded labour are prohibited, and do not generally occur.

The National Public Service Law and the Local Public Service Law provide that public employees who incite strike action be dismissed and fined or sentenced up to three years' imprisonment. This does not comply with Article 1.d. of the Abolition of Forced Labour Convention, 1957 (No. 105) as it prohibits penal servitude as a punishment for having participated in strikes.

Malaysia**Government*****Recognition of this principle and right***

The principle of the elimination of all forms of forced or compulsory labour is recognized in Malaysia.

There are no definitions of forced or compulsory labour in national legislation or judicial decisions. However, all forms of forced or compulsory labour are prohibited. This principle does not apply to activities concerning rehabilitation work by prison inmates.

As regards national policy, Article 6 of the Malaysian Federal Constitution provides that no forced labour is allowed, except as provided for by national law.

***Efforts made or envisaged to ensure respect,
promotion and realization of this principle
and right***

The principle of the elimination of all forms of forced or compulsory labour has been respected and no incidents of forced labour have been noted in Malaysia.

In realizing this principle, the following measures have been implemented:

- awareness raising/advocacy;
- legal reform;
- inspection/monitoring mechanisms;
- penal sanctions;
- civil or administrative sanctions;
- special institutional machinery;

- capacity building;
- employment creation/income generation;
- educational programmes;
- rehabilitation following removal from forced labour;
- international cooperation programmes or projects; and
- tripartite examination of related issues.

Within these measures no special attention is given to the situation of particular groups of people.

Article 6 of the Malaysian Federal Constitution can be regarded as a successful example of the elimination of forced or compulsory labour.

Employers' and workers' organizations have not been involved in the development and implementation of government measures.

No specific government authority is responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour.

Progress and achievements concerning this principle and right

Since the last Government's report, the major change concerning the principle of the elimination of all forced forms of forced or compulsory labour is the amendment to Clause 3 of Article 6 of Malaysian Federal Constitution regarding work or service as consequence of a conviction of guilt in a court of law (11 January 2001).

Priority needs for technical cooperation

There is no need for ILO technical cooperation to facilitate the realization of the principle of the elimination of all forms of forced or compulsory labour in Malaysia.

Mozambique

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Mozambique, especially in the national Constitution and legislation.

Mozambique ratified in 1999 the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

There are no definitions of forced or compulsory labour in national legislation or judicial decisions. However, all forms of forced and compulsory labour are prohibited.

In Mozambique, the principle of the elimination of forced or compulsory labour applies to all categories of persons or activities. A prison policy was recently approved in the country, which contains provisions on issues related to the prohibition of forced labour. Although there is no national policy for realizing this principle, it is in the Government's agenda to develop such a policy and ILO support and assistance would be welcomed in this regard.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

The Government, through the labour inspectorate, has conducted inspection activities in many areas, but not on forced labour; based on the absence of evidence and cases of forced labour or compulsory labour in the country.

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following measures have been implemented:

- legal reform;
- inspection/monitoring mechanisms;
- penal sanctions;
- special institutional machinery;
- employment creation/income generation: the Government has endeavoured to create and promote employment to deal with the high unemployment rate;
- educational programmes; and
- rehabilitation following removal from forced labour.

In addition, awareness raising/advocacy and tripartite examination of related issues are envisaged. In this respect, after designing projects, the Government will be able in the near future to examine them with the social partners and other interested parties. International cooperation programmes or projects and other measures that can contribute to preventing or eliminating all forms of forced labour would be appreciated. These measures would benefit all interested groups, in particular men, women and young people in general.

As regards successful examples of the elimination of forced or compulsory labour, in the 1970s, a production drive was instituted in the country, whereby all unemployed people regarded at that time as "unproductive" were recruited to work in plantations in the northern province of the country. There was no legislation to institute this measure and when the operation was abolished, there was also no legislation to repeal it. Another positive measure is the ratification in 1977 and implementation by Mozambique of the Abolition of Forced Labour Convention, 1957 (No. 105).

Employers' and workers' organizations have been involved, for example, in the reform of national labour legislation and the setting of national minimum wage.

No specific government authority is responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour. However, the government would

be interested in international technical cooperation programmes in relation to the elimination of forced or compulsory labour.

The Government does not have any statistics or other information on the elimination of all forms of forced or compulsory labour, but will make arrangements to obtain such information in the near future.

Progress and achievements concerning this principle and right

The major changes regarding the principle of the elimination of all forms of forced or compulsory concern the regulatory, policy or institutional framework, the initiation of significant new programmes, new data and the change in the number of people working under forced labour conditions.

Difficulties concerning the realization of this principle and right

Since there is no forced labour in Mozambique, the Government has no difficulty in realizing this principle. However, efforts are made to prevent this phenomenon.

Priority needs for technical cooperation

The Government considers it important to undertake technical cooperation with the ILO to eliminate forced or compulsory labour. In this respect, the following types of technical cooperation are needed, in order of priority (1 = most important):

Type of technical cooperation needed	Priority
Assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle	1
Awareness raising, legal literacy and advocacy	2
Strengthening data collection and capacity for statistical collection and analysis	1
Sharing of experiences across countries/regions	1
Policy advice	1
Legal reform (labour law and other relevant legislation)	2
Capacity building of responsible government institutions	2
Employment creation, skills training and income generation for vulnerable workers	1
Development of social protection systems	1
Rural development policies (for example, land reform, rural infrastructure, agricultural extension, marketing, microfinance)	1
Cross-border cooperation mechanisms	2
Coordination between institutions (e.g. various ministries and relevant commissions)	2

Report preparation

The Government did not consult the social partners, due to the difficulties in preparing this report, although it was sent to them.

Myanmar

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Myanmar.

All forms of forced and compulsory labour are prohibited. This principle applies to all categories of persons or activities and is supported by a national policy.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

In instances where the Government finds that the principle of the elimination of all forms of forced or compulsory labour has not been respected, the following applies:

Order No. 1/99 and its Supplementing Order explicitly state that action will be taken against offenders under section 374 of the Criminal Code (charges of negligence and public nuisance, respectively).

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following measures have been implemented:

- awareness raising/advocacy;
- legal reform;
- inspection/monitoring mechanisms;
- penal sanctions; and
- civil/administrative sanctions.

Within these measures, no special attention is given to the situation of particular groups of people.

The above actions provided for against offenders by Order No. 1/99 and its Supplementing Order (in case of negligence, public nuisance, etc.) can be regarded as a successful example for the elimination of forced or compulsory labour.

Employers' and workers' organizations have been involved in the development and implementation of government measures. In addition, the Government is cooperating with the ILO. It also collects statistics/other information relevant to the elimination of all forms of forced or compulsory labour.

Progress and achievements concerning this principle and right

Since the last Government's report, the major change concerning the principle of the elimination of all forced forms of forced or compulsory labour consists in the acceptance in May 2002 of an ILO Liaison Officer (Ad-Interim) in the country.

Priority needs for technical cooperation

The ILO technical cooperation would be needed in the following areas, in order of priority:

- (1) assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle, and
- (2) sharing of experiences across countries/regions.

Report preparation

In preparing this report, consultations were held with other governmental agencies, employers' and workers' organizations and the ILO. The comments by the most representative of employers' and worker's organizations concerned have been taken into account in the report.

Moreover, this report was sent to the following institutions:

- Attorney-General Office;
- Ministry of Agriculture;
- Ministry of Construction;
- Department of Prison;
- General Administration Department under Ministry of Home Affairs;
- Irrigation Department;
- Department of National Races and Border Area;
- the Union of Myanmar Federation of Chamber of Commerce and Industries (UMFCCI); and
- the Workers' Welfare Associations concerned.

Annexes (not reproduced)

- Order No. 1/99 directing not to exercise powers under certain provisions of the Towns Act, 1907 and the Village Act, 1907.
- Order Supplementing Order No. 1/99.
- (Other annexes, not received).

Oman

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Oman. In this respect, forced or compulsory labour is defined in its various forms in national legislation and/or judicial decisions, and is prohibited in the country.

This principle applies to all categories of persons or activities, and there is a national policy for its realization.

In instances where the principle of the elimination of all forms of forced or compulsory labour has not been respected, legal actions are taken against offenders. The penalties are imposed by the judicial system, depending on the type of violation.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following measures have been implemented in Oman:

- awareness raising/advocacy;
- legal reform;
- inspection/monitoring mechanisms;
- penal sanctions;
- civil/administrative sanctions;
- employment creation/income generation;
- educational programmes;
- rehabilitation following removal from forced labour; and
- tripartite examination of issues.

In addition, special institutional machinery, capacity building and international cooperation programmes/projects are envisaged.

Within these measures, no special attention is given to the situation of particular groups of people.

The social partners and the Chamber of Commerce and Industry have been involved in the development and implementation of government measures.

In Oman, the Ministry of Manpower is responsible for the identification, emancipation or rehabilitation of persons subject to forced labour.

The Government does not collect statistics or other information relevant to the elimination of all forms of forced or compulsory labour.

Priority needs for technical cooperation

There is no need for ILO technical cooperation to facilitate the realization of the principle of the elimination of all forms of forced or compulsory labour in Oman.

Report preparation

The most representative employers' and workers' organizations and other governmental authorities outside the Ministry of Manpower were consulted in the preparation of the report, and no comments were received from them.

A copy of the report was sent to the social partners.

Philippines

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in the Philippines. It applies to all categories of persons or activities.

1. With regard to national policy for realizing this principle, the Constitution provides as follows:

ARTICLE III. BILL OF RIGHTS

Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted...

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities under subhuman conditions, shall be dealt with by law.

ARTICLE II. DECLARATION OF PRINCIPLES AND STATE POLICIES

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

ARTICLE XIII. SOCIAL JUSTICE AND HUMAN RIGHTS LABOR

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance

with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

2. In addition, the Civil Code (Act No. 386) provides the following:

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

...

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

...

(14) The right to be free from involuntary servitude in any form;

...

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

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

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

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

3. Moreover, the Revised Penal Code (Act 3815) punishes forced labour as follows:

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

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

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

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

Article 286. Grave coercion. – The penalty of prision correccional and a fine not exceeding 6,000 pesos shall be imposed upon any person who, without any authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something against his will, whether it be right or wrong.

***Efforts made or envisaged to ensure respect,
promotion and realization of this principle
and right***

As indicated above, in case of use of force labour, the Civil Code (Article 32/8 and 14 and Article 1703) and the revised Penal Code (Article 272-274 and 286) apply.

Within these measures, special attention is given to the situation of working children.

With regard to child labour, the National Program Against Child Labor (NPACL) and the Sagip Batang Manggagawa Program (SBM) can be regarded as successful examples.

Employers' and workers' organizations have been involved in the development and implementation of government measures in particular the National Program Against Child Labor.

The following government authorities are responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour:

- the Department of Labor and Employment: through the Bureau of Women and Young Workers, in cases of employment of children below 15 years of age;
- the Department of Social Welfare and Development (DSWD): a government agency which establishes, among its many functions, a comprehensive social welfare program for the protection and remedial and development welfare services for children and youth.

In addition, the Government works with the ILO's International Programme on the Elimination of Child Labour (ILO-IPEC, Philippines) which involves various institutions such as:

- Lunduyan sa Pagpapalaganap, Pagtaguyod at Pagtanggol ng Karapatang Pambata (LPPKP).
- Networks of Advocates of Children's Welfare & Development Inc. (ADNET).
- Punla sa Toa Foundation Inc. (PTF).
- DocuPro.
- Educational Research and Development Assistance Foundation Inc. (ERDA).
- End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT).
- Institute of Philippine Culture (IPC).
- Community Organization of the Philippines Enterprise Foundation Incorporated (COPE).
- Community Organizers' Multiversity (CO MULTIVERSITY).
- Kamalayan Development Foundation (KDF).
- Kaugmaon Center for Children's Concerns Foundation Inc. (KCCCFI).

- Pammbansang Tagapag-ugnay ng mga Manggagawa sa Bahay (PATAMABA).
- Philippine Center for Investigative Journalism (PCIJ).
- Philippine Children's Television Foundation (PCTVF).
- Philippine Rural Reconstruction Movement (PRRM).
- St. Euphrasia Training Center.
- Stop Trafficking of Philipinos Foundation inc. (STOP).
- Visayan Forum Foundation (VF).
- Akap-Ateneo Human Rights Center, Ateneo de Manila University (AHRC-AKAP).

The Government only collects statistics/information with regards to child labour.

Report preparation

In preparing this report, consultation was made with the most representative employers' and workers' organizations – the Employers' Confederation of the Philippines (ECOP) and the Labour Solidarity Movement (LSM), respectively – to which a copy was sent for comments.

Annexes (not reproduced)

- Brochure of the IPEC program in the Philippines including the partnership organizations.
- Philippine Survey on Children 2001 – Preliminary results; National Statistics Office, Manila.

Qatar

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Qatar.

National laws deal with forced labour questions such as imposing work on a person in spite of him, or forcing him to exact a work or an activity. Yet, there is no explicit general definition of forced labour.

All forms of forced and compulsory labour are prohibited. This principle applies to all categories of persons or activities.

Moreover, the Labour Code and the Penal Code prohibit any forms of forced or compulsory labour.

***Efforts made or envisaged to ensure respect,
promotion and realization of this principle
and right***

In instances where the principle of the elimination of all forms of forced or compulsory labour is not respected, the relevant codes with the consequent penal sanctions are applied. No violations of these codes have been observed yet and no forms of forced labour exist in the country.

In realizing this principle, the following measures have been implemented:

- inspection/monitoring mechanisms;
- penal sanctions;
- civil/administrative sanctions; and
- employment creation/income generation.

No particular measures have been undertaken, given that no form of forced or compulsory labour exists in the country.

No special government authority is responsible for the identification, emancipation and/or rehabilitation of persons subject to forced labour.

No forced labour exists in the country. Should a case of forced labour emerge, it will appear in the statistics of court decisions.

Priority needs for technical cooperation

In view of the above, there is no need for ILO technical cooperation to facilitate the realization of the principle in Qatar.

Report preparation

In preparing this report, consultations were held with the employers' and workers' organizations. In addition, the Ministry of Interior and the Ministry of Justice have been consulted on the measures to be taken in accordance with the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) regarding the application of the Forced Labour Convention, 1930 (No. 29).

No comments on the report were received from the employers' or workers' organizations.

A copy of the report was sent to the Chamber of Commerce and Industry of Qatar and to the Workers' Committee of Qatar [General Committee of Workers].

Singapore

Government

Recognition of this principle and right

Legislation on forced or compulsory labour

Forced or compulsory labour does not exist in Singapore. Slavery and all forms of forced labour are strictly prohibited under article 10(1) of the Singapore Constitution. Adequate measures have also been taken by the government, employers' and workers' organizations to eliminate forced or compulsory labour in the workplace.

In addition, women as well as children and young persons in Singapore are protected from the exploitation under the Women's Charter, Children and Young Persons Act as well as the Penal Code.

Ratification of ILO Conventions

Singapore ratified in 1965 the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). However, Convention No. 105 was denounced in 1979, due to fundamental differences with the ILO in the interpretation of our legislation with regard to this Convention. The ILO Committee of Experts on the Application of Conventions and Recommendations had highlighted sections in Singapore legislation such as the Newspaper and Printing Presses, Internal Security Act, Societies Act as being contrary to the Convention. The Committee had, however, read them with the Prisons Act, which has a provision that may require persons detained to work.

The Government maintains the stand that work in prison is voluntary and our prison labour does not constitute forced labour. Prisoners are not compelled to work and a prisoner will not be punished if he does not wish to work. The work programme is an integral part of Prisons' Rehabilitation Programme and aims to provide prisoners with some basic skills and train them on basis work discipline.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Both, the Singapore National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF), were consulted in the development and implementation of the various measures in this area of concern.

Progress and achievements concerning this principle and right

Since the last report, there have been no changes in national legislation.

Report preparation

The comments of the Singapore National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF) were taken into consideration in the preparation of this report.

A copy of this report has been forwarded to both the Singapore National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF).

Sri Lanka

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Sri Lanka. This is evident from many measures taken by the Government, ranging from legislation to abolish slavery to Constitutional recognition of the freedom to engage in any lawful employment to ratification of certain international instruments on these subjects.

By an Order-in-Council of 12 April 1832, the feudal system of land tenure was abolished. In 1844, slavery was abolished with the enactment of the Abolition of Slavery Ordinance, No. 20 of 1844. The host of labour regulations introduced over the years provide many safeguards for employees by regulating their hours of work, wages, other important benefits and safety and health of workers.

Among the Directive Principles of the State Policy and Fundamental Duties recognised under article 27 of the Constitution are the duty to ensure equality of opportunity to citizens so that no citizen shall suffer any disability on the grounds of race, religion, language caste, political opinion or occupation and the State shall eliminate economic and social privilege and disparity and the exploitation of man by man or by the State.

Article 14 of the Constitution recognizes as fundamental rights, the freedom of speech and expression including publication, the freedom to form and join trade unions and the freedom to engage by himself or in association with others in any lawful occupation, profession, trade business or enterprise.

Article 126 of the Constitution vests the Supreme Court with jurisdiction to hear and determine any question relating to infringement of fundamental rights by executive or administrative action and to grant such relief as it may deem just and equitable in the circumstances.

There are no definitions of forced or compulsory labour in legislation or judicial decisions. However, all forms of forced or compulsory labour are prohibited.

This principle does not apply to all categories of people. A national feasibility study on *Ratification of ILO Convention No. 105 – Abolition of Forced Labour, 1957* by Lalani S. Perera (July 2002) underscores that while in the organized sector the vulnerability may be minimized to a certain extent through worker organization activities and recourse to judicial remedies, certain categories of workers or employees including domestic workers in private households and workers in the informal sector are not often covered by the provisions of labour legislation.

There is no national policy to realise the principle of the elimination of all forms of forced or compulsory labour. However, the Government intends to adopt a policy on this subject and would appreciate receiving related ILO technical assistance. The Government

is currently in the process of working with the assistance of the ILO in effecting necessary changes to the legislation and practices. The above feasibility study has been carried out for this purpose.

In addition, a tripartite workshop was held with the financial and technical assistance of the ILO in July 2002 to ascertain the difficulties encountered in the ratification of ILO Convention 105, and a tripartite working committee has been appointed to follow-up in giving effect to the recommendations made at this workshop.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Sri Lanka has recognized the principle of elimination of all forms of forced or compulsory labour. However, the Attorney General has observed that there are legal provisions which may have relevant to the issue of forced or compulsory labour in terms of Article 1 of the Abolition of Forced Labour Convention, 1957 (No. 105) (Cf. the above feasibility study).

In realizing this principle, the following measures have been implemented:

- awareness raising/advocacy;
- inspection/monitoring mechanisms;
- educational programmes;
- international cooperation programmes or projects; and
- tripartite examination of related issues.

In addition, legal reform is envisaged.

Within these measures no special attention is given to the situation of particular groups of people.

The tripartite workshop mentioned above and the Feasibility Study carried out concerning the ratification of the Abolition of Forced Labour Convention, 1957 (No. 105), can be regarded as successful examples of the elimination of forced or compulsory labour in Sri Lanka.

Employers' and workers' organizations have been involved in the development and implementation of government measures, namely in the above tripartite workshop.

No specific government authority is responsible for the identification, emancipation or rehabilitation of persons subject to forced labour. However, the Government cooperates with the ILO in relation to the elimination of forced or compulsory labour.

No statistics or other information relevant to the elimination of forced or compulsory labour is collected by the Government. However, it plans to do so.

Progress and achievements concerning this principle and right

The major change regarding the principle of the elimination of all forms of forced or compulsory was the tripartite cooperation for ratification of the Abolition of Forced Labour Convention, 1957 (No. 105). This exercise was carried out in July 2002, with the ILO technical and financial assistance.

Difficulties concerning the realization of this principle and right

The main difficulty encountered with respect to realizing the principle of the elimination of all forms of forced or compulsory is the following legislation, which has legal provision relevant to the issue of forced labour in terms of Article 1 of the Abolition of Forced Labour Convention, 1957 (No. 105):

- Public Security Ordinance No. 25 of 1947;
- Compulsory Public Services Act No. 70 of 1961;
- Essential Public Services Act No. 61 of 1979;
- Mobilization and Supplementary Forces Act No. 40 of 1985;
- Industrial disputes Act No. 43 of 1950; and
- Prison Ordinance (in relation to labour or prisoners).

Priority needs for technical cooperation

There is a need for ILO technical assistance to facilitate the realization of the principle of the elimination of forced or compulsory labour in the following areas, ranked in order of priority (1 = most important; 2 = 2nd most important; etc.; 0 = not important):

Type of technical cooperation needed	Priority
Assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle	0
Awareness raising, legal literacy and advocacy	4
Strengthening data collection and capacity for statistical collection and analysis	5
Sharing of experiences across countries/regions	7
Policy advice	6
Legal reform (labour law and other relevant legislation)	1
Capacity building of responsible government institutions	2
Training of other officials (e.g. police, judiciary, social workers, teachers)	3
Strengthening capacity of employers' and workers' organizations	0
Employment creation, skills training and income generation for vulnerable workers	0
Development of social protection systems	0
Rural development policies (for example, land reform, rural infrastructure, agricultural extension, marketing, microfinance)	0
Cross-border cooperation mechanisms	0
Coordination between institutions (e.g. various ministries and relevant commissions)	0

In particular, the first three priorities needs for technical cooperation can be described as follows:

- (1) assistance for legal reforms: (Cf. the national feasibility study);
- (2) capacity building of responsible institutions in order to effectively implement the provisions of the Abolition of Forced Labour Convention, 1957 (No. 105); and
- (3) training of officials.

Sri Lanka is already working with the ILO to ratify the Abolition of Forced Labour Convention, 1957 (No. 105) and to ensure full conformity with the provisions of the Convention. The Government needs presently continued support in this respect.

Report preparation

The reports are made available to the most representative employer and worker organizations and the relevant government institutions/Ministries for their observations, and based on their observations a report is prepared. Any inconsistencies would be discussed with the concerned organizations. The issue was discussed at the National Tripartite Workshop held in July 2002, the recommendations are to be followed-up by an appointed tripartite working committee.

A copy of the report was sent to the Employers Federation of Ceylon and to the following workers' organizations:

- Lanka Jathika Estate Workers Union;
- Jathika Sevaka Sangamaya;
- Sri Lanka Nidahas Sevaka Sangamaya;
- Ceylon Workers Congress.

Annexes (not reproduced)

- Report on the workshop on the Ratification of Forced Labour Convention 105, July 2002, Colombo.
- Feasibility Study on the Ratification of the ILO Convention No. 105 – Abolition of Forced Labour, 1957 – by Sri Lanka, Lalani S. Perera, July 2002.

United States

Government

Many of the questions in the report are not susceptible to simple yes/no answers; however, to accommodate the ILO's request, yes/no answers have been provided that reflect the *general* principles of US law and practice. The following are brief explanations of a complicated and detailed system of laws, and of necessity these statements cannot fully reflect US law and practice. Additional materials and web sites referenced in this

report, and prior reports on related ILO Conventions, should be consulted for a more complete explanation of US law and practice.

Recognition of this principle and right

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

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

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

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

Moreover, under United States court cases, the words “involuntary servitude” have for a long time had a much larger meaning than slavery (Id. In *Plessy v. Ferguson*, 163 U.S. 537; 1896), the Supreme Court defined involuntary servitude to mean the control of the labour and services of one man for the benefit of another and the absence of a legitimate right to dispose of one’s own person, property, or services. Further, the Thirteenth Amendment’s prohibition of “involuntary servitude” has been determined by the Supreme Court to ban the practice of peonage, which is broadly defined as “compulsory service in the payment of a debt” (*Baily v. Alabama*, 219, 242; 1911; see also *Peonage Cases*, 123 F. 671, D.C. Ala. 1903).

In the United States, all forms of forced or compulsory labour are prohibited and the principle of the elimination of forced or compulsory labour applies to all categories of persons or activities.

The United States adopted legislation showing the existence of a national policy for realizing the principle of the elimination of all forms of forced or compulsory labour. In addition to the Thirteenth Amendment, which is self-executing, pursuant to the enforcement powers afforded to Congress by Section 2 of the Amendment, the United States has enacted legislation to assist in the enforcement of the Amendment. For example, the provisions of United States Code (18 U.S.C. § 241), which are applicable to both private individuals and public officials, and the provisions of 18 U.S.C. § 242, which are only applicable to public officials, provide criminal penalties for the exaction of forced labour in violation of the Thirteenth Amendment. Sections 241 and 242 forbid the deprivation of rights guaranteed by the United States Constitution and, in pertinent part, specifically provide as follows:

If two or more persons conspire to injure, oppress, threaten or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege

secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured –

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States ... shall be fined not more than \$1,000 or fined under this title or imprisoned not more than ten years, or both; and if death results, shall be subject to imprisonment for any term of years or for life.

18 U.S.C. §§ 241-2

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

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

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

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

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

The most recent development with regard to the United States national policy was the passage of the Victims of Trafficking and Violence Protection Act of 2000 on 28 October 2000. The Department of Justice of the United States (Civil Rights Division) summarizes this new Act as follows:

*On October 28, 2000, the President signed into law the **Victims of Trafficking and Violence Protection Act of 2000**. This new law, which was passed virtually unanimously by both houses of Congress, addresses issues of worker exploitation resulting from trafficking in persons. This law is the culmination of the federal government's efforts through the **Trafficking in Persons and Worker Exploitation Task Force**, an interagency group that brings the FBI,*

INS, Department of Labor and other agencies together to remedy a problem with both domestic and global dimensions, primarily involving women and children as victims.

The Criminal Section of the Civil Rights Division, which enforces slavery and peonage statutes that were initially enacted over 100 years ago, was highly involved in drafting this new legislation. The new law expands the definition of forced labor to reach the more insidious forms of coercion occurring in contemporary times, thus enabling the Section to come to the aid of more victims and to bring more cases than allowed under prior laws.

Here are some highlights of the new statute as they affect the Criminal Section's enforcement responsibilities:

- *creates new laws that criminalize trafficking with respect to slavery, involuntary servitude, peonage or forced labor;*
- *permits prosecution where nonviolent coercion is used to force victims to work in the belief they would be subject to serious harm;*
- *permits prosecution where the victim's service was compelled by confiscation of documents such as passports or birth certificates;*
- *increases prison terms for all slavery violations from 10 years to 20 years and adds life imprisonment where the violation involves the death, kidnaping, or sexual abuse of the victim;*
- *requires courts to order restitution and forfeiture of assets upon conviction;*
- *enables victims to seek witness protection and other types of assistance;*
- *gives prosecutors and agents new tools to get legal immigration status for victims of trafficking during investigation and prosecution.*

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

As regards instances where the principle of the elimination of forced or compulsory labour is not respected, the Government refers to the legislation mentioned above, including the Victims of Trafficking and Violence Protection Act of 2000 and the cases brought under this Act, together with sentences handed down pursuant to those cases (see annexes not reproduced).

The United States maintains a free market labour system in which individuals are not forced to work and are paid for their services. In addition to the Constitutional protections described above, the United States has specific federal legislation which requires "every employer" to pay "each of his employees" a minimum wage (29 U.S.C. § 216). This system of minimum wage standards, as much as any Constitutional provision, is instrumental in providing the United States with a completely voluntary and compensated labour system. In addition, the United States has specific federal labour legislation requiring overtime pay (29 U.S.C. § 207), as well as prohibitions against child labour (29 U.S.C. § 212), and employment discrimination (42 U.S.C. § 2000e). These provisions also help establish and maintain the country's voluntary and compensated labour system.

Despite this array of protections, the United States recognized that certain populations could be vulnerable to labour exploitation. The Victims of Trafficking and Violence Protection Act of 2000, was passed, in part, to better protect these populations.

In realizing the principle of the elimination of all forms of forced or compulsory labour, the following measures have been implemented:

- awareness raising/advocacy;

- legal reform;
- inspection/monitoring mechanisms;
- penal sanctions;
- civil or administrative sanctions;
- special institutional machinery;
- capacity building;
- employment creation/income generation;
- educational programmes;
- rehabilitation following removal from forced labour;
- international cooperation programmes/projects; and
- tripartite examination of issues.

Within these measures, no special attention is given to the situation of particular groups of people, since the laws regarding forced labour in the United States, such as the Thirteenth Amendment, the peonage statutes and the Victims of Trafficking and Violence Protection Act of 2000, apply equally to all people in the United States. While United States recognizes that certain portions of the population, such as migrant workers or women and minors in the sex trade, may be more vulnerable to exploitation, the laws are designed to protect all groups.

The cases brought under the Victim of Trafficking and Violence Protection Act of 2000 can be regarded as successful examples of the elimination of forced or compulsory labour in the United States (see annexes not reproduced).

With respect to the involvement of the social partners in the development and implementation of government measures, the legislation, described above and in the 1999 Report of the United States Government and in Reports on related Conventions, was developed following public debate that included organizations representative of employers and workers. Similarly, the implementation of regulations supporting such legislation is done following a notice and comment procedure that provides an opportunity for participation by employers' and workers' organizations. Finally, the Congressional oversight process provides an opportunity for public comment on the Executive Branch implementation of legislation and regulations.

In the United States, the US Department of Justice (Civil Rights Division, Criminal Section, Washington, D.C. 20530) is responsible for the identification, emancipation and rehabilitation of persons subject to forced labour. The Criminal Section continues in its effort to deter the victimization of migrant workers and other groups by enforcing the involuntary servitude and peonage statutes. The section also enforces the Victims of Trafficking and Violence Protection Act of 2000.

In relation to the elimination of forced or compulsory labour, the Government does neither work with multilateral agencies or bilateral donors, nor with non-governmental organizations at the multilateral level.

Statistics relevant to the elimination of all forms of forced or compulsory labour are kept throughout the United States Government and in numerous private organizations. The principal storehouse of information concerning any labour statistics is the Bureau of Labor Statistics, Washington, D.C. 20212)

Statistics regarding the number of investigations and prosecutions under the Victims of Trafficking and Violence Protection Act of 2000 and other cases involving involuntary servitude, are maintained at the US Department of Justice (Civil Rights Division, Criminal Section, Washington, D.C. 20530)

Statistics regarding the investigations and prosecutions of the minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq. as well as other statutes are maintained at the US Department of Labor (Office of the Administrator, Wage and Hour Division, Washington, DC, 20210)

***Progress and achievements concerning
this principle and right***

Since the last Government's report, the major change regarding the principle of the elimination of all forms of forced or compulsory labour in the United States concern the Victims of Trafficking and Violence Protection Act of 2000 and the cases brought under this Act, together with sentences handed down pursuant to those cases (see annexes not reproduced).

***Difficulties concerning the realization
of this principle and right and priority
needs for technical cooperation***

There is no need for ILO technical cooperation with respect to realizing the principle of the elimination of all forms of forced or compulsory labour in the United States, since the Government does not encounter any difficulties in realizing this principle.

Report preparation

The draft report was reviewed by members of the Tripartite Advisory Panel on International Labour Standards, a subgroup of the President's Committee on the ILO which includes representatives from the United States Council for International Business, the American Federation of Labor and Congress of International Organizations (AFL-CIO), and other government agencies.

Comments on the report were made by the workers' organizations.

A copy of the report was sent to the United States Council for International Business, the American Federation of Labor and Congress of International Organizations (AFL-CIO).

Annexes (not reproduced)

- A copy of the Victims of Trafficking and Violence Protection Act of 2000 (http://www.ojp.usdoj.gov/vawo/laws/vawo2000/stitle_a.htm).
- A summary of the Act (<http://www.usdoj.gov/crt/crim/traffickingsummary.html>).

- The testimony of Assistant Attorney General for Civil Rights, Ralph F. Boyd Jr., concerning what measures have been taken to implement the Act (<http://www.usdoj.gov/crt/speeches/1129testimony.htm>).
- A description of the Trafficking in Person and Worker Exploration Task Force (<http://www.usdoj.gov/crt/crim/tpwetf.htm>).
- The recent Department of Justice press releases regarding the Act (http://www.usdoj.gov/opa/pr/2002/September/02_crt_525.htm, http://www.usdoj.gov/opa/pr/2002/June/02_crt_381.htm, http://www.usdoj.gov/opa/pr/2002/June/02_crt_360.htm, http://www.usdoj.gov/opa/pr/2002/February/02_crt_084.htm, http://www.usdoj.gov/opa/pr/2002/January/02_crt_038.htm).

Observations submitted to the Office by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Introduction

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby submits these comments on the *Report of the United States Government on Elimination of all Forms of Forced or Compulsory Labour (2002) (Report)* pursuant to the Declaration of fundamental Principles and Rights at Work and its Follow-up (Declaration). The comments are directed at a significant omission in the draft. The AFL-CIO urges the United States to correct that omission.

Conflict between US law and practice and core principles regarding forced labour

In its latest report under article 19 of the ILO Constitution, the United States acknowledged in response to the report form (indicating “difficulties ... which prevent or delay the ratification of the ... Convention [29]”) that:

In 1986, the Tripartite Advisory Panel on International Labor Standards (“TAPILS”) began a legal analysis of ILO Conventions 29 and 105 concerning forced labour. This analysis and discussions with the ILO indicated that the practices in the United States of private companies running prisons and of state and local prisoners working under special programs for private companies might not be consistent with the provisions of Article II of Convention 29.

Specifically, the United States noted that its practices might conflict with the provision of Article 2.2(c) of the Convention, which provides that forced labour does not include:

any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.

The Committee of Experts has also noted its concern with whether the growth in private prison labour in a number of developed countries, including the United States, has occurred in conformity with this same requirement (*See Committee of Experts on the Application of Conventions and Recommendations: General Report and Observations Concerning Particular Countries* (CEACR Report) at §§. 115 – 125, ILO Conference, 86th

Session 1998). According to the Committee, the prohibition against hiring a prisoner to or placing him at the disposal of a private entity covers “all work organized by privately run prisons,” including work run by a private entity within a public institution (*Id.* §§ 116, 117). Moreover, it makes no difference if the prisoner has a direct relationship with a public authority, which has the contractual relationship with private contractor, or if the prisoner has a direct relationship with the contractor itself (*Id.* §. 118). In both cases, the labour performed violates the Convention, unless the prisoner gives consent freely to the employment relationship with the private entity (although not to the work requirement itself), and supervision of the work remains with the public authority (*Id.* §§ 120, 122).

[O]nly when performed in conditions approximating a free employment relationship can work by prisoners for private companies be held compatible with the explicit prohibition in Article 2(2)(c); this necessarily requires the formal consent of the person concerned. (*Id.* § 125).

Determining whether or not practices in the United States, both at the federal and state level, fulfill the requirements of the Forced Labour Convention, 1930 (No. 29) has proven to be a difficult task because of the need to examine both federal and state/local penal systems, and also because of the unresolved interpretive issues surrounding the Convention. As summarized in a report prepared for the United States Department of Labor, International Labor Affairs:

*The greatest potential for inconsistency between the two systems (US and international) appears in the context of prison labour involving the private sector. The conclusions to be drawn from any apparent inconsistencies are uncertain because the ILO has not yet clearly resolved what constitutes permissible involvement of the private sector, and sufficient public supervision and control of prison labour. The evolving interpretation of this exception under the Convention emphasizes the need for voluntariness, or consent, by the prisoner to the private employment aspect of the prison labour relationship. Voluntariness is demonstrated by some type of formal consent and the existence of objective indicia like wages and benefits comparable to the free employment sector. The requirement that the labour be performed “under public supervision and control” requires an examination of the circumstances in each case. **There is as yet no interpretation of what constitutes sufficient public supervision, in so far as the employment aspect is concerned, in privatized prisons.** (Emphasis added)*

(Janelle M. Diller, The Convention Concerning Forced or Compulsory Labour of the International Labour Organisation (No. 29) and United States Law and Practice: A Comparative Analysis at 4 April 1997).

The AFL-CIO does not think that the United States can, in good faith, submit a Declaration Follow-up report on forced labour to the ILO without acknowledging the serious, unresolved, compliance issues that arise with respect to private prison labour in the country. The United States have a continually expanding prison population. An April 2001 report to the International Confederation of Free Trade Unions, states that “[o]ne in every 250 adults in the US is serving a prison or jail sentence of a year or more.” *Id.* § 7.1.1 and n.2. Its prison population has increased by 5.6 percent annually for the last ten years. Colin Fenwick, *Private Benefit from Forced Prison Labour: Case Studies on the Application of ILO Convention 29 (Private Benefit)* (University of Melbourne), §. 7.1.1 and n.5. In addition to that, its reliance on private prisons is unsurpassed around the globe. According to *Private Benefit* (at §. 7.1.2.), “[t]he United States has the largest number of privately run prison facilities in the world.” Thus, whether or not our practices in this area meet international labour standards remains a significant human rights question that cannot be ignored.

Yugoslavia

Government

Recognition of this principle and right

The principle of the elimination of all forms of forced or compulsory labour is recognized in Yugoslavia. In this respect, forced or compulsory labour is defined in its various forms in national legislation and/or judicial decisions, and is prohibited under article 54 of the Constitution of the Federal Republic of Yugoslavia. This principle applies to all categories of persons or activities.

There is no national policy to realise the principle of the elimination of all forms of forced or compulsory labour. However, the Government intends to adopt a policy on this subject and would appreciate receiving related ILO technical assistance.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

In Yugoslavia, no specific measures have been implemented or envisaged in relation to realizing the principle of the elimination of all forms of forced or compulsory labour, and no specific government authority is responsible for the identification, emancipation or rehabilitation of persons subject to forced labour. Also, no information relevant to forced or compulsory labour is available.

The Government does not work with any multilateral agency (other than the ILO), bilateral donors or other organizations in relation to the elimination of forced or compulsory labour. However, it wishes to underscore that Abolition of Forced Labour Convention, 1957 (No. 105) is in process of ratification.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Yugoslavia in the realization of the principle of the elimination of all forms of forced or compulsory labour, are the lack of information and data, and of public awareness/support with regard to forced labour due to trafficking.

Priority needs for technical cooperation

The ILO technical cooperation to facilitate the realization of the principle of the elimination of all forms of forced or compulsory labour would be needed in Yugoslavia in the following areas:

- awareness raising, legal literacy and advocacy;
- strengthening data collection and capacity for statistical collection and analysis; and
- cross-border cooperation mechanisms.

Report preparation

In preparing this report, no consultations were held with the most representative employers' and workers' organizations, or other governmental authorities outside the Ministry of Labour.