



## **Senior Committee: Human Rights Council**

### **Topic: The Issue of the Exploitation of Incarcerated Workers and Safeguarding Labor Rights in Prison**

## **Background Information**

*“Incarcerated workers are under the complete control of their employers, and they have been stripped of even the most minimal protections against labour exploitation and abuse.”*

- American Civil Liberties Union

Prison labour, or penal labour is work performed by incarcerated and detained people<sup>1</sup>. It is a modern type of slavery and 49.7 million people were living in modern slavery in 2021<sup>2</sup>. Not all prison labour is forced labour, however the prison setting implies risks of modern slavery because of its inherent power imbalance, seeing as those incarcerated have few avenues to challenge abuses behind bars. Labour that is performed freely and voluntarily, can be a valuable activity but becomes exploitative when there are elements of coercion, force and threat of punishment against detainees such as solitary confinement and changes in parole.

Historically, prison labour has been considered a means for punishment and retaliation and also for rehabilitation and reintegration and was therefore generally accepted, as can be seen in many international treaties<sup>3</sup>. However, there is a very fine line between offering incarcerated people a meaningful occupation that prepares them for their life post-release and exploiting them for the sake of corporate interests.

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<sup>1</sup> Freedom United (2022). *Prison labor and modern slavery*. [online] FreedomUnited.org. Available at: <https://www.freedomunited.org/prison-labor-and-modern-slavery/>.

<sup>2</sup> International Labour Organization (2021). *Forced labour, Modern Slavery and Human Trafficking (Forced labour, Modern Slavery and Human trafficking)*. [online] Ilo.org. Available at: <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

<sup>3</sup> Höni, J. and Jost, G. (2022). Human Dignity Is Inviolable... Unless You Are a Prisoner?: A Brief Analysis of the Current Status of Prison Labour Under International Law. *Völkerrechtsblog*, [online] 10(17176). doi:10.17176/20221223-001440-0.

## Current Situation

The first source of international law relevant to the topic is the 1927 Slavery Convention. In Article 2 it specifies that parties agreed to eliminate slavery in all forms. Slavery is incompatible with human dignity and therefore the prohibition of slavery is a rule in international law which all nations must abide by. Article 1(1) of the Convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. The issue here is that while incarcerated people over the world received little to no pay, their legal autonomy is not in question. As a result, even though prison labour in the US and Germany, for instance, is often forced and involuntary, it does not fit the definition of slavery established by the convention, because the incarcerated people still have legal autonomy.

The International Labour Organizations (ILO) defines forced prison labour in the Forced Labour Convention (No. 29), 1930 as “work undertaken involuntarily under threat of a menace or penalty”<sup>4</sup>. The ILO specifies that free consent is a requirement for prisoners and that a company using prison labour should ensure that a prisoner’s refusal to work is respected, meaning there will be no penalties such as a loss of privileges or assessments which could jeopardise any reduction in their sentence. According to the ILO, a good indication of free prison labour include: the conditions of work being similar to work outside the prison, with comparable wages paid directly to the workers, legal working hours, legal safety and health measures, a social security scheme for accident and health coverage, the learning of new skills, the possibility of continuing work of the same type upon release and with the option of withdrawing consent at any time.

The European Convention on Human Rights (ECHR) is not very protective of incarcerated people. The ECHR states that “no one shall be held in slavery or servitude”, adopting the 1927’s Slavery Convention definition of slavery, and it forbids forced labour, adopting the 1930 Forced Labour Conventions definition of forced labour. The ECHR makes the same exemption for incarcerated people, made in the Forced Labour Convention of 1930. The ECtHR (European Court of Human Rights) reinforces the notion that the dignity of incarcerated people should be protected to a lesser degree and that they do not have a right to be paid for their labour.

The United Nations Office on Drugs and Crime (UNODC) discusses prison labour in the Nelson Mandela Rules. These outline the minimum standards by which to treat those incarcerated and rule 97 states that those “incarcerated shall not be held in slavery or servitude”. However the ILO’s convention on Forced Labour of 1930 explicitly excludes incarcerated peoples from its definition of forced labour,

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<sup>4</sup> International Labour Organization (2012). *Q&As on Business and Forced Labour*. [online] Ilo.org. Available at: [www.ilo.org/empent/areas/business-helpdesk/faqs](http://www.ilo.org/empent/areas/business-helpdesk/faqs).

in Article 2 it excludes any work from any person exacted as a consequence of a conviction in a court of law, if the work is supervised by public authority<sup>5</sup>.

The 1957 Convention on the Abolition of Forced Labour by the General Conference of the ILO states that each member of the ILO which ratifies the convention must suppress and not make use of any form of forced labour, as a means for political coercion or education, for the purpose of economic development, as a means of labour discipline, as punishment for taking part in strikes, or as a means of discrimination. Once more the ILO does not explicitly prohibit the forced labour of incarcerated peoples<sup>6</sup>.

The International Covenant on Civil and Political Rights (ICCPR) forbids forced labour but allows states to impose forced labour on incarcerated people as a punishment for crime. On the other hand, the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that incarcerated people are only supposed to work for private companies if they express consent. It guarantees just and favourable conditions of work including fair wages, which are understood to be above the minimum wage.

Essentially, slavery and forced labour are prohibited by international law, but most instruments of international law create an exemption for incarcerated people, removing their protection from slavery. This exemption contradicts the universal right to equality and dignity established by the Universal Declaration of Human Rights (UDHR).

## **Violations of the Mandela Rules on forced prison labor**

### **United States of America**

In the USA nearly 800,000 incarcerated workers are under complete control of their employers and have no protection against labour exploitation and abuse<sup>7</sup>. The 13th Amendment of the US constitution abolished slavery and involuntary servitude but contained an exception for incarcerated people: “a

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<sup>5</sup> ILO (1930). *Convention C029 - Forced Labour Convention, 1930 (No. 29)*. [online] [www.ilo.org](http://www.ilo.org). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029).

<sup>6</sup> Office of the High Commissioner for Human Rights (1957). *Abolition of Forced Labour Convention, 1957 (No. 105)*. [online] OHCHR. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/abolition-forced-labour-convention-1957-no-105>.

<sup>7</sup> ACLU (2022). *Captive Labor: Exploitation of Incarcerated Workers | News & Commentary*. [online] American Civil Liberties Union. Available at: <https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers>.

punishment for crime whereof the party shall have been duly convicted”<sup>8</sup>. On 8th of November, 2022, the citizens of Alabama, Oregon, Tennessee and Vermont voted in favour of amending their state constitutions to end the exceptions that allowed for slavery and forced prison labour to be used as punishment for a crime. Such vote failed in Louisiana, and so the federal constitution and more than 12 states still allow slavery and forced labour for incarcerated people. The “slavery loophole”, results in incarcerated people being paid a very small amount of money and dire consequences for any resistance offered ranging from solitary confinement to changes in parole and privileges received. The system of forced prison labour in the US has been repeatedly reprimanded as a form of modern-day slavery.

## **Germany**

While the German constitution generally prohibits forced labour, it provides a loophole in cases of “judicially mandated imprisonment” and therefore allows incarcerated people in German prisons to be deprived of universally recognized employment rights. The German economy is taking advantage of an inexpensive workforce of inmates with wages of one to three Euros per hour.

## **China**

An ex-prisoner, Dima Siakatsky returned after his release from Shanghai’s Qingpu Prison, where he witnessed foreign prisoners being coerced into labour, packaging goods for foreign and Chinese brands<sup>9</sup>. In an interview, he pulled out a handful of Christmas cards made for the Tesco supermarket chain and waved them at the screen. as evidence that the prisoners at Qingpu Prison were packaging the cards, as he kept some of them and smuggled them out with him as proof. Siakatsky ended the topic by appealing to international human rights organisations to seek more aggressive actions against China.

## **Belarus**

According to CNN IKEA furniture was allegedly produced by incarcerated people in Belarus penal colonies under forced labour conditions<sup>10</sup>. These penal colonies are known for torturing incarcerated people and applying good and healthcare deprivation.

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<sup>8</sup> Sainato, M. (2022). ‘*Slavery by any name is wrong*’: the push to end forced labor in prisons. [online] the Guardian. Available at: <https://www.theguardian.com/us-news/2022/sep/27/slavery-loophole-unpaid-labor-in-prisons>.

<sup>9</sup> Humphrey, P. (2022). *Forced Prison Labor in China: Hiding in Plain Sight*. [online] thediplomat.com. Available at: <https://thediplomat.com/2022/01/forced-prison-labor-in-china-hiding-in-plain-sight/>.

<sup>10</sup> Alberti, M. (2022). *IKEA suppliers allegedly used Belarus prisoners under forced labor conditions, report says* | *CNN Business*. [online] CNN. Available at: <https://edition.cnn.com/2022/11/18/business/ikea-suppliers-belarus-labor-allegations/index.html>.

## **Focus of Debate:**

Hopefully this background report has shed light to the fact that generally, even though instruments of international law such as the UCDOC and the ECHR are against slavery and forced labour, this prohibition does not apply to incarcerated people, there is a clear lack of protection of the protection of incarcerated people's labour rights. The delegates must come together and reflect upon the following: **if everyone has the right to equality and human dignity, why are incarcerated people exempt from the protections from slavery?**

There is an international consensus that slavery and forced labour should be prohibited, nevertheless there is a lack of treaties that address the human rights violations that are happening in prisons all over the world. **The international community needs treaties, conventions and mechanisms that address forced prison labour with the utmost specificity, and places agreements into paper, so that incarcerated people have their dignity and human rights rightly secured.** The International community must come together to generate an agreement on the protection of incarcerated people's labour rights and reprimand the countries currently committing these violations.

Prior to the debate delegates should use the information on violations provided in this background report as prompts to research past and current situations where incarcerated people have been subjected to forced labour so that during the debate delegates can address these violations with measures to end forced labour and prevent it from coming to be. Delegates are encouraged to reflect upon the inalienable right equality and dignity and how this right is being withheld from incarcerated people. **Discussion as to the effectiveness of the current international human rights mechanisms is also welcome together with the proposal of solutions or improvements, such as but not limited to: treaties, conventions, declarations including: suggestions of sanction mechanisms, suggestions of reward mechanisms, committees dedicated to the issue.**