

Article 22 of the Constitution of the ILO

Report for the period 1 July 2007 to 31 May 2009
made by the Government of New Zealand
on the

FORCED LABOUR CONVENTION, 1930 (No. 29)

I Please give a list of the legislation and administrative regulations, etc., which apply the provisions of the Convention. Where this has not already been done, please forward copies of the said legislation, etc., to the International Labour Organisation with this report.

Please give any available information concerning the extent to which these laws and regulations have been enacted or modified to permit of, or as a result of, ratification.

Copies of new legislation will be forwarded to the ILO once enacted.

Corrections Act and Corrections Regulations

The applicable legislation remains the same as in New Zealand's 2007 Report.

Corrections (Contract Management of Prisons) Amendment Bill 2009

The New Zealand Government has introduced the Corrections (Contract Management of Prisons) Amendment Bill. The Government expects to have the Bill enacted this year. The Bill will allow the competitive tendering of prison management on a case-by-case basis.

Under this proposed law, private companies will be able to enter into a contract with the Government to manage prisons. It will be a legal requirement under the Act that companies managing prisons will comply with all relevant New Zealand legislation, including the Corrections Act 2004 and the New Zealand Bill of Rights Act 1990. Furthermore, they will have to comply with all relevant international obligations and standards. This will include international covenants and treaties such as the UN Convention Against Torture, The UN Standard Minimum Rules for the Treatment of Prisoners and the ILO Convention on Forced Labour, 1930 (No.29).

As with existing prisons, privately managed prisons will be subject to scrutiny by the Inspectors of Corrections and the Office of the Ombudsmen. The Bill also establishes a new role of a Prison Monitor who will be assigned to each privately managed prison and will be responsible for monitoring contractual compliance. Prison Monitors will have access to all prisoners, all staff and all parts of the prison at all times of the day and night to enable them to carry out their function. In addition, privately managed prisons will be subject to extensive reporting requirements.

Private prison managers will also be required by law to provide programmes designed to ascertain and address the causes of prisoners' offending, and to assist in their reintegration back into the community.

Other Legislative Changes

The Parole Amendment Act and the Sentencing Amendment Act were adopted in 2007. The Parole Amendment Act 2007 amends and clarifies some definitions of the Parole Act 2002. The Sentencing Amendment Act 2007 provides a clearer hierarchy of sentences and orders and more sentencing options for judges. These amendments do not relate to prisoner employment and do not affect the Department of Corrections' obligations under Convention 29.

The full texts of the relevant legislation can be accessed through the following weblink: <http://www.legislation.govt.nz>.

II Please indicate in detail for each of the following articles of the Convention the provisions of the above-mentioned legislation and administrative regulations, etc., or other measures under which each article is applied.

If the Committee of Experts or the Conference Committee on the Application of Conventions and Recommendations has requested additional information or has made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question. (Committee of Experts observations attached below.)

Article 1

- 1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.*
- 2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.*
- 3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.*

Please state whether recourse to forced or compulsory labour in any form is still authorised in one or more of the territories to which the ratification of this Convention applies and, if so, the forms of forced or compulsory labour, the territories where it is authorised and the law or regulation authorising such exaction.

If the transitional period provided for by paragraph 2 of this Article is still running, please state what measures are contemplated in the territories concerned to ensure the effective application of the first paragraph of this Article, and the date on which these measures may be expected to come into force.

There is no authorisation of forced or compulsory labour as defined in Convention 29.

Article 2

1. *For the purposes of this Convention the term "forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*
2. *Nevertheless, for the purposes of this Convention, the term "forced or compulsory labour" shall not include:*
 - (a) *any work or service exacted in virtue of compulsory military service laws for work of a purely military character;*
 - (b) *any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;*
 - (c) *any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;*
 - (d) *any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;*
 - (e) *minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.*

Please give information on measures taken by the competent authority to establish and enforce a distinction between the forms of compulsory service which are, in accordance with this Article, excepted from the definition given to the term "forced or compulsory labour" and other forms of compulsory service.

Please state in particular what guarantees are provided to ensure that services exacted for military purposes are used for purely military ends; to ensure that work exacted in case of emergency shall cease as soon as the circumstances that endanger the population or its normal living conditions no longer exist; and to prevent any confusion between "minor communal services" and public works which are normally the responsibility of the Government.

Please state whether certain forms of compulsory work or service mentioned in this Article to which the citizens of the metropolitan territory are not liable have in fact been exacted during the period under review from the inhabitants of the non-metropolitan territories. If so, please furnish any information on the nature and importance of the work or services performed.

Prisoner Employment

Offenders who obtain employment after completing a sentence are less likely to re-offend than those who remain unemployed. For this reason, improving offenders' education and employment skills is an important element in the rehabilitation of prisoners in New Zealand.

The provision of prison work is mandated in the Corrections Act 2004. Section 66 of the Corrections Act 2004 states that every prisoner, other than those on remand, awaiting trial or detained under the Immigration Act 1987, may, while in custody, be employed in any work that is directed or provided by the prison manager. A prisoner on remand, awaiting trial or detained under the Immigration Act 1987, may only be employed under the Corrections Act 2004 if the prisoner asks to be employed.

Section 66 of the Corrections Act 2004 sets conditions and the type of employment or work prisoners may undertake while in custody. The relevant provisions are:

S 66 Work and Earnings

- (1) Every prisoner (other than a prisoner who is only awaiting trial or on remand or who is detained under the Immigration Act 1987) may, while in custody:
 - (a) be employed in any work that is directed or provided by the prison manager; and
 - (b) be employed in that work outside the prison in which he or she is detained.

- (5) Prisoners may:
 - (a) be employed under this section only in work of a kind described in subsection (6) that is approved by the chief executive and under the conditions approved by the chief executive; and
 - (b) only be directed, under subsection (1)(a), to perform work of a kind specified in subsection 6(b).

- (6) The work referred to in subsection (5) is work that is:
 - (a) intended to provide the prisoner with work experience or to assist his or her rehabilitation or reintegration into the community; or
 - (b) intended to reduce the cost of keeping prisoners in custody by providing work maintaining the prison, such as cooking and cleaning.

Under S 66(5)(b) prisoners can only be directed to do work to help reduce the cost of keeping prisoners in custody. This includes self-sufficiency work and tasks, such as sweeping and mopping prison floors, cleaning cells, and doing laundry. In practice, however, prisoners are not directed to do this type of work as there are usually more than enough prisoners willing to do this work.

Prisoner employment has been a major focus for the New Zealand Government in recent years. Providing education and employment skills to prisoners is an important means by which we will reduce re-offending. International research supports the link between employment, employment related training and reduced recidivism.

All work opportunities are intended to provide the prisoner with work experience to assist his or her rehabilitation or reintegration into the community. As such, the provision of prisoner work opportunities by the Department of Corrections ('Corrections') does not constitute a formal employment relationship under New Zealand legislation. Corrections provides employment as an opportunity for prisoners to acquire skills, qualifications and employment experience. The exception to this is prisoners on the Release to Work programme who have a conventional employment relationship with their employers outside of prison (as described under the Corrections Inmate Employment section below). Work programmes are voluntary and participation is subject to the prisoner's suitability and security classification.

The main vehicle for achieving government policy on prisoner education and employment is the Prisoner Employment Strategy which is approved by the New Zealand Government. Considerable growth in prisoner employment and skills acquisition has occurred under the current strategy covering the period July 2006 to June 2009.

For the preceding three years the average monthly numbers of prisoners in Corrections Inmate Employment (CIE) work programmes have been:

| Year | CIE Work | Release to Work | Trade and Technical Training | Prison Based Work | Total employed | % of prison population |
|---------------|-----------------|------------------------|-------------------------------------|--------------------------|-----------------------|-------------------------------|
| Feb 07 | 1,549 | 99 | 28 | 1,735 | 3,411 | 45.4% |
| Feb 08 | 1,790 | 176 | 19 | 1,560 | 3,545 | 46.9% |
| Feb 09 | 2,216 | 162 | 43 | 1,644 | 4,065 | 50.8% |

New Zealand is currently in the process of developing a new prisoner employment strategy to cover the next three years when the current strategy finishes. The new strategy is presently entitled Prisoner Skills and Employment (Prisoner Employment Strategy 2009-2012).

Prisoner Incentive Payment

Our previous report to the Committee stated that the incentive payment framework for prisoners was under review. The incentive payment for prisoners in prisoner employment is the subject of an ongoing review. Information will be provided to the Committee in New Zealand's next report.

Corrections Inmate Employment (CIE)

The CIE division currently manages prisoner work programmes in all prisons.

The main components of the prisoner employment activities run by CIE include providing general work skills and practical trade skills in prison based industries, access to trade and technical training, and, in the final phase of a sentence, the opportunity to participate in the Release to Work programme. There is an emphasis on providing employment training in areas of current and predicted labour market skills shortages and ensuring that the training contributes towards a formal qualification on the New Zealand Qualifications Authority (NZQA) framework.

CIE runs prison based industries. These include farming, nursery, horticulture, forestry, timber processing, joinery, building construction, pre-cast concrete, light engineering, printing, electrical assembly, textiles, catering and laundry. They provide a work environment designed to mirror the community employment experiences as closely as possible. The majority of prison based industries operate on a commercial footing.

CIE contracts with private business at market rates and the prisoners remain in the CIE work programme under the supervision and management of the Department of Corrections.

Small numbers of prisoners participate in the Release to Work programme at any one time. This programme allows suitable prisoners who are nearing the end of their

sentence to leave prison to work in suitable employment. Under this programme prisoners have a conventional employment relationship with their employer and are paid market wages into his or her trust account with some deductions for board and food. On average 52% of prisoners on the Release to Work programme retain their jobs after release.

The number of prisoners involved in CIE run work programmes continues to increase and the work programmes are generally popular with prisoners and successful in providing prisoners with skills they can use in employment.

Articles 3-23

These articles do not apply to the New Zealand Government.

Article 24

Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner. Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.

Please state what arrangements have been made for the inspection of forced or compulsory labour and what measures have been taken to bring the regulations to the knowledge of the persons affected.

Prisoners in New Zealand have the right to make a complaint regarding their conditions or treatment to the Ombudsman. The Ombudsman can investigate any complaint of prisoner abuse or inhumane conditions.

Article 25

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced. Please furnish information on any legal proceedings which have been instituted as a consequence of the application of this Article and on any penalties imposed.

Article 26

1. *Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction; provided that, if such Member may desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation, it shall append to its ratification a declaration stating:
 - (1) *the territories to which it intends to apply the provisions of this Convention without modification;*
 - (2) *the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;*
 - (3) *the territories in respect of which it reserves its decision.**
2. *The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a*

subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration.

III. Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions, unless this has already been done in connection with Article 25.

There is no change since the last report on this Convention.

IV Please add a general appreciation of the manner in which the Convention is applied, for example by giving extracts from official reports, and information on any practical difficulties encountered in the application of the Convention or in the suppression of forced or compulsory labour.

The Department of Corrections reports on its prisoner employment goals and accomplishments. This information can be found in the attached publications:

- Statement of Intent (1 July 2009 – 30 June 2009) Output Class 6 Prisoner Employment, pp 84-86. This Report is available through the following link: http://www.corrections.govt.nz/_data/assets/pdf_file/0006/264363/corrections-soi-2008.pdf;
- Annual Reports (1 July 2007 – 30 June 2008) Output Class 6 Prisoner Employment, pp 121-125. This Report is available through the following link: http://www.corrections.govt.nz/_data/assets/pdf_file/0005/295241/07-08-Annual-Report.pdf; and
- Prisoner Employment Strategy 2009-2012 will be provided when it is approved by the New Zealand Government.

V. Please indicate the representative organisations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organisation.1 If copies of the report have not been communicated to representative organisations of employers and/or workers, or if they have been communicated to bodies other than such organisations, please supply information on any particular circumstances existing in your country which explain the procedure followed.

Copies of this report have been forwarded to:

Business New Zealand
New Zealand Council of Trade Unions

Responses to comments made by the Committee of Experts on the Application of Conventions and Recommendations in 2007

Direct Request 2008/09

Noting the Government's statement that, as a result of the introduction of the new Prisoner Employment Strategy, the existing Inmate Employment Policy will be replaced with the Prisoner Employment Policy which is currently in development, the Committee hopes that the Government will supply a copy of the new policy, as soon as it is finalised.

Answer: The Prisoner Employment Strategy 2006-2009 is being replaced by the Prisoner Skills and Employment (Prisoner Employment Strategy 2009-2012). The new strategy is discussed further in the main body of this report. A copy of the new employment strategy will be sent to the Committee once it has been approved by the New Zealand Government.

...the Committee hopes that, in the light of the above explanations, measures will be taken to ensure, both in law and in practice, that convicted persons performing community work are not hired to, or placed at, the disposal of private agencies without their consent, and that the Government will provide, in its next report, information on the progress achieved in this regard.

Answer:

Community Work Sentences

The New Zealand Government considers the performance of community work agency placements at private organisations, such as charities, is voluntary. However, due to feedback from the Committee, the Government will continue to ensure that convicted persons performing community work are not placed at the disposal of private agencies without their consent.

Private Prisons

The New Zealand Government has prepared the Corrections (Contract Management of Prisons) Amendment Bill to allow private prisons. Private businesses will have the opportunity to tender on a competitive basis to manage prisons. It is intended that the law change will apply to prisons already in operation as well as new prisons.

Private prisons will have the same responsibilities to prisoners in terms of providing adequate and humane care as Government run prisons. Private prisons will be bound to comply with the Corrections Act 2004, the New Zealand Bill of Rights Act 1990 as well as any International human rights conventions and treaties ratified by the New Zealand Government that relate to the treatment and rights of prisoners.

The Committee hopes that the Government will supply a copy of the National Plan of Action to Prevent People Trafficking, as soon as it is adopted, and provide information on its application in practice, including the information on any legal proceedings which have been instituted against perpetrators and on the penalties imposed.

Answer: New Zealand has not had any confirmed cases of people trafficking. Nevertheless, New Zealand is conscious that it remains at risk of becoming a

destination country for victims of trafficking and has developed a whole-of-Government Plan of Action to Prevent People Trafficking (Plan of Action) in anticipation of a case being identified in the future. This Plan of Action was approved for release by the New Zealand Government in July 2009. A copy of the Plan of Action publication can be found at: <http://www.dol.govt.nz/publications/research/people-trafficking/people-trafficking.pdf> and is also included with this report.

Implementation of the Plan of Action will focus on prevention, protection of victims, and prosecution of trafficking offenders. Key action items in the Plan of Action are: training and awareness-raising for government enforcement officers and targeted non-Government organisations, developing a policy for offering immigration status options to victims of people trafficking and providing support to any victims who assist with the criminal justice process against their traffickers. The Plan of Action reinforces the government's stance that human trafficking is taken seriously and offenders will be prosecuted to the fullest extent of the law.

As the Plan of Action is a whole-of-government strategy, each agency will be responsible for implementing the action items they have committed to in the Plan. Overall monitoring and reporting will be undertaken by the Department of Labour with assistance from the Inter-agency Working Group on People Trafficking. The Inter-Agency Working Group is chaired by the Department of Labour and has membership from the Ministries of Foreign Affairs and Trade, Justice, Health, Women's Affairs, the New Zealand Police, New Zealand Customs Service and the Department of Prime Minister and Cabinet.