

SLAVERY, SERVITUDE AND FORCED LABOUR

IV. CONCLUDING OBSERVATIONS

CERD

- Republic of Korea, CERD, A/51/18 (1996) 48 at para. 331.

The large number of foreigners who are being employed in ever-increasing numbers by businesses in the Republic of Korea, who live and work clandestinely in the country, usually under difficult and precarious conditions, and who are the victims of discrimination under the provisions of article 5 (a), (b), (d), (e) and (f) of the Convention, is of concern. The same concern has been expressed with regard to the situation of foreign trainees who are allegedly subjected to various forms of discrimination and forced labour.

- Mauritania, CERD, A/54/18 (1999) 34 at para. 329.

With regard to article 5 of the Convention, allegations are noted to the effect that some groups of the population, especially the black communities, are still suffering from various forms of exclusion and discrimination, especially where access to public services and employment is concerned. It is noted that in some parts of the country, vestiges of practices of slavery and involuntary servitude could still persist.

- Ghana, CERD, A/55/18 (2000) 64 at para. 379.

The State party is commended for adopting measures that outlaw the practice of slavery known as “Trokosi”, which affects solely females in the Ewe ethnic group. The State party is encouraged to strictly enforce the criminal sanctions for violations.

- Germany, CERD, A/56/18 (2001) 27 at para. 110.

The establishment of the Foundation for the compensation of persons subjected to forced labour is noted. The fact that this Foundation will also be of benefit to Sintis and Roma populations is welcomed.

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ICCPR

- Luxembourg, ICCPR, A/48/40 vol. I (1993) 30 at para. 143.

Other areas of concern include article 18 of the Constitution, which still presupposes the existence of the death penalty; the lack of a remedy to decisions of the Prosecutor General regarding internment of the mentally ill; the deprivation of the right to vote as a further sanction in criminal cases; and continuing provision in the law for hard or forced labour, which has not yet been abolished.

- United Republic of Tanzania, ICCPR, A/48/40 vol. I (1993) 35 at para. 184.

Specific provisions of the Constitution which are incompatible with the Covenant include article 30 (1) which provides a wide scope for limitations of rights and freedoms and article 25 which provides for the possibility of forced labour.

- Dominican Republic, ICCPR, A/48/40 vol. I (1993) 95 at paras. 450, 460 and 464.

Paragraph 450

The situation of Haitian workers remains a matter of pressing concern and little action has been taken to remedy the situation. In this connection, concern is expressed over the State party's compliance with the provisions of the Covenant concerning forced labour.

Paragraph 460

The lack of protection afforded to Haitians living or working in the country from such serious human rights abuses as forced labour and cruel, inhuman or degrading treatment is of concern. Concern is also expressed over the fact that the protection of the fundamental human rights of foreigners is subject to reciprocity. The degrading living and working conditions of Haitian labourers and the tolerated practices that effectively restrict their freedom of movement is also of concern. Furthermore, while many Haitian workers have been prevented from leaving their place of work, there have also been incidents of mass expulsions from the country. In this regard, the Committee considers that Presidential Decree No. 233-91, which resulted in the mass deportation of Haitian workers under 16 and over 60 years of age, represents a serious violation of several articles of the Covenant.

Paragraph 464

The situation concerning the living and working conditions of Haitian labourers should be addressed as a matter of priority. The State party should ensure the implementation of laws concerning labour standards, including adequate monitoring of working conditions. In this regard, the necessity of strengthening the capacity of the labour inspectorate to effectively monitor the working conditions of Haitian labourers, with a view to ending their slave-like exploitation, is emphasized. Child

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labourers in particular require a higher level of protection and the relevant international standards should be vigorously applied. There should also be more active enforcement, particularly in the "export zones", of the exercise of trade union rights in conformity with article 22 of the Covenant. Additionally, Presidential Decree No. 233-91 should be abolished rather than merely suspended.

- Brazil, ICCPR, A/51/40 vol. I (1996) 44 at paras. 319 and 336.

Paragraph 319

The widespread problem of forced labour and debt bondage, especially in the rural areas, is of concern.

Paragraph 336

The State party should enforce laws prohibiting forced labour, child labour and child prostitution and should implement programmes to prevent and combat such human rights abuses. In addition, more effective supervisory mechanisms should be established to ensure compliance with the provisions of national legislation and relevant international standards. It is imperative that persons who are responsible for, or who directly profit from, forced labour, child labour and child prostitution be severely punished under law.

- Bolivia, ICCPR, A/52/40 vol. I (1997) 35 at paras. 213 and 222.

Paragraph 213

The exploitation of children in employment, including the practice of the "criadito" and the growing numbers of street children is of concern.

Paragraph 222

Effective measures should be taken to abolish the practice of the "criadito".

- India, ICCPR, A/52/40 vol. I (1997) 67 at paras. 430 and 444.

Paragraph 430

Despite measures taken by the Government, members of Scheduled Castes and Tribes, as well as the so-called backward classes and ethnic and national minorities, continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, including inter-caste violence, bonded labour and discrimination of all kinds. It is regretted that the *de facto* perpetuation of the caste system entrenches social differences and contributes to these violations. Further measures should be adopted, including education programmes at national and state levels, to combat all forms of discrimination against these vulnerable groups, in accordance

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with articles 2, paragraph 1, and 26 of the Covenant.

Paragraph 444

The extent of bonded labour, as well as the fact that the incidence of this practice reported to the Supreme Court is far higher than is mentioned in the report, is of concern. The eradication measures that have been taken do not appear to be effective in achieving real progress in the release and rehabilitation of bonded labourers. A thorough study should be urgently undertaken to identify the extent of bonded labour and more effective measures should be taken to eradicate this practice, in accordance with the Bonded Labour System (Abolition) Act of 1976 and article 8 of the Covenant.

- Israel, ICCPR, A/53/40 vol. I (1998) 45 at para. 312.

Women brought to Israel for purposes of prostitution, many under false pretences or through coercion, are not protected as victims of trafficking but are likely to be penalized for their illegal presence in Israel by deportation. Such an approach to this problem effectively prevents these women from pursuing a remedy for the violation of their rights under article 8 of the Covenant. Serious efforts should be made to seek out and punish the traffickers, to institute rehabilitation programmes for the victims and to ensure that they are able to pursue legal remedies against the perpetrators.

- Italy, ICCPR, A/53/40 vol. I (1998) 50 at para. 333.

The treatment by the judiciary of offences concerning trafficking of women and others for the purpose of prostitution as acts which can be assimilated to slavery and contrary to international and national law is appreciated.

- United Republic of Tanzania, ICCPR, A/53/40 vol. I (1998) 57 at para. 393.

The Nyalali Commission has accurately identified all of the following provisions as infringing human rights which are also protected by the Covenant, and has recommended the repeal of: the Emergency Powers Act 1986 (article 4); certain aspects of the Human Resources Deployment Act 1983 which led to forced labour on communal projects (article 8); powers of the President to detain persons (incommunicado for a period) without trial, under the Preventive Detention Act 1962 (article 9); punishment under the Witchcraft Ordinance 1928 (articles 7 and 10).

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 171.

Traffic in women and insufficient protection for women subject to trafficking and slavery-like

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practices remain serious concerns under article 8 of the Covenant. Planned new legislation against child prostitution and child pornography may not protect children under the age of 18 when the age limit for sexual consent is as low as 13. The absence of specific legal provisions prohibiting the bringing of foreign children to Japan for the purpose of prostitution is of concern, despite the fact that abduction and sexual exploitation of children are subject to penal sanctions. The situation should be brought into compliance with the State party's obligations under articles 9, 17 and 24 of the Covenant.

- Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at para. 77(16).

The information on trafficking in women to Venezuela, especially from neighbouring countries, and the lack of information from the delegation on the extent of the problem and action to combat it, are of deep concern. Preventive measures should be taken to eliminate the trafficking in women in order to comply with the provisions of articles 7 and 8 of the Covenant and set up rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.

- Dominican Republic, ICCPR, A/56/40 vol. I (2001) 54 at para. 78(17).

Concern is expressed over the failure to protect Haitians living or working in the Dominican Republic from serious human rights abuses such as forced labour and cruel, inhuman or degrading treatment. Concern is also expressed over the living and working conditions of Haitian workers and the tolerated practices that restrict their freedom of movement. The State party should give priority to addressing the issue of the working and living conditions of Haitian workers, and ensure that those workers can take advantage of the rights and safeguards laid down in articles 8, 17 and 22 of the Covenant.

- Croatia, ICCPR, A/56/40 vol. I (2001) 65 at paras. 80(9) and 80(12).

Paragraph 80(9)

Article 17 of the Constitution, dealing with a state of emergency, is not entirely compatible with the requirements of article 4 of the Covenant, in that the Constitutional grounds justifying a derogation are broader than the "threat to the life of the nation" mentioned in article 4, measures of derogation are not restricted to those strictly required by the exigencies of the situation and non-derogable rights do not include the rights under article 8, paragraphs 1 and 2, article 11 and article 16 of the Covenant. The State party should ensure that its constitutional provisions on a state of emergency are compatible with article 4 of the Covenant and that in practice no derogation from rights should be permissible unless the conditions of article 4 have been met.

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Paragraph 80(12)

The delegation's statement that the State party has a variety of measures at its disposal in its criminal law to combat the practice of trafficking of women into and through its territory, particularly for purposes of sexual exploitation is noted. The State party should take appropriate steps to combat this practice, which constitutes a violation of several Covenant rights, including the right under article 8 to be free from slavery and servitude.

- Czech Republic, ICCPR, A/56/40 vol. I (2001) 83 at para. 83(13).

The reports of trafficking of women, with the State party being a country of origin and transit as well as a recipient country are of deep concern (arts. 3, 8). Resolute measures should be taken to combat this practice, which constitutes a violation of several Covenant rights, including article 3 and the right under article 8 to be free from slavery and servitude. The State party should also strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into its territory for the purpose of prostitution. Strong measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an opportunity to give evidence against the person responsible in criminal or civil proceedings.

- Democratic People's Republic of Korea, ICCPR, A/56/40 vol. I (2001) 98 at paras. 86(17) and 86(26).

Paragraph 86(17)

There are serious doubts about the compatibility of the provisions of Chapter Two of the Labour Law of the State party, especially articles 14 and 18 thereof, with the prohibition of forced labour in article 8, paragraph 3(a), of the Covenant. The State party should amend the above-mentioned provisions of the Labour Law so as to avoid any potential conflict with provisions of article 8 of the Covenant.

Paragraph 86(26)

While noting the delegation's statement that trafficking of women does not exist in the State party, serious concern remains about the number of substantiated allegations about trafficking of women, in violation of article 8 of the Covenant, brought to the attention of the Committee by non-governmental and other sources, including the report of the Special Rapporteur on Violence against Women of the Commission on Human Rights. The State party should investigate the above allegations in a spirit of cooperation.

ICESCR

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- Mali, ICESCR, E/1995/22 (1994) 64 at para. 345.

It is noted with concern that, despite the prohibition of forced labour in the new Constitution, debt bondage still exists in the salt mining communities north of Timbuktu.

- Libyan Arab Jamahiriya, ICESCR, E/1998/22 (1997) 38 at para. 184.

Reports that foreigners who have come to work in the State party in connection with the Great Man-made River project are living and working in appalling conditions is of concern. Foreign employees in the State party who are accused of infringing disciplinary rules may be punished by penalties of imprisonment which can include compulsory labour.

- Iraq, ICESCR, E/1998/22 (1997) 50 at paras. 259 and 275.

Paragraph 259

Concern is expressed that it is possible to condemn a person to compulsory labour, as part of a prison sentence, in cases of expression of political opinions or ideological opposition to the political, social or economic system, for breach of labour discipline or for participation in strikes. This practice is designed to prevent or inhibit free expression in relation to policies and practices which have a direct bearing on the enjoyment of economic, social and cultural rights.

Paragraph 275

It is recommended that Law No. 104 of 1981 and the Penal Code, which provide for compulsory labour in cases of expression of political opinions or ideological opposition to the political, social or economic system, for breach of labour discipline or for participation in strikes, be reviewed and brought into conformity with article 6, paragraph 1, of the Covenant and ILO Convention No. 29 (Forced Labour Convention, 1930).

- United Kingdom of Great Britain and Northern Ireland, ICESCR, E/1998/22 (1997) 56 at para. 306.

The right to strike should be established in legislation and strike action should no longer entail the loss of employment. The current notion of freedom to strike, which simply recognizes the illegality of being subjected to involuntary servitude, is insufficient to satisfy the requirements of article 8 of the Covenant.

- Sri Lanka, ICESCR, E/1999/22 (1998) 22 at para. 77.

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The plight of hundreds of thousands of Sri Lankan women working abroad as domestic helpers, many of them underpaid and treated as virtual slaves, is of concern. It is regretted that the Government has not made a serious effort to assess the negative impact of this phenomenon on children who are left in vulnerable and difficult circumstances without their mothers and to take appropriate remedial measures.

- Ireland, ICESCR, E/2000/22 (1999) 33 at para. 140.

The fact that the Merchant Shipping Act of 1894 is still in force, which provides that seafarers absent without permission are to be punished by being forced to work on board ship is deplored.

- Tunisia, ICESCR, E/2000/22 (1999) 36 at para. 177.

The State party should take the necessary measures to ensure that sentences of forced labour may not be imposed for crimes of conscience or for participation in strikes declared to be illegal.

- Congo, ICESCR, E/2001/22 (2000) 43 at para. 210.

The State party should take appropriate measures, to guarantee, *inter alia*, the prohibition of discrimination, the elimination of forced or bonded labour, particularly of children under 16 years of age, and conditions for the enjoyment of the right to work, such as equal pay for equal work for men and women. These issues should be brought to the attention of ILO, with which the Government of the Congo is presently negotiating concerning follow-up measures to recently ratified ILO Conventions and possible technical cooperation programmes.

- Australia, ICESCR, E/2001/22 (2000) 66 at para. 395.

The State party should ensure that labour in private prisons is voluntarily undertaken and is properly remunerated.

- Togo, ICESCR, E/2002/22 (2001) 57 at para. 317.

It is noted with concern that trafficking in women for the purpose of forced prostitution and non-consensual labor as domestic servants persists. It is also noted with concern that trafficking in persons predominantly concerns children, who are sold as young as 2 years old for future work on

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plantations or as house servants. Allegedly, these children are extensively exploited, fed poorly, crudely clothed and inadequately cared for. Although the State party has been undertaking some measures to address these problems, such as conducting public awareness campaigns and organizing a workshop for border police and other law enforcement officers on child trafficking trends and judicial remedies, the root causes of these problems have not been adequately addressed.

- Syrian Arab Republic, ICESCR, E/2002/22 (2001) 67 at paras. 408 and 424.

Paragraph 408

Concern is expressed about the practice of forced labour in prisons, especially by minors and those who have been incarcerated for vagrancy and other petty crimes.

Paragraph 424

Measures should be taken to prohibit the practice of forced labour in prisons, including by minors and those incarcerated for vagrancy and other petty crimes.

- Nepal, ICESCR, E/2002/22 (2001) 83 at paras. 525 and 538.

Paragraph 525

The abolishment of *kamaiya*, the system of agricultural bonded labour, is welcomed.

Paragraph 538

There is concern that although the *kamaiya* system of agricultural bonded labour was abolished in July 2000, the emancipated *Kamaiyas* are facing many problems, including lack of housing, land, work, and education for their children.

- Japan, ICESCR, E/2002/22 (2001) 90 at paras. 597 and 624.

Paragraph 597

It is of concern that the State party has not ratified certain significant ILO Conventions, such as Conventions No. 105 (1957) concerning the abolition of forced labour, No. 111 (1958) concerning discrimination (employment and occupation) and No. 169 (1989) concerning the indigenous and tribal peoples in independent countries.

Paragraph 624

The State party should ratify ILO Conventions No. 105 (1957) concerning the abolition of forced labour, No. 111 (1958) concerning discrimination (employment and occupation) and No. 169 (1989) concerning indigenous or tribal peoples in independent countries.

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CEDAW

- Bolivia, CEDAW, A/50/38 (1995) 25 at para. 102.

The Government should look into the various aspects of prostitution which is regarded as a severe case of human rights violations and one of the most heinous forms of slavery.

- India, CEDAW, A/55/38 part I (2000) 7 at paras. 82 and 83.

Paragraph 82

The practice of debt bondage and the denial of inheritance rights in land result in gross exploitation of women's labour and their impoverishment.

Paragraph 83

The Government should enforce laws on bonded labour and provide women with self-employment opportunities and minimum wages in home-based production and the non-formal sector.

- Myanmar, CEDAW, A/55/38 part I (2000) 12 at paras. 113 and 114.

Paragraph 113

The recent order of the Government of Myanmar, which overruled those provisions of the Towns Act and the Village Act that authorized the Government to extract forced labour from women, is welcomed. Forced labour of women is a contemporary form of slavery and a denial of their rights. However, the fact that the Towns Act and the Village Act remains as legislation is of concern. That there is little information about the implementation and enforcement of the recent order is of further concern.

Paragraph 114

With regard to forced labour, the Government should take the action necessary to bring the perpetrators to justice.

CRC

- India, CRC, CRC/C/94 (2000) 10 at para. 97.

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Concern is expressed about the large number of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants, and in agriculture, many of whom are working in hazardous conditions. Minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

- Georgia, CRC, CRC/C/97 (2000) 18 at para. 131.

The State party should undertake a study on refugee, asylum-seeking and unaccompanied children to ascertain the extent to which they are victims of torture or other cruel, inhuman or degrading treatment and punishment; economic exploitation, including forced labour; commercial sexual exploitation; sale, trafficking and abduction; and abandonment, abuse and neglect.