Instruments
Key documents
Ratification of ILO Conventions
Supervising the application of International Labour Standards
- Supervision by country
- Search comments by the supervisory bodies

Complaint procedures
- Freedom of association cases
- Representations (Art. 24)
- Commission of Inquiry (Art. 26)

Regular reporting
Country profiles
Comparatives
Maritime Labour Convention (2006)

NATLEX
National Legislation on Labour and Social Rights

LEGOSH
Global database on occupational safety and health legislation

EPLex
Employment protection legislation database

Compendium of court decisions

NORMLEX Home > Country profiles > New Zealand > Comments

Direct Request (CEACR) - adopted 1998, published 87th ILC session (1999)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

Display in: French - Spanish

View all | Printable version

The Committee notes the information provided by the Government in its report. It also notes the comments made by the New Zealand Council of Trade Unions (NZCTU) appended to the report, as well as the Government's reply to these comments.

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. The NZCTU reported deep concern about recent and proposed changes to the legislation relating to the introduction of a community wage scheme provided for in the Social Security Amendment Act (No. 5), 1998 and the Social Security (Work Test) Amendment Bill. According to the NZCTU, the effect of this legislation is that, from October 1998, people who receive unemployment benefit, sickness benefit or domestic purposes benefit through the New Zealand's system of social security are required to undertake "organized activities" as a condition of their entitlement to receive benefits; "organized activities" include forced labour accompanied by sanctions and penalties if beneficiaries refuse to work. The Government states in its reply that the NZCTU's comments relate to policies that were not implemented during the reporting period (i.e. the period ending 31 May 1998). The Government denies that the new legislation will violate the Convention; it does not address the details of the NZCTU's allegations but indicates its intention to provide a more detailed response to the concerns raised by the NZCTU in the next reporting period. The Committee requests the Government to supply a copy of the Social Security Amendment Act (No. 5), 1998, as well as the Social Security (Work Test) Amendment Act, as soon as it is adopted, and in the meantime draws the attention of the Government to paragraph 45 of the 1979 General Survey on the abolition of forced labour.

Article 2, paragraph 2(c). The Committee notes the information supplied by the Government on the work to which detainees may be directed under section 60(2) of the Criminal Justice Act, as amended in 1997. In order to enable the Committee to ascertain compliance with the provisions of Article 2, paragraph 2(c), the Government is requested to supply with its next report representative samples of Work Project Agreements concluded with sponsors under section 60(2)(a) and (b) of the Criminal Justice Act, as well as information on the legal and organizational status of work party supervisors in relation to the Department of Corrections and the various sponsors.

[The Government is asked to report in detail in 1999.]

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- 2009
- 2008
- 2006
- 2004
- 2001
- 1999
- **1998**

Instruments
Key documents
Ratification of ILO Conventions
Supervising the application of International Labour Standards
- Supervision by country
- Search comments by the supervisory bodies

Complaint procedures
- Freedom of association cases
- Representations (Art. 24)
- Commission of Inquiry (Art. 26)

Regular reporting
Country profiles
Comparatives
Maritime Labour Convention (2006)

NATLEX
National Legislation on Labour and Social Rights

LEGOSH
Global database on occupational safety and health legislation

EPLex
Employment protection legislation database

Compendium of court decisions

NORMLEX Home > Country profiles > New Zealand > Comments

Direct Request (CEACR) - adopted 1999, published 88th ILC session (2000)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

Display in: French - Spanish

View all | Printable version

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the following matters raised in its previous comments: The Committee noted the comments made by the New Zealand Council of Trade Unions (NZCTU) appended to the Government's report, as well as the Government's reply to these comments. 1. Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. The NZCTU reported deep concern about recent and proposed changes to the legislation relating to the introduction of a community wage scheme provided for in the Social Security Amendment Act (No. 5), 1998 and the Social Security (Work Test) Amendment Bill. According to the NZCTU, the effect of this legislation is that, from October 1998, people who receive unemployment benefit, sickness benefit or domestic purposes benefit through the New Zealand's system of social security are required to undertake "organized activities" as a condition of their entitlement to receive benefits; "organized activities" include forced labour accompanied by sanctions and penalties if beneficiaries refuse to work. The Government states in its reply that the NZCTU's comments relate to policies that were not implemented during the reporting period (i.e. the period ending 31 May 1998). The Government denies that the new legislation will violate the Convention; it does not address the details of the NZCTU's allegations but indicates its intention to provide a more detailed response to the concerns raised by the NZCTU in the next reporting period. The Committee requests the Government to supply a copy of the Social Security Amendment Act (No. 5), 1998, as well as the Social Security (Work Test) Amendment Act, as soon as it is adopted, and in the meantime draws the attention of the Government to paragraph 45 of the 1979 General Survey on the abolition of forced labour. Article 2, paragraph 2(c). 2. The Committee notes the information supplied by the Government on the work to which detainees may be directed under section 60(2) of the Criminal Justice Act, as amended in 1997. In order to enable the Committee to ascertain compliance with the provisions of Article 2, paragraph 2(c), the Government is requested to supply with its next report representative samples of Work Project Agreements concluded with sponsors under section 60(2)(a) and (b) of the Criminal Justice Act, as well as information on the legal and organizational status of work party supervisors in relation to the Department of Corrections and the various sponsors. 3. Referring to the general observation on the Convention made in its report to the 87th Session of the ILC (1999), the Committee requests the Government to include in its next report information as to the present position in law and practice as regards:

(i) whether there are prisons administered by private concerns, profit-making or otherwise;

(ii) whether any private prison contractors deploy prisoners to work either inside or outside prison premises, either for the account of the contractor or for that of another enterprise;

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- 2009
- 2008
- 2006
- 2004
- 2001
- **1999**
- 1998

(iii) whether private parties are admitted by the prison authorities into prison premises of any kind for the purpose of engaging prisoners in employment;

(iv) whether employment of prisoners outside prison premises, either for a public authority or for a private enterprise, is allowed;

(v) the conditions in which employment under any of the above conditions takes place, in respect of remuneration (indicating the level and comparing it with minimum wage normally applicable to such work), benefits accruing (such as pension rights and workers' compensation), observance of occupational safety and health legislation and other conditions of employment (e.g. through labour inspection), and how those conditions are determined;

(vi) what the source of any remuneration is (whether from public or private funds) and for what purposes it must or may be applied (e.g. for the personal use of the prisoner or if it is subject to compulsory deductions);

(vii) for whose benefit is the product of prisoners' work and any surplus profit deriving from it, after deduction of overheads, and how it is disbursed;

(viii) how the consent of the prisoners concerned is guaranteed, so that t is free from the menace of any penalty, including any loss of privileges or other disadvantages following from a refusal to work.

Direct Request (CEACR) - adopted 2001, published 90th ILC session (2002)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

Display in: French - Spanish

View all | Printable version

The Committee has noted the Government's report with responses to the Committee's 1999 direct request and 1998 general observation, as well as the comments of the New Zealand Employers' Federation on the Government's report.

1. *Obligations imposed on social security beneficiaries.* Further to its previous comments, the Committee notes with interest the Government's indication in its response that it intends to take a more facilitative approach to assisting people to find work, with less emphasis on compulsion and more on obtaining sustainable results through working with beneficiaries on an individual level to build their capacities and make the most of opportunities. Noting also with interest the adoption and entry into force of the Social Security Amendment Act, 2001, the Committee looks forward to learning about administrative practice under the amended legislation.

2. *Privatized prisons and prison labour.* (a) *Inmates of privatized prisons.* The Committee notes from the Government's response to the 1998 general observation that the new remand centre in Auckland is administered by Australasian Correction Management, a private concern, and that internal services (e.g. cleaning, kitchen, laundry) will be manned by inmates. The Committee requests the Government to indicate whether the new remand centre in Auckland houses only remand prisoners, or also convicted prisoners and, if so, which category or categories perform work or services.

(b) *Conditions of employment.* The Committee notes the Government's indication that section 20(1) and (2) of the Penal Institutions Act, 1954, requires that each inmate (excluding those awaiting trial or on remand) shall be employed in such work as may be directed by the superintendent of the institution.

The Committee refers to *Articles 1(1) and 2(1) and (2)(c) of the Convention*, which neither permit work to be imposed on unconvicted prisoners anywhere, nor allow that convicted prisoners be hired to or placed at the disposal of private individuals, companies or associations; thus, the manning of internal services by any inmates in a privately administered institution would only be compatible with the Convention under the conditions of a free employment relationship, that is, with the person's consent, free from the menace of any penalty in the wide sense (such as a reduced prospect of early release) and, since those concerned remain a captive labour force, under arm's length conditions of employment, including wages approximating those accepted by workers having access to the free labour market. The Committee refers in this regard to the explanations provided in its general observation under the Convention as well as in paragraphs 82-146 of its General Report of last year.

(i) *Consent.* The Committee notes from the Government's reply to point (viii) of the 1998 general observation that inmates are provided with a written document "stating what the work is", etc. which they "then sign ... to signify their understanding of the rules and expectations of both parties". This does not appear to imply that they are

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- 2009
- 2008
- 2006
- 2004
- **2001**
- 1999
- 1998

being asked for their consent. The Government is requested to supply a specimen of the document in question, as well as information on any further measures taken, also in respect of section 20(1) and (2) of the Penal Institutions Act, to make work by any prisoners in privately managed institutions subject to their formal consent.

(ii) *Menace of a penalty.* In point (viii) of its 1998 general observation, the Committee also asked how consent is guaranteed to be free from the menace of any penalty, including any loss of privileges or other disadvantages following a refusal to work. The Committee notes that the Government's reply addresses the procedure for dispute resolution, but not the issue of how refusal to work may reflect on prisoners' privileges and prospects of early release. It hopes that the relevant rules will be reviewed in this light and that the Government will forward a copy thereof.

(iii) *Arm's length conditions.* The Committee notes the Government's indication that weekly allowances for inmates engaged in internal services are up to NZ$17 per week, that is, less than 7 per cent of the adult minimum wage rate in New Zealand, and that "no other benefits accrue". The Committee hopes that the necessary measures will be taken to ensure that prisoners in privatized institutions will be offered arm's length conditions of employment, including wages that would be acceptable to workers having access to the free labour market, as well as accident insurance, and that the Government will report on action taken to this end.

(c) *Private use of labour in state prisons.* In points (iii) and (iv) of its general observation of 1998, the Committee had asked whether private parties are admitted by the prison authorities into prison premises of any kind for the purpose of engaging prisoners in employment, and whether employment of prisoners outside prison premises, either for a public authority or for a private enterprise, was allowed. The Government has replied to both questions negatively, explaining that "direct employment of prisoners by private parties is not permitted", and that "the individual prison may hold contracts for the supply/manufacture of goods and services to third parties, but all inmates so engaged are under the total control, administration and supervision of the prison".

The Committee takes due note of these indications. It, however, understands that at the time of the Government's reply, the Inmate Employment Programme comprised not only state-owned and managed enterprises that produced goods for the open market, but also "private sector industries", where the prison hired the labour of prisoners to privately owned and managed businesses run inside the prison. Furthermore, it understands that prisoners, under the supervision of prison officers, were hired, inter alia, to private owners to carry out work such as fruit picking or tree planting.

Referring to the explanations given in point 6 of its general observation, the Committee must point out that the fact that prisoners remain at all times under the supervision and control of a public authority does not absolve the Government from the requirement that the persons are not to be hired to private individuals, companies or associations.

Thus, all prisoners working for private persons or enterprises need to be granted the conditions of free employment, as set out under (b) above with regard to privatized prisons. The Committee hopes that the Government will report on measures taken to this end.

Instruments
Key documents
Ratification of ILO Conventions
Supervising the application of International Labour Standards
- Supervision by country
- Search comments by the supervisory bodies

Complaint procedures
- Freedom of association cases
- Representations (Art. 24)
- Commission of Inquiry (Art. 26)

Regular reporting
Country profiles
Comparatives
Maritime Labour Convention (2006)

NATLEX
National Legislation on Labour and Social Rights

LEGOSH
Global database on occupational safety and health legislation

EPLex
Employment protection legislation database

Compendium of court decisions

NORMLEX Home > Country profiles > New Zealand > Comments

Direct Request (CEACR) - adopted 2004, published 93rd ILC session (2005)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

Display in: French - Spanish

View all | Printable version

The Committee has noted the information provided by the Government in reply to its earlier comments. It has also noted the comments made by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand on the application of the Convention, communicated by the Government, as well as comments made by the International Confederation of Free Trade Unions (ICFTU) dated 6 May 2003.

1. *Sentence of community work.* The Committee has noted that the Sentencing Act, 2002, which came into force on 30 June 2002, introduced a new sentence of community work, which replaced the sentences of periodic detention and community service. The Committee notes that a sentence of community work may be imposed by court if the offender is convicted of an offence punishable by imprisonment; or if the prisoner is convicted of an offence and the enactment expressly provides that a community-based sentence may be imposed on conviction. The sentence may be for not less than 40 or more than 400 days as the court thinks fit (section 55).

The Committee also notes that the court is entitled to impose a community-based sentence or fine, or both, only if the court does not regard a fine as being the appropriate sentence, or because the court does not consider that the offender has the financial capacity to pay (section 15).

The Committee notes that the Act provides guidance on the use of the sentence of community work (section 56), concurrent and cumulative sentences of community work (section 57) and length of sentence of community work (section 58). In addition, the Committee notes that it is a probation officer who must determine placement of the offender for community work (section 61).

The committee notes that the Act defines the authorized work for a person sentenced to community work (section 63). The types of work are:

(a) at or for any hospital or church or at or for any charitable, educational, cultural, or recreational institution or organization (including a marae); or

(b) at or for any other institution or organization for old, infirm, or disabled persons, or at home of any old, infirm, or disabled person; or

(c) on any land of which the Crown or any public body is the owner or lessee or occupier, or any land that is administered by the Crown or any public body.

Further, section 63(2) prohibits the offender, when performing such services or work, from taking the place of any person who would otherwise have been employed to do that work in the ordinary course of that person's paid employment.

The Committee notes that the days and times at which an offender performs work

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- 2009
- 2008
- 2006
- **2004**
- 2001
- 1999
- 1998

must be fixed by agreement between a probation officer and either the community work centre or the agency (section 64) and that the offender is subject to the control, direction and supervision of a probation officer while the offender is doing work at a community work centre or an agency (section 65).

The Committee wishes to recall in this connection that *Article 2(2)(c) of the Convention* expressly prohibits that convicts be hired to or placed at the disposal of private individuals, companies or associations, in a sense that the exception from the scope of the Convention provided for in this Article for compulsory work of convicted persons does not extend to their work for private entities, even if they are not for profit and even if they are under public supervision and control. However, such community work sentences could be imposed if the offender either requests to do such community work, or gives free and voluntary consent to so perform the work. The Committee therefore requests the Government to indicate, in its next report, whether measures are taken or envisaged to ensure that offenders performing community work are not hired to or placed at the disposal of private individuals, companies or associations without their consent and, if so, how the voluntary consent of the persons concerned to work for a private user of community work is guaranteed.

2. *Prison labour in privatized prisons. Private use of labour in state prisons.* In its previous comments, the Committee noted that the Auckland Central Remand Prison (ACRP) was administered by Australasian Correction Management, a private concern. The Committee notes with interest the Government's statement in the report that it is now government policy that the private prison be allowed to continue with the management of the ACRP until the end of its contract and then revert back to government control by July 2005. The Committee is looking forward to receiving from the Government further information on this issue.

The Committee also notes with interest the Government's statement in the report that inmate participation in inmate employment, excepting self-sufficiency roles, is voluntary. The Government indicates that Corrections Inmate Employment is currently developing the inmate induction package for all inmates undertaking employment, which will include, inter alia, a consent document to be signed by inmates to acknowledge that they have voluntarily accepted to participate in employment. The Committee would appreciate it if the Government would provide a copy of this document, as soon as the induction package is completed.

Referring to its observation of satisfaction under the Convention, the Committee has noted the Government's indication in the report that existing contracts with private sector industries have been reviewed, and that the Department of Corrections no longer participates in any contractual arrangements where private sector management is part of a contract. It would be grateful if the Government would indicate, in its next report, whether the Department's inmate employment policy (which refers, among other categories of inmate employment, to commercial industries run in cooperation with the private sector) will also be revised accordingly and, if so, supply a copy of a revised text.

3. *Trafficking in persons.* The Committee has taken note of the information supplied by the Government concerning measures taken to prevent, suppress and punish trafficking in persons for the purpose of exploitation. It notes, in particular, the information on the legislative amendments made in 2002 which, according to the Government, were considered necessary because the New Zealand experience had been that the exploitation of people working unlawfully, whether trafficked or not, often fell short of the more serious offences of slavery or debt bondage. Noting also that, in the communication of 6 May 2003 referred to above, the ICFTU alleged that there were reports of bonded labour involving migrant workers in the commercial sex industry, the Committee requests the Government to refer to these allegations and to provide, in its next report, information on any legal proceedings which have been instituted as a consequence of the application of the legislative amendments referred to above and on the penalties imposed, as required in the report form under *Article 25* of the Convention.

Observation (CEACR) - adopted 2004, published 93rd ILC session (2005)

Instruments
Key documents
Ratification of ILO Conventions
Supervising the application of International Labour Standards
- Supervision by country
- Search comments by the supervisory bodies

Complaint procedures
- Freedom of association cases
- Representations (Art. 24)
- Commission of Inquiry (Art. 26)

Regular reporting
Country profiles
Comparatives
Maritime Labour Convention (2006)

NATLEX
National Legislation on Labour and Social Rights

LEGOSH
Global database on occupational safety and health legislation

EPLex
Employment protection legislation database

Compendium of court decisions

NORMLEX Home > Country profiles > New Zealand > Comments

Direct Request (CEACR) - adopted 2006, published 96th ILC session (2007)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

Display in: French - Spanish

View all | Printable version

1. The Committee has noted the information provided by the Government in its last report in reply to its earlier comments. It has also noted the comments made by the New Zealand Council of Trade Unions (NZCTU) and by Business New Zealand on the application of the Convention, which were communicated by the Government with its report.

2. *Sentence of community work*. In its previous comments, the Committee noted that, under the Sentencing Act 2002, which came into force on 30 June 2002, a sentence of community work may be imposed by the court if the offender is convicted of an offence punishable by imprisonment; or if the prisoner is convicted of an offence and the enactment expressly provides that a community-based sentence may be imposed on conviction. Under section 63 of the Act, an offender sentenced to community work may be required to perform work: (a) at or for any hospital, church, charitable, educational, cultural or recreational institution or organization (including a *marae*); (b) at or for any institution or organization for the old, infirm or disabled persons at, or for, any home of an old, infirm or disabled person; or (c) on any land of which the Crown, or any public body, is the owner, lessee or occupier, or on any land that is administered by the Crown or any public body. The Committee notes that in its last report, for the period 1 July 2003 to 1 May 2005, the Government indicated that, on occasion, community work may be undertaken by sentenced offenders at or for privately-owned institutions. The Committee also notes from the guidelines that in Volume 3 ("Community Work") of the Community Probation Service (CPS) Operations Manual, the statement manifesting a policy that contemplates community work placements with private entities, albeit with conditions: "If the location is a home or institution that is privately owned (fully or partly), the benefit of the work must be for the people using and working in the institution. It must not be for the benefit of the institution itself".

3. The Committee notes from the section on community-based sentences in the Annual Report 2006 of the Department of Corrections (DOC), the indication that during 2005-06 the Department managed approximately 65,000 sentences and orders in the community, and that of this total by far the biggest portion was around 45,000 community work sentences. The report states that these sentences and orders led to over 2 million hours of free labour being provided by offenders to communities, and that during the year 41,420 new sentences and orders were commenced. ***The Committee would be grateful for information indicating the number of these community-work placements that involved work performed at or for private agencies or institutions or other private entities, and for information that identifies such private sponsors, including, for example, a list of authorized private institutions or other entities. Recalling that, under the exception in Article 2(2)(c) of the Convention, forced or compulsory labour is not deemed to include work or service exacted from any person as a consequence of a***

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- 2009
- 2008
- **2006**
- 2004
- 2001
- 1999
- 1998

conviction in a court of law, provided that said person is not hired to or placed at the disposal of private individuals, companies or associations, the Committee has considered that, where offenders perform work imposed under community-based sentencing policies, assurances are needed that any sponsoring private institutions or entities are non-profit-making, and that any work performed by sentenced offenders under such private sponsorship is of a real benefit to the community. The Committee asks the Government to supply information regarding measures taken to ensure that such is the case under its community work programme.

4. *Consent of the sentenced offender to doing community work.* The Committee notes that under section 55 ("Sentence of community work") of the Sentencing Act 2002, a court may sentence an offender to community work: (a) if the offender is convicted of an offence punishable by imprisonment; or (b) if the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction. Section 74 provides, among other things, that: (1) if a court imposes a community-based sentence on an offender, the particulars of the sentence must be drawn up in the form of an order; that: (2) wherever practicable, a copy of the order must be given to the offender before he or she leaves the court; and that: (3) if it is not practicable to give a copy of the order to the offender before the offender leaves the court, a copy must be given to the offender in person as soon as practicable after the offender leaves the court. The Committee notes that, according to the guidelines in Volume 3 ("Community Work") of the CPS Operations Manual of the Department of Corrections, actions that apply to court-ordered sentences of community work include the following: the offender signs the Court order as acknowledgment that: he or she has received the Court order; and that he or she understands the requirements of the Court order, particularly the requirement to report as soon as possible and no later than 72 hours. The Committee, in particular, also notes from Volume 3 of the CPS Operations Manual the guideline explaining that: "Community work is a compulsory sentence, i.e., *it is imposed without the offender's consent*" (emphasis added). The Committee notes the report posted on the Internet site of the Ministry of Justice, "Conviction and Sentencing of Offenders in New Zealand: 1995 to 2004", which states that offenders sentenced to community work "must report to a probation officer who will determine the appropriate placement of the offender, i.e. at a community work centre, with another agency, or a combination of both of these". ***The Committee has considered that, where a sentence of community-based work entails a work placement at a private institution or entity, assurances are needed that the sentenced person consents to doing the community work. The Committee would therefore be grateful for explanatory comments from the Government regarding the foregoing provisions and documentation in light of the need for such consent by the sentenced offender, as well as for information regarding the measures taken in law and practice to ensure that the consent of sentenced offenders to perform work for private sponsors is guaranteed.***

5. *Prison labour in privatized prisons.* In its previous comments, the Committee noted with interest the statement by the Government in its report that the Auckland Central Remand Prison (ACRP), which had been administered by Australasian Correction Management, a private concern, was to revert back to government control by July 2005. The Committee notes with interest the information from the Internet site of the Department of Corrections that management of the ACRP reverted to the Public Prisons Service (PPS) on 12 July 2005. The Committee also notes with interest section 198 ("No new management contracts may be entered into ...") of the Corrections Act 2004, which came into force on 1 June 2005, and repealed and replaced the Penal Institutions Act 1954, which provides: "No person may, on behalf of the Crown, enter into any contract with any person for the management, by that person instead of the Crown, of any prison".

6. *Private use of labour in state prisons.* In its previous comments, the Committee asked the Government to indicate whether, consistent with the policy of the Department of Corrections, to end its participation in any contractual arrangements involving private sector management as part of the contract, the Department's Inmate

Employment Policy (which refers, among other categories of employment, to commercial industries run with the involvement of the private sector) would also be revised accordingly and, if so, to supply a copy of a revised text. The Government, in its last report, indicated that it intended to revise the Department's Inmate Employment Policy with regard to participation of the Department in contractual arrangements with private sector interests, and that a copy of the final policy would be provided with the Government's next report. The Committee notes from the Internet site of the DOC the Department's "Prisoner Employment Strategy 2006-09", released in May 2006. The strategy report, under its "priority areas", states as its goals, among others, to "establish interfaces with industry to explore employment opportunities for prisoners, which are of mutual benefit to both parties", and to "develop a partnership approach with industry ... to ensure that training meets labour skill demand and that qualifications obtained by prisoners are relevant to the labour market". ***The Committee seeks clarification about whether the Prisoner Employment Strategy 2006-09 represents the "revised" and "final policy" on inmate employment previously referred to by the Government.***

7. *Freely given consent of a prisoner as a condition for a private use of prison labour*. In its previous comments, the Committee noted with interest the statement by the Government in its report that participation in prisoner employment, excepting self-sufficiency roles, was voluntary. It noted the indication that Corrections Inmate Employment was developing a prisoner "induction package" for all prisoners undertaking employment, which would include, inter alia, a signed consent document to acknowledge the voluntary acceptance of participation in employment, and it asked the Government to supply a copy. The Committee noted the indications of the Government that there was no single induction package covering all prisoner employment, and that the Government had enclosed a copy of the induction package for prisoners participating in the horticulture industry, which illustrated the overall form of the packages and included a checklist that incorporated, in item (1), the prisoner's written consent that employment was an agreed part of his or her sentence plan. ***The Committee notes that the copy of the document referred to was not included with the Government's report, and it asks the Government to supply a copy with its next report.***

8. The Committee notes the indication by the Government in its last report that sentence plans, or sentence "management" plans as they are referred to in the Corrections Act 2004, are prepared with and for prisoners to achieve an optimal match of available programmes, employment, and constructive activities for each prisoner, and to sequence programmes, work, and activities effectively. Each plan is discussed with the prisoner and agreed to in writing with him or her. ***The Committee asks the Government to provide a copy of a typical sentence management plan.***

9. *Trafficking in persons for exploitation*. In its previous comments the Committee requested the Government to refer to the reports of alleged bonded labour involving migrant workers in the commercial sex industry noted in the communication from the ICFTU of 6 May 2003, and to provide information on any legal proceedings which had been instituted as a consequence of the application of the Crimes Act 1961, as amended on 18 June 2002 by the Crimes Amendment Act 2002 and on the penalties imposed, as required in the report form under *Article 25* of the Convention. The Committee notes the Government's indication in its last report that there had not been any cases determined under section 98D (the trafficking offence provision) of the Act; and that there had been six prosecutions resulting in three convictions under section 98C (the migrant smuggling offence provision). The Government indicates that the most prominent case was *R v Chechelnitski* (CA 160/04, 1 September 2004), in which the Court of Appeal upheld a sentence of three and a half years' imprisonment imposed under section 98C, on a person who was found to have accompanied three illegal immigrants into the country who were not subject to coercion and were trying to enter of their own accord.

10. The Committee notes the Government's indication that the Prostitution Reform Act 2003, which entered into force on 28 June 2003, creates an offence of "inducing or

compelling persons to provide commercial sexual services or earnings from prostitution" (section 16), and that this provision, more than the previous law, specifically targets situations where a person is induced or compelled to engage in commercial sexual activity. The Government indicates that the new section 98AA of the Crimes Act 1961, inserted by the Crimes Amendment Act (No. 2) 2005, is also of similar effect in relation to persons under 18 years of age. The Government also refers to section 19 of the Prostitution Reform Act, which prohibits permits being granted under the Immigration Act 1987 to a person who provides commercial sexual services or who operates or invests in a business of prostitution. The Government indicates that this provision is intended to prevent persons from being brought into New Zealand for the purposes of employment in the sex industry and from entrepreneurs coming to New Zealand to operate or invest in a business of prostitution. ***The Committee notes that copies of this legislation, despite the reference to their inclusion as annexes to the Government's report, were not received, and the Government is asked to supply them with its next report. The Committee would also appreciate statistical data and other information from the Government regarding the application and enforcement of these new provisions, including information about any arrests, prosecutions, convictions, and sentence dispositions, as well as any permit denials, resulting from the implementation of these reforms.***

11. The Committee notes from a May 2006 report on the Internet site of the Ministry of Justice, the indication that the Department of Labour, in conjunction with the New Zealand Police, Department of Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade, and the New Zealand Customs Service, had agreed to formulate a National Plan of Action to Combat Trafficking in Persons; that development of a national plan would address prevention, protection, prosecution and reintegration; that such a plan would help New Zealand to meet its international obligations and will guide domestic responses to trafficking; and that a multi-agency working group, with the involvement of non-government agencies, had drafted a discussion document outlining possible approaches for the development of the National Plan. ***The Committee hopes that the Government will report on the status of this initiative in its next report***.

12. *Forced child labour*. The Committee notes the Government's indication that section 6 of the Crimes Amendment Act (No. 2) 2005, which inserts new section 98AA into the Crimes Act 1961 and which had yet to come into force, makes it an offence, punishable by a maximum of 14 years' imprisonment, to enter into a dealing involving a person under the age of 18 for the purposes of sexual exploitation or engagement in forced labour. The Committee also notes from the Internet site of the Ministry of Justice the May 2006 report, "A five-year stocktake of the steps taken by the New Zealand Government and civil society to prevent the commercial sexual exploitation of children". With reference to forced or compulsory child labour, the Committee notes that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182). In so far as Article 3(a) of Convention No. 182 provides that the worst forms of child labour include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour", the Committee is of the view that the problem of forced or compulsory labour of children may be examined more specifically under Convention No. 182. The protection of children is enhanced by the fact that Convention No. 182 requires States which ratify it to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee accordingly asks the Government to henceforth refer to its comments on the application of Convention No. 182.***

Instruments
Key documents
Ratification of ILO Conventions
Supervising the application of International Labour Standards
- Supervision by country
- Search comments by the supervisory bodies

Complaint procedures
- Freedom of association cases
- Representations (Art. 24)
- Commission of Inquiry (Art. 26)

Regular reporting
Country profiles
Comparatives
Maritime Labour Convention (2006)

NATLEX
National Legislation on Labour and Social Rights

LEGOSH
Global database on occupational safety and health legislation

EPLex
Employment protection legislation database

Compendium of court decisions

NORMLEX Home > Country profiles > New Zealand > Comments

Direct Request (CEACR) - adopted 2009, published 99th ILC session (2010)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

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View all | Printable version

The Committee notes the information provided by the Government in reply to its earlier comments. It also notes the comments made by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand on the application of the Convention, which were communicated by the Government with its report, as well as the Government's responses to these comments.

Articles 1 (paragraph 1), and 2 (paragraphs 1 and 2(c)), of the Convention.

1. *Privatization of prisons and prison labour.* The Committee notes the indications of the Government in its report that the Corrections (Contract Management of Prisons) Amendment Bill 2009 has been introduced to allow private prisons; that under this legislation, private companies will have the opportunity to tender on a competitive basis to manage prisons; and that this law change will apply to prisons already in operation as well as new prisons. The Committee notes that in its response to the NZCTU comments, the Government indicates that the Bill contains provisions to prevent prison labour in contract-managed prisons from being used to benefit private sector commercial operations. It refers in this regard to a contractual requirement for companies managing prisons to comply with the relevant legislation, stating that this will ensure that prisoners in privately managed prisons will only be employed as they would in a public prison. The Government further indicates that standards and requirements placed on contract-managed prisons will be strictly enforced. It refers in this connection to provisions for the assignment of a prison monitor to each contract-managed prison to monitor contractual compliance, to privately managed prisons being subject to extensive reporting requirements and scrutiny by corrections inspectors, and to the fact the Chief Executive of Corrections will remain responsible for all prisoners. The Committee notes that section 66 of the Corrections Act 2004 provides, inter alia, that prisoners in any prison may be directed by the prison manager to perform work maintaining the prison.

The Committee refers in this regard to paragraph 106 of its 2007 General Survey on the eradication of forced labour, in which it explained that the prohibition on convicted prisoners being hired to or placed at the disposal of private parties is not limited to work outside penitentiary establishments but applies equally to workshops which may be operated by private undertakings inside prisons, as well as to work organized by privately run prisons.

The Committee asks the Government to take the necessary measures to ensure that both in law and in practice any new system of privately managed prisons will not involve the exaction of forced or compulsory labour from any prisoner, including any work or services directed by prison managers, except with the prisoner's voluntary consent, given free from the menace of any penalty, and under conditions of employment approximating those of free workers (see paragraphs 59–60 and 114–120 of the 2007 General Survey referred to above).

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- **2009**
- 2008
- 2006
- 2004
- 2001
- 1999
- 1998

The Committee asks the Government to provide, in its next report, information on the measures taken or envisaged in this regard, as well as a copy of the Corrections (Contract Management of Prisons) Amendment Bill 2009, once it has been finally adopted and enacted into law.

2. *Private use of labour in state prisons.* The Committee notes the detailed information supplied by the Government in its report concerning its policy on prisoner employment under the Prisoner Employment Strategy. Corrections Inmate Employment (CIE), a group within the Department of Corrections, manages prisoner work programmes in all prisons, aiming to provide prisoners who volunteer general work skills and practical trade skills. As one component of this activity, CIE contracts with private business at market rates, and prisoners remain in the CIE work programme under the supervision and management of the Department of Corrections. The Government states that, with the exception of the Release to Work programme, the provision of prisoner work opportunities by the Department does not constitute a formal employment relationship. The Government reiterates, however, that the incentive pay framework has been the subject of an ongoing review, and that it will provide information about this in its next report. The Committee notes from the Internet site of the Department of Corrections, the Prisoner Skills and Employment Strategy 2009–12, defined as "a strategy to raise prisoner skill levels and provide prisoners with employment experience". To achieve this, the Department will, inter alia, increase employment opportunities, in part, by "increasing partnerships with the private sector". The strategy document refers to examples of current partnerships, which include renovation work for Housing New Zealand Corporation, photocopier assembly and repair work for Canon and light engineering work for a number of clients in the South Island. It indicates that the Department regularly engages with private companies about opportunities for more meaningful work and training for prisoners, and that under the new strategy it "will be looking to increase the number of contracts with private companies".

The Committee recalls that, for the private employment of prison labour to comply with the Convention, it must be voluntary and depend on the formal consent of the prisoner concerned. However, the requirement of such consent is not in itself sufficient to eliminate the possibility that it is given under the menace of loss of a right or advantage. The Committee has considered that conditions approximating a free labour relationship are the most reliable indicator of the voluntariness of prison labour (2007 General Survey, paragraph 60). ***The Committee requests the Government to provide in its next report information indicating whether, in what ways and to what extent the new prisoner employment strategy is being conceived and implemented in such a way as to grant conditions approximating free employment to prisoners who work for the Department's private sector partners under that strategy.***

3. *Sentence of community work.* In its previous comments the Committee has noted that under the Sentencing Act 2002, a court may sentence an offender to community work, and that such work may be undertaken at, or for, private agencies or institutions or other private entities. The Committee has also noted that the penalty of community work may be imposed without the consent of the offender, referring to Volume 3 of the Community Probation Service (CPS) Operations Manual, which stipulates: "Community work is a compulsory sentence, i.e., it is imposed without the offender's consent".

The Committee notes the indications of the Government in its report that it considers the performance of community work at placements with private organizations to be voluntary, and that it would nevertheless continue to ensure that convicted persons performing community work are not placed at the disposal of private agencies without their consent. ***While taking due note of this indication, the Committee reiterates its hope that measures will be taken to ensure that, both in law and in practice, 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.

Articles 1 (paragraph 1), 2 (paragraph 1), and 25. Trafficking in persons. The Committee notes with interest the information supplied by the Government concerning the measures being actively taken in relation to the problem of trafficking in persons, and in particular its Plan of Action to Prevent People Trafficking, which was approved by the Government in July of 2009. The Plan of Action's key items include training and awareness raising for government enforcement officers and targeted non-governmental organizations, development of a policy for offering immigration status options to victims of trafficking, and providing support to victims who assist with criminal justice proceedings against their traffickers. The Committee notes the Government's stated commitment to a comprehensive strategy, pursuant to which an Inter-Agency Working Group will oversee and ensure the implementation of the Plan of Action. The Committee has also noted that the Crimes Act, 1961 was amended in 2002 to include anti-trafficking provisions (section 98), and that trafficking in persons carries penalties of up to 20 years' imprisonment. ***Noting also that New Zealand has not had any confirmed cases of trafficking in persons, the Committee hopes that the Government will provide, in its next report, information on the application in practice of the Plan of Action, as well as the relevant provisions of the Crimes Act, as amended, including information on legal proceedings in any cases brought against trafficking offenders and on the penalties imposed, if and when such information becomes available.***

Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

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The Committee notes the Government's reports and the comments made by the New Zealand Council of Trade Unions (NZCTU) dated 2 October 2011 and 11 October 2012, as well as the Government's reply thereto.

Articles 1(1), 2(1) and (2)(c) of the Convention. 1. *Privatization of prisons and prison labour.* The Committee previously noted the introduction of the Corrections (Contract Management of Prisons) Amendment Bill which would allow private companies to manage prisons, including prisons currently under operation as well as new prisons. The Government stated that the Bill contained provisions to prevent prison labour in contract-managed prisons from being used to benefit private sector commercial operations. The Committee requested the Government to take measures to ensure that the new system of privately managed prisons would only allow work by prisoners with the prisoner's voluntary consent, given free from the menace of any penalty, and under conditions of employment approximating those of free workers.

The Committee notes the Government's indication that the Corrections (Contract Management of Prisons) Amendment Act was adopted in November 2009, which allows competitive tendering of prison management on a case by case basis. The Government refers to section 199(2) of the Corrections Act (as amended), which states that it is a legal requirement under the Act that companies comply with all relevant New Zealand legislation, including the Corrections Act 2004 and the New Zealand Bill of Rights Act 1990, as well as with relevant international obligations and standards, including the Convention. The Government further indicates that, as with state-run prisons, privately managed prisons are subject to scrutiny by the inspectors of corrections and the Office of the Ombusdmen. The Committee also notes that the Corrections (Contract Management of Prisons) Amendment Act establishes the role of Prison Monitor (pursuant to section 199E) assigned to each privately managed prison. Prison Monitors have access to all prisoners and all parts of the prison at all times. Section 199G(1)(e) states that Prison Monitors must specifically report on work undertaken by prisoners at the direction of the prison manager. The Committee further notes the Government's statement that privately managed prisons are subject to extensive reporting requirements. Section 199D of the Corrections Act (as amended) states that the manager of a private prison must report at regular intervals on, inter alia, the employment provided for prisoners by or at the prison. In addition, the Committee notes the Government's statement that privately managed prisons are required to have prisoner employment programmes, approved by the Chief Executive of the Department of Corrections.

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- **2012**
- 2009
- 2008
- 2006
- 2004
- 2001
- 1999
- 1998

The Committee takes due note of the Government's indication that New Zealand's only contract managed prison is required to ensure that any prisoner employed in prison work has provided written consent to that employment, and that such consent has not subsequently been withdrawn. The Committee also notes the NZCTU's statement that additional corrections facilities are currently being built which will also be managed privately. In this connection, the Committee notes the Government's indication that it plans to design and manage a new prison under a Public-Private Partnership, to be operational in 2015. The Committee notes that this prospective contract will require compliance with the Convention so that any prisoner employed in prison work will have provided written consent for that employment.

The Committee therefore observes that the practice of requiring the written consent of prisoners engaged in work in the one privately-run prison in the country is in conformity with the Convention, and that the one privately-run prison under development will likewise require this. ***Noting that the issue of written consent does not appear to be addressed in the provisions of the Corrections (Contract Management of Prisons) Amendment Act, the Committee requests the Government to provide information on any measures taken or envisaged to ensure that any additional privately-run correctional facilities will also require the written consent of prisoners, in line with the current practice. The Committee also requests the Government to provide information on the conditions of work performed in private prisons and the manner in which it is ensured that prisoners are informed of these conditions. Please also provide extracts of the reports of the managers of private prisons (pursuant to section 199D of the Corrections Act (as amended)) concerning the employment of prisoners, as well as examples of the written consent forms of prisoners in private prisons employed in prison work.***

2. *Private use of labour in state prisons*. The Committee previously noted that Corrections Inmate Employment (CIE), a group within the Department of Corrections, manages prisoner work programmes in all prisons, and aimed to provide prisoners who volunteer general work skills and practical trade skills, including through contracts with private businesses at market rates. The Government indicated that, with the exception of the Release to Work programme, the provision of prisoner work opportunities by the department did not constitute a formal employment relationship. The Committee requested information on the implementation of the new prisoner employment strategy, particularly on the granting of conditions approximating free employment to prisoners who work for the department's private sector partners under that strategy.

The Committee notes the statement of the NZCTU that prison employment programmes provide a valuable opportunity for inmates to develop work skills and to enhance their employment prospects following release.

The Committee notes the Government's statement that the current Prisoners Skills and Employment Strategy covers the period 2009–12. The Government indicates that the overall growth in prisoner employment and skills acquisition has continued, with the percentage of the prison population that is employed rising from 50.8 per cent in 2009 (4,065 prisoners) to 63.4 per cent in 2012 (4,825 prisoners). In 2012, this included 2,562 prisoners working in prison industries, 114 prisoners in the Release to Work programme, 103 prisoners in trade and technical training and 2,046 prisoners in prison based work. The Committee further notes the Government's statement that the main prisoner employment activities and prison industries run by the CIE have not changed during the period covered by the report, though there has been an increasing focus on the completion of trade-related qualifications by prisoners. The Government states that prisoners engaged with CIE achieved a total of 2,798 nationally-recognized qualifications in 2010–11 and that these qualifications

will support prisoners in gaining sustainable employment on release from prison The CIE continues to contract with private businesses at market rates, and the prisoners remain in the CIE work programme under the supervision and management of the Department of Corrections. Regarding the Release to Work programme, the Government indicates that suitable prisoners who are nearing the end of their sentence are allowed to leave prison on day release, and work for a suitable employer in a conventional employment relationship. Prisoners are paid market wages (no lower than the legal minimum wage) which are paid into a prisoners' trust account, with deductions for board not exceeding 30 per cent of earnings. Approximately half of the participating prisoners retained their Release to Work jobs after their release.

3. *Sentence of community work*. In its previous comments, the Committee noted that under the Sentencing Act 2002, a court may sentence an offender to community work, and that such work may be undertaken at, or for, private agencies or institutions or other private entities. The Committee also noted that the penalty of community work may be imposed without the consent of the offender; Volume 3 of the Community Probation Service (CPS) Operations Manual states that "[c]ommunity work is a compulsory sentence, i.e. it is imposed without the offender's consent". In this regard, the Government indicated that it considered the performance of community work at placements with private organizations to be voluntary, and that it would continue to ensure that convicted persons performing community work were not placed at the disposal of private agencies without their consent.

The Committee notes the Government's statement that the Department of Corrections obtains the consent of each individual offender being placed at an agency through a written agreement between the agency, the offender and the department. ***The Committee requests the Government to provide further information in its next report on the written agreement between the offender performing community work at a private agency, the agency and the Department of Correction, including copies of agreements concluded in this regard.***

Articles 1(1), 2(1) and 25. Trafficking in persons. The Committee previously noted that the Crimes Act, 1961, had been amended to include anti-trafficking provisions (section 98), and that trafficking in persons carries penalties of up to 20 years' imprisonment. The Committee also noted the adoption of the Plan of Action to Prevent People Trafficking in July of 2009, which included measures for training and awareness raising for government enforcement officers, the development of a policy for offering immigration status options to victims of trafficking, and the provision of support to victims who assist with criminal justice proceedings against their traffickers. The Committee requested information on the implementation of the Plan of Action and the application of the relevant provisions of the Crimes Act.

The Committee notes the statement by the NZCTU that no independent research has been conducted to determine the full extent of any trafficking problem in the country and that at present, there is little evidence of major trafficking in the country. The NZCTU indicates that there are examples of foreign visitors working illegally, including work in horticulture and the sex industry. Those found working illegally will be deported by Immigration New Zealand, so there is little incentive for illegal workers to report exploitative employers. In this regard, the NZCTU indicates that the Plan of Action to Prevent People Trafficking does not address in any depth the issue of non-cooperation with authorities for fear of deportation.

The Committee notes the Government's statement in its report submitted under the Abolition of Forced Labour Convention, 1957 (No. 105), that it is conscious that New Zealand remains at risk of becoming a destination country for victims of trafficking, and that the Plan of Action was developed in

anticipation. The Government states that the Plan of Action mainstreams human trafficking prevention and assistance into existing Government initiatives and programmes, and that the overall monitoring and reporting of its implementation will be undertaken by the Department of Labour with assistance from the Inter-agency Working Group on People Trafficking. The Government further indicates that in 2010, the Department of Labour launched a campaign to raise public awareness on human trafficking by distributing brochures in six languages outlining possible signs of human trafficking. ***The Committee requests the Government to pursue its efforts to prevent and combat trafficking in persons, and to provide information on measures taken in this regard within the framework of the Plan of Action to Prevent People Trafficking. The Committee also requests the Government to provide information, in its next report, concerning the application in practice of the anti-trafficking provisions of the Crimes Act, including the number of prosecutions, convictions, and specific penalties applied, as well as copies of relevant court cases.***

Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

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The Committee notes the Government's reports and the comments made by the New Zealand Council of Trade Unions (NZCTU) dated 2 October 2011 and 11 October 2012, as well as the Government's reply thereto.

Articles 1(1), 2(1) and (2)(c) of the Convention. 1. *Privatization of prisons and prison labour.* The Committee previously noted the introduction of the Corrections (Contract Management of Prisons) Amendment Bill which would allow private companies to manage prisons, including prisons currently under operation as well as new prisons. The Government stated that the Bill contained provisions to prevent prison labour in contract-managed prisons from being used to benefit private sector commercial operations. The Committee requested the Government to take measures to ensure that the new system of privately managed prisons would only allow work by prisoners with the prisoner's voluntary consent, given free from the menace of any penalty, and under conditions of employment approximating those of free workers.

The Committee notes the Government's indication that the Corrections (Contract Management of Prisons) Amendment Act was adopted in November 2009, which allows competitive tendering of prison management on a case by case basis. The Government refers to section 199(2) of the Corrections Act (as amended), which states that it is a legal requirement under the Act that companies comply with all relevant New Zealand legislation, including the Corrections Act 2004 and the New Zealand Bill of Rights Act 1990, as well as with relevant international obligations and standards, including the Convention. The Government further indicates that, as with state-run prisons, privately managed prisons are subject to scrutiny by the inspectors of corrections and the Office of the Ombusdmen. The Committee also notes that the Corrections (Contract Management of Prisons) Amendment Act establishes the role of Prison Monitor (pursuant to section 199E) assigned to each privately managed prison. Prison Monitors have access to all prisoners and all parts of the prison at all times. Section 199G(1)(e) states that Prison Monitors must specifically report on work undertaken by prisoners at the direction of the prison manager. The Committee further notes the Government's statement that privately managed prisons are subject to extensive reporting requirements. Section 199D of the Corrections Act (as amended) states that the manager of a private prison must report at regular intervals on, inter alia, the employment provided for prisoners by or at the prison. In addition, the Committee notes the Government's statement that privately managed prisons are required to have prisoner employment programmes, approved by the Chief Executive of the Department of Corrections.

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- **2012**
- 2009
- 2008
- 2006
- 2004
- 2001
- 1999
- 1998

The Committee takes due note of the Government's indication that New Zealand's only contract managed prison is required to ensure that any prisoner employed in prison work has provided written consent to that employment, and that such consent has not subsequently been withdrawn. The Committee also notes the NZCTU's statement that additional corrections facilities are currently being built which will also be managed privately. In this connection, the Committee notes the Government's indication that it plans to design and manage a new prison under a Public-Private Partnership, to be operational in 2015. The Committee notes that this prospective contract will require compliance with the Convention so that any prisoner employed in prison work will have provided written consent for that employment.

The Committee therefore observes that the practice of requiring the written consent of prisoners engaged in work in the one privately-run prison in the country is in conformity with the Convention, and that the one privately-run prison under development will likewise require this. ***Noting that the issue of written consent does not appear to be addressed in the provisions of the Corrections (Contract Management of Prisons) Amendment Act, the Committee requests the Government to provide information on any measures taken or envisaged to ensure that any additional privately-run correctional facilities will also require the written consent of prisoners, in line with the current practice. The Committee also requests the Government to provide information on the conditions of work performed in private prisons and the manner in which it is ensured that prisoners are informed of these conditions. Please also provide extracts of the reports of the managers of private prisons (pursuant to section 199D of the Corrections Act (as amended)) concerning the employment of prisoners, as well as examples of the written consent forms of prisoners in private prisons employed in prison work.***

2. *Private use of labour in state prisons*. The Committee previously noted that Corrections Inmate Employment (CIE), a group within the Department of Corrections, manages prisoner work programmes in all prisons, and aimed to provide prisoners who volunteer general work skills and practical trade skills, including through contracts with private businesses at market rates. The Government indicated that, with the exception of the Release to Work programme, the provision of prisoner work opportunities by the department did not constitute a formal employment relationship. The Committee requested information on the implementation of the new prisoner employment strategy, particularly on the granting of conditions approximating free employment to prisoners who work for the department's private sector partners under that strategy.

The Committee notes the statement of the NZCTU that prison employment programmes provide a valuable opportunity for inmates to develop work skills and to enhance their employment prospects following release.

The Committee notes the Government's statement that the current Prisoners Skills and Employment Strategy covers the period 2009–12. The Government indicates that the overall growth in prisoner employment and skills acquisition has continued, with the percentage of the prison population that is employed rising from 50.8 per cent in 2009 (4,065 prisoners) to 63.4 per cent in 2012 (4,825 prisoners). In 2012, this included 2,562 prisoners working in prison industries, 114 prisoners in the Release to Work programme, 103 prisoners in trade and technical training and 2,046 prisoners in prison based work. The Committee further notes the Government's statement that the main prisoner employment activities and prison industries run by the CIE have not changed during the period covered by the report, though there has been an increasing focus on the completion of trade-related qualifications by prisoners. The Government states that prisoners engaged with CIE achieved a total of 2,798 nationally-recognized qualifications in 2010–11 and that these qualifications

will support prisoners in gaining sustainable employment on release from prison The CIE continues to contract with private businesses at market rates, and the prisoners remain in the CIE work programme under the supervision and management of the Department of Corrections. Regarding the Release to Work programme, the Government indicates that suitable prisoners who are nearing the end of their sentence are allowed to leave prison on day release, and work for a suitable employer in a conventional employment relationship. Prisoners are paid market wages (no lower than the legal minimum wage) which are paid into a prisoners' trust account, with deductions for board not exceeding 30 per cent of earnings. Approximately half of the participating prisoners retained their Release to Work jobs after their release.

3. *Sentence of community work*. In its previous comments, the Committee noted that under the Sentencing Act 2002, a court may sentence an offender to community work, and that such work may be undertaken at, or for, private agencies or institutions or other private entities. The Committee also noted that the penalty of community work may be imposed without the consent of the offender; Volume 3 of the Community Probation Service (CPS) Operations Manual states that "[c]ommunity work is a compulsory sentence, i.e. it is imposed without the offender's consent". In this regard, the Government indicated that it considered the performance of community work at placements with private organizations to be voluntary, and that it would continue to ensure that convicted persons performing community work were not placed at the disposal of private agencies without their consent.

The Committee notes the Government's statement that the Department of Corrections obtains the consent of each individual offender being placed at an agency through a written agreement between the agency, the offender and the department. ***The Committee requests the Government to provide further information in its next report on the written agreement between the offender performing community work at a private agency, the agency and the Department of Correction, including copies of agreements concluded in this regard.***

Articles 1(1), 2(1) and 25. Trafficking in persons. The Committee previously noted that the Crimes Act, 1961, had been amended to include anti-trafficking provisions (section 98), and that trafficking in persons carries penalties of up to 20 years' imprisonment. The Committee also noted the adoption of the Plan of Action to Prevent People Trafficking in July of 2009, which included measures for training and awareness raising for government enforcement officers, the development of a policy for offering immigration status options to victims of trafficking, and the provision of support to victims who assist with criminal justice proceedings against their traffickers. The Committee requested information on the implementation of the Plan of Action and the application of the relevant provisions of the Crimes Act.

The Committee notes the statement by the NZCTU that no independent research has been conducted to determine the full extent of any trafficking problem in the country and that at present, there is little evidence of major trafficking in the country. The NZCTU indicates that there are examples of foreign visitors working illegally, including work in horticulture and the sex industry. Those found working illegally will be deported by Immigration New Zealand, so there is little incentive for illegal workers to report exploitative employers. In this regard, the NZCTU indicates that the Plan of Action to Prevent People Trafficking does not address in any depth the issue of non-cooperation with authorities for fear of deportation.

The Committee notes the Government's statement in its report submitted under the Abolition of Forced Labour Convention, 1957 (No. 105), that it is conscious that New Zealand remains at risk of becoming a destination country for victims of trafficking, and that the Plan of Action was developed in

anticipation. The Government states that the Plan of Action mainstreams human trafficking prevention and assistance into existing Government initiatives and programmes, and that the overall monitoring and reporting of its implementation will be undertaken by the Department of Labour with assistance from the Inter-agency Working Group on People Trafficking. The Government further indicates that in 2010, the Department of Labour launched a campaign to raise public awareness on human trafficking by distributing brochures in six languages outlining possible signs of human trafficking. ***The Committee requests the Government to pursue its efforts to prevent and combat trafficking in persons, and to provide information on measures taken in this regard within the framework of the Plan of Action to Prevent People Trafficking. The Committee also requests the Government to provide information, in its next report, concerning the application in practice of the anti-trafficking provisions of the Crimes Act, including the number of prosecutions, convictions, and specific penalties applied, as well as copies of relevant court cases.***

Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

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The Committee notes the Government's report and the observations made by the Business New Zealand and the New Zealand Council of Trade Unions (NZCTU), which were communicated by the Government with its report, as well as the Government's reply thereto.

Articles 1(1), 2(1) and (2)(c) of the Convention. 1. *Privatization of prisons and prison labour.* In its previous comments, the Committee noted the provisions under the Corrections (Contract Management of Prisons) Amendment Act 2009 relating to the establishment of monitors for each contract prison (section 199E) who are entitled to report on work undertaken by prisoners (section 199G(1) (e)) and the duty of the manager of a private prison to report, at regular intervals on, inter alia, the employment provided for prisoners by or at the prison (section 199D). It also noted the Government's indication that New Zealand's only contract managed prison requires every prisoner employed in prison work to provide a written consent to that employment. Noting the Government's indication that it was planning to design and manage a new prison under a public–private partnership, to be operational in 2015, the Committee requested the Government to provide information on any measures taken or envisaged to ensure that the new privately-run correctional facilities also require the written consent of prisoners before being employed.

The Committee notes the Government's statement that there are two privately-run correctional facilities which require compliance with all laws, including those on health and safety and international obligations. Moreover, the policies of both the facilities require the prisoner to first submit a request form to participate in employment and thereafter the prisoner will be assessed for suitability to a specific job description. However, the Committee notes the NZCTU's statement that the prisoners in private prisons do not have any other choice than to agree to work and that the practice of submitting a request by the prisoner does not appear to be an adequate substitute for voluntary consent, given free from the menace of any penalty and under conditions of employment approximating those of free workers. ***Observing that the issue of voluntary written consent does not appear to be addressed in the Corrections Act, the Committee requests the Government to clarify whether the request form required to be submitted by the prisoners of private prisons for employment involves their voluntary consent, such consent being free from the menace of any penalty, including the loss of rights or privileges. It also requests the Government to provide a copy of the request form for employment of prisoners of private prisons.***

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- 2009
- 2008
- 2006
- 2004
- 2001
- 1999
- 1998

2. *Sentence of community work*. In its previous comments, the Committee noted that under the Sentencing Act 2002, a court may sentence an offender to community work, and that such work may be undertaken at, or for, private agencies or institutions or other private entities. It also noted the Government's indication that the performance of community work at placements with private organizations shall be voluntary, and that it would continue to ensure that convicted persons performing community work were not placed at the disposal of private agencies without their consent. In this regard, it noted the Government's statement that the Department of Corrections obtains the consent of each individual offender being placed at an agency through a written agreement between the agency, the offender and the department. ***Noting that the Government has not provided any new information on this point, the Committee once again requests the Government to provide further information on the written agreement between the offender performing community work at a private agency, the agency and the Department of Correction, including copies of agreements concluded in this regard.***

Articles 1(1), 2(1) and 25. Trafficking in persons. In its previous comments, the Committee noted that the Crimes Act, 1961 as amended, contains anti-trafficking provisions under section 98. It also noted the adoption of the Plan of Action to Prevent People Trafficking in July 2009 which included measures for training and awareness raising for government enforcement officers, the development of a policy for offering immigration status options to victims of trafficking, and the provision of support to victims who assist with criminal justice proceedings against their traffickers. It noted that the overall monitoring and reporting of its implementation was undertaken by the Department of Labour with assistance from the Inter-agency Working Group on People Trafficking (IWG).

The Government indicates in its report that several cases of labour exploitation of migrant workers and people smuggled or trafficked have been investigated, including migrant workers from the Philippines who assist with post-earthquake rebuild in the Canterbury region; migrant workers, both male and female, from India and China working in the horticulture and viticulture sector, and in the hospitality sector, predominantly ethnic restaurants. The Committee notes the Government's information that the coordinated efforts by Immigration New Zealand and the Labour Inspectorate into migrant exploitation have led to the investigation and prosecution of five persons, who were convicted and sentenced with fines, community service and home detention for the exploitation of migrant Chinese chefs. Following the observations by the NZCTU concerning the low ratio of labour inspectors to the total work force, the Committee notes the Government's indication that in the 2015 budget, the expenditure for employment relation services over the next four years has been increased which will help strengthen compliance with minimum employment standards including through increasing the number of labour inspectors.

The Committee further welcomes that the first anti-trafficking prosecution under the Crimes Act was initiated, in September 2014, involving labour exploitation of 18 people from India, which is currently before the court. The Committee finally notes that section 98D of the Crimes Act 1961, as amended in 2002, which refers only to transnational trafficking of persons was amended by the Crimes Amendment Act of 2015. This new provision criminalizes trafficking in persons within the country as well as explicitly identifies the element of trafficking for "exploitative purposes" which includes prostitution or other sexual purposes, slavery or practices similar to slavery, servitude, and forced labour or other forced services. This provision carries penalties of up to 20 years' imprisonment and/or a fine of NZ$500,000 (US$354,700). ***The Committee requests the Government to provide information on the***

application in practice of 98D of the Crimes Act, including the number of prosecutions, convictions, and specific penalties applied, as well as copies of relevant court cases, particularly of the anti-trafficking case of September 2014 which is pending before the court. It also requests the Government to continue to provide information on the measures taken or envisaged with respect to identification and protection of victims of trafficking, particularly among migrant workers, including through the coordinated efforts of the Labour Inspectorate and the Immigration Office, and the investigations and prosecutions carried out in this regard. Finally, the Committee requests the Government to provide information on the implementation of the measures taken within the framework of the Plan of Action to Prevent People Trafficking, indicating whether the objectives set out have been achieved and whether an evaluation has been undertaken in order to assess the impact of the measures adopted.

Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017)

Forced Labour Convention, 1930 (No. 29) - ***New Zealand*** *(Ratification: 1938)*

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The Committee notes the Government's report and the observations made by the Business New Zealand and the New Zealand Council of Trade Unions (NZCTU), which were communicated by the Government with its report, as well as the Government's reply thereto.

Articles 1(1), 2(1) and (2)(c) of the Convention. 1. *Privatization of prisons and prison labour.* In its previous comments, the Committee noted the provisions under the Corrections (Contract Management of Prisons) Amendment Act 2009 relating to the establishment of monitors for each contract prison (section 199E) who are entitled to report on work undertaken by prisoners (section 199G(1) (e)) and the duty of the manager of a private prison to report, at regular intervals on, inter alia, the employment provided for prisoners by or at the prison (section 199D). It also noted the Government's indication that New Zealand's only contract managed prison requires every prisoner employed in prison work to provide a written consent to that employment. Noting the Government's indication that it was planning to design and manage a new prison under a public–private partnership, to be operational in 2015, the Committee requested the Government to provide information on any measures taken or envisaged to ensure that the new privately-run correctional facilities also require the written consent of prisoners before being employed.

The Committee notes the Government's statement that there are two privately-run correctional facilities which require compliance with all laws, including those on health and safety and international obligations. Moreover, the policies of both the facilities require the prisoner to first submit a request form to participate in employment and thereafter the prisoner will be assessed for suitability to a specific job description. However, the Committee notes the NZCTU's statement that the prisoners in private prisons do not have any other choice than to agree to work and that the practice of submitting a request by the prisoner does not appear to be an adequate substitute for voluntary consent, given free from the menace of any penalty and under conditions of employment approximating those of free workers. ***Observing that the issue of voluntary written consent does not appear to be addressed in the Corrections Act, the Committee requests the Government to clarify whether the request form required to be submitted by the prisoners of private prisons for employment involves their voluntary consent, such consent being free from the menace of any penalty, including the loss of rights or privileges. It also requests the Government to provide a copy of the request form for employment of prisoners of private prisons.***

Other comments on C029

Observation
- 2004

Direct Request
- 2016
- 2012
- 2009
- 2008
- 2006
- 2004
- 2001
- 1999
- 1998

2. *Sentence of community work*. In its previous comments, the Committee noted that under the Sentencing Act 2002, a court may sentence an offender to community work, and that such work may be undertaken at, or for, private agencies or institutions or other private entities. It also noted the Government's indication that the performance of community work at placements with private organizations shall be voluntary, and that it would continue to ensure that convicted persons performing community work were not placed at the disposal of private agencies without their consent. In this regard, it noted the Government's statement that the Department of Corrections obtains the consent of each individual offender being placed at an agency through a written agreement between the agency, the offender and the department. ***Noting that the Government has not provided any new information on this point, the Committee once again requests the Government to provide further information on the written agreement between the offender performing community work at a private agency, the agency and the Department of Correction, including copies of agreements concluded in this regard.***

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Instruments
Key documents
Ratification of ILO Conventions
Supervising the application of International Labour Standards
- Supervision by country
- Search comments by the supervisory bodies

Complaint procedures
- Freedom of association cases
- Representations (Art. 24)
- Commission of Inquiry (Art. 26)

Regular reporting
Country profiles
Comparatives
Maritime Labour Convention (2006)

NATLEX
National Legislation on Labour and Social Rights

LEGOSH
Global database on occupational safety and health legislation

EPLex
Employment protection legislation database

Compendium of court decisions

NORMLEX Home > Country profiles > New Zealand > Comments

Observation (CEACR) - adopted 2004, published 93rd ILC session (2005)

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Work of prisoners for private employers. Further to its earlier comments on the subject, the Committee notes with satisfaction from the Government's report that, since 31 July 2002, the Department of Corrections has had no inmates hired to private individuals or private sector organizations for work, as the Department has ceased all contractual arrangements where there had been direct private sector management of industries.

Direct Request (CEACR) - adopted 2004, published 93rd ILC session (2005)

Other comments on C029

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