

International Labour Conference, 100th Session, 2011

# Report of the Committee of Experts on the Application of Conventions and Recommendations

*(articles 19, 22 and 35 of the Constitution)*

**Third item on the agenda:  
Information and reports on the application  
of Conventions and Recommendations**

Report III (Part 1A)

General Report  
and observations concerning particular countries

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The **Committee of Experts on the Application of Conventions and Recommendations** is an independent body composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The annual report of the Committee of Experts covers numerous matters related to the application of ILO standards. The structure of the report, as modified in 2003, is divided into the following parts:

- (a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) (**Part 1A, pages 1–4**).
- (b) **Part I: the General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work (**Part 1A, pages 5–40**).
- (c) **Part II: Observations concerning particular countries** cover the sending of reports, the application of ratified Conventions (see section I), and the obligation to submit instruments to the competent authorities (see section II) (**Part 1A, pages 41–813**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III (Part 1B)) and this year it concerns social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization (**Part 1B**).

Finally, the *Information document on ratifications and standards-related activities* is prepared by the Office and supplements the information contained in the report of the Committee of Experts. This document primarily provides an overview of recent developments relating to international labour standards, the implementation of special supervisory procedures and technical cooperation in relation to international labour standards. It contains, in tabular form, information on the ratification of Conventions and Protocols, and “country profiles” (**Part 2**).

The report of the Committee of Experts is also available at: [www.ilo.org/ilolex/gbe/ceacr2011.htm](http://www.ilo.org/ilolex/gbe/ceacr2011.htm).



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## List of Conventions by Subject

*Fundamental Conventions are in bold. Priority conventions are in italics.*

- ★ Convention revised in whole or in part by a subsequent Convention or Protocol.
- Convention no longer open to ratification as a result of the entry into force of a revising Convention.
- ◆ Convention not in force.
- Convention withdrawn.

### 1 Freedom of association, collective bargaining, and industrial relations

- C011 Right of Association (Agriculture) Convention, 1921 (No. 11)
- C084 Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84)
- C087 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**
- C098 Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**
- C135 Workers' Representatives Convention, 1971 (No. 135)
- C141 Rural Workers' Organisations Convention, 1975 (No. 141)
- C151 Labour Relations (Public Service) Convention, 1978 (No. 151)
- C154 Collective Bargaining Convention, 1981 (No. 154)

### 2 Forced labour

- C029 Forced Labour Convention, 1930 (No. 29)**
- C105 Abolition of Forced Labour Convention, 1957 (No. 105)**

### 3 Elimination of child labour and protection of children and young persons

- ★ C005 Minimum Age (Industry) Convention, 1919 (No. 5)
- ★ C006 Night Work of Young Persons (Industry) Convention, 1919 (No. 6)
- ★ C010 Minimum Age (Agriculture) Convention, 1921 (No. 10)
- ★ C015 Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)
- C033 Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)
- ★ C059 Minimum Age (Industry) Convention (Revised), 1937 (No. 59)
- ★ C060 Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)
- C077 Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)
- C078 Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)
- C079 Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)
- C090 Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)
- ★ C123 Minimum Age (Underground Work) Convention, 1965 (No. 123)
- C124 Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)
- C138 Minimum Age Convention, 1973 (No. 138)**
- C182 Worst Forms of Child Labour Convention, 1999 (No. 182)**

### 4 Equality of opportunity and treatment

- C100 Equal Remuneration Convention, 1951 (No. 100)**
- C111 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**
- C156 Workers with Family Responsibilities Convention, 1981 (No. 156)

### 5 Tripartite consultation

- C144 *Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*

**6 Labour administration and inspection**

- C063 Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)
- ★ C081 *Labour Inspection Convention, 1947 (No. 81)*
- C085 Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)
- C129 *Labour Inspection (Agriculture) Convention, 1969 (No. 129)*
- C150 Labour Administration Convention, 1978 (No. 150)
- C160 Labour Statistics Convention, 1985 (No. 160)

**7 Employment policy and promotion**

- C002 Unemployment Convention, 1919 (No. 2)
- C034 Fee-Charging Employment Agencies Convention, 1933 (No. 34)
- C088 Employment Service Convention, 1948 (No. 88)
- C096 Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)
- C122 *Employment Policy Convention, 1964 (No. 122)*
- C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
- C181 Private Employment Agencies Convention, 1997 (No. 181)

**8 Vocational guidance and training**

- C140 Paid Educational Leave Convention, 1974 (No. 140)
- C142 Human Resources Development Convention, 1975 (No. 142)

**9 Employment security**

- C158 Termination of Employment Convention, 1982 (No. 158)

**10 Wages**

- C026 Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
- C094 Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
- ★ C095 Protection of Wages Convention, 1949 (No. 95)
- C099 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)
- C131 Minimum Wage Fixing Convention, 1970 (No. 131)
- C173 Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)



**11 Working time**

- C001 Hours of Work (Industry) Convention, 1919 (No. 1)
- ★ C004 Night Work (Women) Convention, 1919 (No. 4)
- C014 Weekly Rest (Industry) Convention, 1921 (No. 14)
- C020 Night Work (Bakeries) Convention, 1925 (No. 20)
- C030 Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
- C031 Hours of Work (Coal Mines) Convention, 1931 (No. 31)
- C041 Night Work (Women) Convention (Revised), 1934 (No. 41)
- C043 Sheet-Glass Works Convention, 1934 (No. 43)
- C046 Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46)
- C047 Forty-Hour Week Convention, 1935 (No. 47)
- C049 Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49)
- C051 Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51)
- C052 Holidays with Pay Convention, 1936 (No. 52)
- C061 Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)
- C067 Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67)
- ★ C089 Night Work (Women) Convention (Revised), 1948 (No. 89)
- ★ C101 Holidays with Pay (Agriculture) Convention, 1952 (No. 101)
- C106 Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
- C132 Holidays with Pay Convention (Revised), 1970 (No. 132)
- C153 Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)
- C171 Night Work Convention, 1990 (No. 171)
- C175 Part-Time Work Convention, 1994 (No. 175)

**12 Occupational safety and health**

- C013 White Lead (Painting) Convention, 1921 (No. 13)
- C045 Underground Work (Women) Convention, 1935 (No. 45)
- C062 Safety Provisions (Building) Convention, 1937 (No. 62)
- C115 Radiation Protection Convention, 1960 (No. 115)
- C119 Guarding of Machinery Convention, 1963 (No. 119)
- C120 Hygiene (Commerce and Offices) Convention, 1964 (No. 120)
- C127 Maximum Weight Convention, 1967 (No. 127)
- C136 Benzene Convention, 1971 (No. 136)
- C139 Occupational Cancer Convention, 1974 (No. 139)
- C148 Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
- ★ C155 Occupational Safety and Health Convention, 1981 (No. 155)
- C161 Occupational Health Services Convention, 1985 (No. 161)
- C162 Asbestos Convention, 1986 (No. 162)
- C167 Safety and Health in Construction Convention, 1988 (No. 167)
- C170 Chemicals Convention, 1990 (No. 170)
- C174 Prevention of Major Industrial Accidents Convention, 1993 (No. 174)
- C176 Safety and Health in Mines Convention, 1995 (No. 176)
- C184 Safety and Health in Agriculture Convention, 2001 (No. 184)
- C187 Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

**13 Social security**

- ★ C012 Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
- ★ C017 Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
- ★ C018 Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)
- C019 Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- ★ C024 Sickness Insurance (Industry) Convention, 1927 (No. 24)
- ★ C025 Sickness Insurance (Agriculture) Convention, 1927 (No. 25)
- C035 Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)
- C036 Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)
- C037 Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)
- C038 Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)
- C039 Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39)
- C040 Survivors' Insurance (Agriculture) Convention, 1933 (No. 40)
- ★ C042 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)
- C044 Unemployment Provision Convention, 1934 (No. 44)
- C048 Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)
- ★ C102 Social Security (Minimum Standards) Convention, 1952 (No. 102)
- C118 Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- C121 Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
- C128 Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
- C130 Medical Care and Sickness Benefits Convention, 1969 (No. 130)
- C157 Maintenance of Social Security Rights Convention, 1982 (No. 157)
- C168 Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

**14 Maternity protection**

- ★ C003 Maternity Protection Convention, 1919 (No. 3)
- C103 Maternity Protection Convention (Revised), 1952 (No. 103)
- C183 Maternity Protection Convention, 2000 (No. 183)

**15 Social policy**

- ★ C082 Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82)
- C117 Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)

**16 Migrant workers**

- C021 Inspection of Emigrants Convention, 1926 (No. 21)
- C066 Migration for Employment Convention, 1939 (No. 66)
- C097 Migration for Employment Convention (Revised), 1949 (No. 97)
- C143 Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

**17 Seafarers**

- ★ C007 Minimum Age (Sea) Convention, 1920 (No. 7)
- C008 Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- ★ C009 Placing of Seamen Convention, 1920 (No. 9)
- C016 Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
- C022 Seamen's Articles of Agreement Convention, 1926 (No. 22)
- ★ C023 Repatriation of Seamen Convention, 1926 (No. 23)
- C053 Officers' Competency Certificates Convention, 1936 (No. 53)
- ◆● C054 Holidays with Pay (Sea) Convention, 1936 (No. 54)
- C055 Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
- C056 Sickness Insurance (Sea) Convention, 1936 (No. 56)
- ◆● C057 Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
- ★ C058 Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
- C068 Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
- C069 Certification of Ships' Cooks Convention, 1946 (No. 69)
- ◆● C070 Social Security (Seafarers) Convention, 1946 (No. 70)
- C071 Seafarers' Pensions Convention, 1946 (No. 71)
- ◆● C072 Paid Vacations (Seafarers) Convention, 1946 (No. 72)
- C073 Medical Examination (Seafarers) Convention, 1946 (No. 73)
- C074 Certification of Able Seamen Convention, 1946 (No. 74)
- ◆● C075 Accommodation of Crews Convention, 1946 (No. 75)
- ◆● C076 Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
- C091 Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)
- C092 Accommodation of Crews Convention (Revised), 1949 (No. 92)
- ◆● C093 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)
- C108 Seafarers' Identity Documents Convention, 1958 (No. 108)
- ◆● C109 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
- C133 Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
- C134 Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
- C145 Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
- C146 Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
- ★ C147 Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
- C163 Seafarers' Welfare Convention, 1987 (No. 163)
- C164 Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
- C165 Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
- C166 Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
- C178 Labour Inspection (Seafarers) Convention, 1996 (No. 178)
- C179 Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
- C180 Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
- C185 Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)
- ◆ C186 Maritime Labour Convention, 2006

**18 Fishers**

- ★ C112 Minimum Age (Fishermen) Convention, 1959 (No. 112)
- C113 Medical Examination (Fishermen) Convention, 1959 (No. 113)
- C114 Fishermen's Articles of Agreement Convention, 1959 (No. 114)
- C125 Fishermen's Competency Certificates Convention, 1966 (No. 125)
- C126 Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)
- ◆ C188 Work in Fishing Convention, 2007 (No. 188)

**19 Dockworkers**

- C027 Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)
- C028 Protection against Accidents (Dockers) Convention, 1929 (No. 28)
- C032 Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)
- C137 Dock Work Convention, 1973 (No. 137)
- C152 Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

**20 Indigenous and tribal peoples**

- C050 Recruiting of Indigenous Workers Convention, 1936 (No. 50)
- C064 Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)
- C065 Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)
- C086 Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)
- C104 Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)
- C107 Indigenous and Tribal Populations Convention, 1957 (No. 107)
- C169 Indigenous and Tribal Peoples Convention, 1989 (No. 169)

**21 Specific categories of workers**

- C083 Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83)
- ★ C110 Plantations Convention, 1958 (No. 110)
- C149 Nursing Personnel Convention, 1977 (No. 149)
- C172 Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
- C177 Home Work Convention, 1996 (No. 177)

**99 Not classified**

- C080 Final Articles Revision Convention, 1946 (No. 80)
- C116 Final Articles Revision Convention, 1961 (No. 116)

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<b>Cameroon</b>		<b>Comoros</b>	
C029 .....	222	C081.....	520
C081 .....	509	C099.....	651
C138 .....	286	C100.....	422
C143 .....	756	Submission to the competent authorities.....	803
C162 .....	678	<b>Congo</b>	
C182 .....	287	C029.....	224
<b>Canada</b>		C081.....	520
C100 .....	419	C087.....	68
C111 .....	420	C095.....	652
C162 .....	679	C144.....	478
<b>Cape Verde</b>		C150.....	521
C019 .....	732	C152.....	778
C081 .....	511	C182.....	306
C098 .....	67	General observations.....	43
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C081 .....	512	C095.....	653
C105 .....	223	C129.....	521
C119 .....	680	C138.....	306
C138 .....	290	C182.....	307
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C013.....	688	C081.....	526
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C129.....	522	<b>Dominican Republic</b>	
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C098.....	69	<b>Ecuador</b>	
C111.....	423	C081.....	527
C138.....	312	C115.....	695
C162.....	689	C128.....	736
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<b>Cuba</b>		C131.....	655
C081.....	523	C136.....	695
C155.....	691	C138.....	319
<b>Cyprus</b>		C139.....	696
C088.....	605	C148.....	696
C100.....	424	C152.....	780
<b>Czech Republic</b>		C162.....	696
C098.....	69	C182.....	321
C115.....	691	<b>Egypt</b>	
C132.....	666	C009.....	760
C144.....	478	C029.....	226
C161.....	692	C087.....	74
C176.....	693	C098.....	75
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C029.....	225	C105.....	227
C062.....	693	C138.....	322
C081.....	524	C182.....	323
C087.....	70	<b>El Salvador</b>	
C094.....	654	C081.....	528
C098.....	71	C111.....	428
C100.....	425	C129.....	529
C111.....	425	Submission to the competent authorities.....	805
C117.....	754	<b>Equatorial Guinea</b>	
C119.....	693	C001.....	666
C121.....	735	C030.....	667
C144.....	479	C087.....	76
C150.....	524	C098.....	76
C158.....	648	General observations.....	44
C182.....	313	Submission to the competent authorities.....	805
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<b>Djibouti</b>		C098.....	77
C019.....	735	C138.....	326
C026.....	654	<b>Ethiopia</b>	
C081.....	525	C087.....	78
C087.....	72	C111.....	429
C094.....	654	C138.....	328
C095.....	655	C155.....	697
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C100.....	426	Submission to the competent authorities.....	805
C115.....	694	<b>Falkland Islands (Malvinas) (United Kingdom)</b>	
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C115 .....	697	C081 .....	536
C155 .....	698	C087 .....	83
C167 .....	699	C122 .....	613
C187 .....	700	C127 .....	703
<b>France</b>		C129 .....	537
C081 .....	529	C160 .....	537
C088 .....	607	C162 .....	704
C096 .....	608	<b>Guinea</b>	
C097 .....	756	C026 .....	656
C106 .....	667	C081 .....	537
C111 .....	432	C087 .....	88
C115 .....	701	C094 .....	657
C122 .....	608	C098 .....	89
C129 .....	532	C111 .....	436
C137 .....	780	C115 .....	704
C148 .....	701	C117 .....	754
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<b>French Polynesia (France)</b>		C120 .....	705
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<b>Gabon</b>		C122 .....	614
C081 .....	533	C134 .....	761
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Submission to the competent authorities .....	805	C139 .....	706
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C111 .....	435	C142 .....	645
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<b>Georgia</b>		C148 .....	706
C052 .....	670	C149 .....	799
C138 .....	331	C152 .....	781
Submission to the competent authorities .....	805	C159 .....	614
<b>Germany</b>		General observations .....	44
C088 .....	610	Submission to the competent authorities .....	806
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C081 .....	534	C069 .....	761
C096 .....	612	C098 .....	89
C105 .....	228	General observations .....	45
C119 .....	702	Submission to the competent authorities .....	806
C150 .....	535	<b>Guyana</b>	
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<b>Gibraltar (United Kingdom)</b>		C042 .....	741
C100 .....	476	C087 .....	90
<b>Greece</b>		C098 .....	90
C081 .....	536	C100 .....	436
C087 .....	81	C111 .....	437
C095 .....	656	C129 .....	537
C098 .....	82	C137 .....	781
C100 .....	435	C140 .....	645
C102 .....	738	C142 .....	646
C111 .....	436	C144 .....	480
C122 .....	612	General observations .....	45
C138 .....	333	<b>Haiti</b>	
C150 .....	536	C029 .....	229
C154 .....	83	C081 .....	538
C156 .....	436	C182 .....	334
<b>Grenada</b>		Submission to the competent authorities .....	806
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<b>Hungary</b>		<b>Kazakhstan</b>	
C024.....	741	C087.....	92
C029.....	230	C098.....	93
C081.....	539	C100.....	448
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<b>India</b>		Submission to the competent authorities.....	806
C081.....	540	<b>Kenya</b>	
C115.....	707	C029.....	235
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<b>Indonesia</b>		C105.....	235
C100.....	438	C129.....	545
C111.....	438	C144.....	481
C138.....	336	Submission to the competent authorities.....	806
C182.....	338	<b>Kiribati</b>	
<b>Iraq</b>		C087.....	95
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<b>Ireland</b>		C105.....	236
C023.....	761	Submission to the competent authorities.....	807
C111.....	443	<b>Kuwait</b>	
C122.....	618	C029.....	236
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Submission to the competent authorities.....	806	C098.....	100
<b>Islamic Republic of Iran</b>		C105.....	237
C095.....	657	C111.....	449
C111.....	439	C144.....	481
C122.....	617	Submission to the competent authorities.....	807
<b>Israel</b>		<b>Kyrgyzstan</b>	
C111.....	444	C122.....	626
<b>Italy</b>		C148.....	711
C092.....	762	C149.....	800
C122.....	618	C182.....	346
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C133.....	762	Submission to the competent authorities.....	807
C139.....	707	<b>Lao People's Democratic Republic</b>	
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<b>Jamaica</b>		<b>Latvia</b>	
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C081.....	542	C098.....	100
C100.....	445	C111.....	452
C105.....	231	C129.....	549
C149.....	799	C150.....	549
C182.....	341	<b>Lebanon</b>	
<b>Japan</b>		C029.....	237
C029.....	232	C081.....	550
C081.....	544	<b>Lesotho</b>	
C088.....	620	C081.....	551
C100.....	445	C087.....	100
C122.....	621	C098.....	101
C159.....	622	C138.....	348
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<b>Jersey (United Kingdom)</b>		<b>Liberia</b>	
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<b>Jordan</b>		C098.....	103
C081.....	544	C112.....	775
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C105 .....	238	C129 .....	557
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<b>Lithuania</b>		<b>Mozambique</b>	
C087 .....	104	C081 .....	559
<b>Luxembourg</b>		C087 .....	117
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C081 .....	552	Submission to the competent authorities.....	808
<b>Macau Special Administrative Region (China)</b>		<b>Myanmar</b>	
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C150 .....	516	C087 .....	118
<b>Madagascar</b>		<b>Namibia</b>	
C081 .....	553	C087 .....	121
C087 .....	105	C098 .....	121
C098 .....	106	<b>Nepal</b>	
C129 .....	554	C098 .....	122
C144 .....	482	C144 .....	482
Submission to the competent authorities .....	808	Submission to the competent authorities.....	808
<b>Malawi</b>		<b>Netherlands</b>	
C087 .....	107	C022 .....	765
C098 .....	107	C081 .....	560
C100 .....	452	C094 .....	658
C111 .....	453	C098 .....	123
C138 .....	352	C121 .....	746
C144 .....	482	C162 .....	718
<b>Malaysia</b>		<b>New Zealand</b>	
C081 .....	554	C014 .....	670
C098 .....	108	C022 .....	765
<b>Mali</b>		C122 .....	626
C087 .....	109	<b>Nicaragua</b>	
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<b>Malta</b>		C098 .....	125
C081 .....	555	C144 .....	483
C087 .....	110	<b>Niger</b>	
C098 .....	110	C029 .....	245
C119 .....	712	C081 .....	561
<b>Mauritania</b>		C087 .....	125
C081 .....	555	C095 .....	659
C087 .....	111	C138 .....	360
C102 .....	743	C148 .....	718
<b>Mauritius</b>		C182 .....	361
C017 .....	743	Submission to the competent authorities.....	808
C019 .....	743	<b>Nigeria</b>	
C087 .....	112	C087 .....	125
C098 .....	113	C088 .....	628
C108 .....	763	C098 .....	128
<b>Mexico</b>		C105 .....	246
C022 .....	763	C111 .....	455
C087 .....	113	C123 .....	365
C102 .....	744	C134 .....	766
C111 .....	453	C144 .....	483
C155 .....	712	<b>Norway</b>	
C161 .....	716	C022 .....	766
C166 .....	764	C081 .....	561
C167 .....	716	C129 .....	562
C170 .....	717	C144 .....	484
C182 .....	354	C155 .....	718

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C029.....	247	C108.....	767
C081.....	562	<b>Portugal</b>	
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C096.....	629	C098.....	146
C098.....	130	C117.....	754
C100.....	456	C129.....	567
C105.....	248	C144.....	486
C111.....	457	C155.....	721
C138.....	365	C162.....	722
C144.....	484	C176.....	722
C159.....	630	<b>Qatar</b>	
C182.....	367	C081.....	568
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<b>Panama</b>		C081.....	546
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C087.....	131	<b>Republic of Moldova</b>	
C098.....	134	C081.....	556
C100.....	459	C087.....	115
C111.....	459	C098.....	116
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<b>Papua New Guinea</b>		C087.....	147
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<b>Peninsular Malaysia (Malaysia)</b>		C142.....	646
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<b>Peru</b>		Submission to the competent authorities.....	809
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C081.....	564	C081.....	569
C087.....	138	C087.....	151
C098.....	140	C094.....	660
C100.....	460	C098.....	152
C111.....	461	C100.....	464
C139.....	720	C111.....	465
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C159.....	630	<b>Sabah (Malaysia)</b>	
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C087.....	141	C144.....	487
C094.....	659	Submission to the competent authorities.....	809
C098.....	143	<b>Saint Lucia</b>	
C100.....	462	C087.....	153
C105.....	253	C100.....	465
C111.....	463	Submission to the competent authorities.....	809
C144.....	485	<b>Saint Vincent and the Grenadines</b>	
<b>Plurinational State of Bolivia</b>		C016.....	769
C081.....	505	Submission to the competent authorities.....	810
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C081 .....	570	C122 .....	635
C087 .....	154	C148 .....	724
C088 .....	633	C155 .....	725
C098 .....	154	<b>Sri Lanka</b>	
C144 .....	487	C029 .....	254
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<b>Saudi Arabia</b>		C098 .....	161
C081 .....	570	C103 .....	752
C100 .....	466	C108 .....	770
<b>Senegal</b>		<b>St Helena (United Kingdom)</b>	
C081 .....	571	General observations .....	47
C087 .....	155	<b>Sudan</b>	
C096 .....	633	C029 .....	255
C122 .....	633	C081 .....	579
C138 .....	380	C098 .....	164
C182 .....	381	C111 .....	467
<b>Serbia</b>		Submission to the competent authorities .....	810
C081 .....	573	<b>Suriname</b>	
C087 .....	156	C081 .....	579
C098 .....	156	Submission to the competent authorities .....	811
<b>Seychelles</b>		<b>Swaziland</b>	
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C098 .....	158	C087 .....	165
General observations .....	46	C098 .....	167
Submission to the competent authorities .....	810	<b>Sweden</b>	
<b>Sierra Leone</b>		C087 .....	167
C017 .....	750	C098 .....	167
C029 .....	254	C180 .....	770
C059 .....	383	<b>Switzerland</b>	
C095 .....	660	C098 .....	168
C098 .....	158	<b>Syrian Arab Republic</b>	
C101 .....	671	C087 .....	169
C111 .....	466	C098 .....	170
C119 .....	724	C100 .....	468
C125 .....	776	C111 .....	468
C144 .....	487	Submission to the competent authorities .....	811
General observations .....	46	<b>Tajikistan</b>	
Submission to the competent authorities .....	810	C111 .....	470
<b>Singapore</b>		Submission to the competent authorities .....	811
C094 .....	661	<b>Tanganyika (United Republic of Tanzania)</b>	
<b>Slovakia</b>		C108 .....	772
C100 .....	467	<b>Thailand</b>	
C115 .....	724	C088 .....	637
C144 .....	487	C105 .....	257
<b>Slovenia</b>		C122 .....	637
C098 .....	159	C182 .....	383
C121 .....	750	General observations .....	47
<b>Solomon Islands</b>		<b>The former Yugoslav Republic of Macedonia</b>	
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<b>Somalia</b>		Submission to the competent authorities .....	811
General observations .....	46	<b>Togo</b>	
Submission to the competent authorities .....	810	C087 .....	176
<b>South Africa</b>		C098 .....	176
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<b>Spain</b>		C144 .....	488
C081 .....	575	C182 .....	388
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C100.....	470	C087.....	186
C105.....	258	C098.....	188
C111.....	470	C144.....	488
<b>Tunisia</b>		C187.....	727
C081.....	581	<b>United Republic of Tanzania</b>	
C087.....	178	C087.....	170
C107.....	797	C098.....	173
C111.....	471	<b>United States</b>	
<b>Turkey</b>		C144.....	489
C029.....	258	<b>Uruguay</b>	
C081.....	582	C098.....	193
C087.....	180	C128.....	751
C098.....	182	C144.....	489
C100.....	471	C181.....	640
C105.....	259	C184.....	728
C111.....	472	<b>Uzbekistan</b>	
C119.....	726	C098.....	195
C138.....	390	C105.....	262
C155.....	726	C182.....	396
C158.....	648	Submission to the competent authorities.....	812
C161.....	727	<b>Vanuatu</b>	
C182.....	392	General observations.....	48
<b>Turkmenistan</b>		<b>Yemen</b>	
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<b>Uganda</b>		C098.....	210
C026.....	661	C111.....	477
C029.....	261	<b>Zambia</b>	
C081.....	586	C029.....	263
C098.....	184	C087.....	211
C105.....	261	C095.....	664
C122.....	639	C098.....	212
C144.....	488	C103.....	753
C158.....	650	C122.....	641
C182.....	394	Submission to the competent authorities.....	813
General observations.....	47	<b>Zimbabwe</b>	
Submission to the competent authorities.....	811	C081.....	593
<b>Ukraine</b>		C087.....	213
C081.....	588	C098.....	215
C087.....	185	C099.....	665
C095.....	661	C105.....	263
C098.....	185	C129.....	594
C100.....	473	C138.....	403
C111.....	474	C140.....	647
C122.....	639	C144.....	490
C129.....	589	C155.....	728
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## Reader's note

### Overview of the ILO supervisory mechanisms

Since its creation in 1919, the mandate of the International Labour Organization (ILO) has included adopting international labour standards, promoting their ratification and application in its member States and the supervision of their application as a fundamental means of achieving its objectives. In order to monitor the progress of member States in the application of international labour standards, the ILO has developed supervisory mechanisms which are unique at the international level.<sup>1</sup>

Under article 19 of the ILO Constitution, a number of obligations arise for member States upon the adoption of international labour standards, including the requirement to submit newly adopted standards to national competent authorities and the obligation to report at intervals on the measures taken to give effect to the provisions of unratified Conventions and Recommendations.

A number of supervisory mechanisms exist whereby the Organization examines the standards-related obligations of member States deriving from ratified Conventions. This supervision occurs both in the context of a regular procedure through annual reports (article 22 of the ILO Constitution),<sup>2</sup> as well as through special procedures based on complaints or representations to the Governing Body made by ILO constituents (articles 24 and 26 of the Constitution). Moreover, since 1950, a special procedure has existed whereby complaints relating to freedom of association are referred to the Committee on Freedom of Association of the Governing Body. The Committee on Freedom of Association may also examine complaints relating to member States that have not ratified the relevant freedom of association Conventions.

### Role of employers' and workers' organizations

As a natural consequence of its tripartite structure, the ILO was the first international organization to associate the social partners directly in its activities. The participation of employers' and workers' organizations in the supervisory mechanism is recognized in the Constitution under article 23, paragraph 2, which provides that reports and information submitted by governments in accordance with articles 19 and 22 must be communicated to the representative organizations.

In practice, representative employers' and workers' organizations may submit to their governments comments on the reports concerning the implementation of ratified Conventions. They may, for instance, draw attention to a discrepancy in law or practice regarding a Convention and thus lead the Committee of Experts to request further information from the government. Furthermore, any employers' or workers' organization may submit comments on the application of Conventions directly to the Office. The Office will then forward these comments to the government concerned, which will have an opportunity to respond before the comments are examined by the Committee of Experts.

<sup>1</sup> For detailed information on all the supervisory procedures, see the *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, International Labour Office, Geneva, Rev. 2006.

<sup>2</sup> Reports are requested every two years for the so-called fundamental Conventions and priority Conventions, and every five years for other Conventions. Reports have been due for groups of Conventions according to subject matter. As regards the recent decision taken by the Governing Body concerning the reporting cycle, see para. 29 of the General Report.

## **Origins of the Conference Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations**

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary of the Conference would not be able to examine all of these reports at the same time as adopting standards and discussing other important matters. In response, the Conference in 1926 adopted a resolution<sup>3</sup> establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO supervisory system.

## **Committee of Experts on the Application of Conventions and Recommendations**

### **Composition**

The Committee of Experts is composed of 20 members,<sup>4</sup> who are outstanding legal experts at the national and international levels. The members of the Committee are appointed by the Governing Body upon the proposal of the Director-General. Appointments are made in a personal capacity from among completely impartial persons of competence and independent standing drawn from all regions of the world, in order to enable the Committee to have at its disposal first-hand experience of different legal, economic and social systems. The appointments are made for renewable periods of three years. In 2002, the Committee decided that there would be a limit of 15 years' service for all members, representing a maximum of four renewals after the first three-year appointment. At its 79th Session (November–December 2008), the Committee decided that its Chairperson would be elected for a period of three years, which would be renewable once for a further three years. At the start of each session, the Committee would also elect a Reporter.

### **Mandate**

The Committee of Experts meets annually in November–December. In accordance with the mandate given by the Governing Body,<sup>5</sup> the Committee is called upon to examine the following:

- the annual reports under article 22 of the Constitution on the measures taken by member States to give effect to the provisions of the Conventions to which they are parties;
- the information and reports concerning Conventions and Recommendations communicated by member States in accordance with article 19 of the Constitution;
- information and reports on the measures taken by member States in accordance with article 35 of the Constitution.<sup>6</sup>

The task of the Committee of Experts is to indicate the extent to which each member State's legislation and practice are in conformity with ratified Conventions and the extent to which member States have fulfilled their obligations under the ILO Constitution in relation to standards. In carrying out this task, the Committee adheres to its principles of independence, objectivity and impartiality.<sup>7</sup>

The comments of the Committee of Experts on the fulfilment by member States of their standards-related obligations take the form of either *observations* or *direct requests*. Observations contain comments on fundamental questions raised

<sup>3</sup> Appendix VII, proceedings of the Eighth Session of the International Labour Conference, 1926, Vol. 1.

<sup>4</sup> There are currently 19 experts appointed.

<sup>5</sup> Terms of reference of the Committee of Experts, Minutes of the 103rd Session of the Governing Body (1947), Appendix XII, para. 37.

<sup>6</sup> Article 35 covers the application of Conventions to non-metropolitan territories.

<sup>7</sup> In its 1987 report, the Committee stated that in its evaluation of national law and practice in relation to the requirements of international labour Conventions: "... its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations, which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States". Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), International Labour Conference, 73rd Session, 1987, para. 24.

by the application of a particular Convention by a member State. These observations are reproduced in the annual report of the Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests usually relate to questions of a more technical nature or of lesser importance. They are not published in the report of the Committee of Experts, but are communicated directly to the government concerned.<sup>8</sup> In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. The General Survey is based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all member States regardless of whether or not they have ratified the concerned Conventions. This year's General Survey covers social security. Pursuant to the decision taken by the Governing Body at its 303rd Session (November 2008), the subjects of General Surveys have been aligned with the four strategic objectives of the ILO as set out in the ILO Declaration on Social Justice for a Fair Globalization, 2008 (the Social Justice Declaration).<sup>9</sup>

## Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The report consists of two volumes. The first volume (Report III 1A)<sup>10</sup> is divided into two parts:

- **Part I: the General Report** describes, on the one hand, the progress of the work of the Committee of Experts and specific matters relating to it that have been addressed by the Committee and, on the other hand, the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards.
- **Part II: Observations concerning particular countries** on the fulfilment of obligations in respect of the submission of reports, the application of ratified Conventions grouped by subject matter and the obligation to submit instruments to the competent authorities.

The second volume contains the **General Survey** (Report III (Part 1B)).<sup>11</sup>

Furthermore, an *Information document on ratifications and standards-related activities* (Report III (Part 2)) accompanies the report of the Committee of Experts.<sup>12</sup>

## Committee on the Application of Standards of the International Labour Conference

### Composition

The Conference Committee on the Application of Standards is one of the two standing committees of the Conference. It is tripartite and therefore comprises representatives of governments, employers and workers. At each session, the Committee elects its Officers, which include a Chairperson (Government member), two Vice-Chairpersons (Employer member and Worker member) and a Reporter (Government member).

### Mandate

The Conference Committee on the Application of Standards meets annually at the June session of the Conference. Pursuant to article 7 of the Standing Orders of the Conference, the Committee shall consider:

- measures taken to give effect to ratified Conventions (*article 22 of the Constitution*);
- reports communicated in accordance with article 19 of the Constitution (*General Surveys*);
- measures taken in accordance with article 35 of the Constitution (*non-metropolitan territories*).

The Committee is required to present a report to the Conference.

<sup>8</sup> Observations and direct requests are accessible through the ILOLEX database, which is available on CD-ROM and accessible via <http://www.ilo.org/ilolex/english/index.htm>.

<sup>9</sup> By virtue of the follow-up to the Social Justice Declaration, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee.

<sup>10</sup> This citation reflects the agenda of the International Labour Conference, which contains as a permanent item, item III relating to information and reports on the application of Conventions and Recommendations.

<sup>11</sup> *ibid.*

<sup>12</sup> This document provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, full information on the ratification of Conventions, together with "country profiles" containing key information on standards for each country.

Following the independent technical examination carried out by the Committee of Experts, the proceedings of the Conference Committee on the Application of Standards provide an opportunity for the representatives of governments, employers and workers to examine together the manner in which States are fulfilling their standards-related obligations, particularly with regard to ratified Conventions. Governments are able to elaborate on information previously supplied to the Committee of Experts, indicate any further measures taken or proposed since the last session of the Committee of Experts, draw attention to difficulties encountered in the fulfilment of obligations and seek guidance as to how to overcome such difficulties.

The Conference Committee on the Application of Standards discusses the report and the General Survey of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion based essentially on the General Report of the Committee of Experts, and with a discussion on the General Survey. With regard to the alignment of the subject of General Surveys with the strategic objective discussed in the context of the recurrent report under the follow-up to the Social Justice Declaration, the outcome of the discussion of the Conference Committee concerning the General Survey is transmitted to the Conference Committee responsible for examining the recurrent report. Following its general discussion, the Conference Committee examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee embarks upon its main task, which is to examine a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. The Conference Committee invites the Government representatives concerned to attend one of its sittings to discuss the observations in question. After listening to the Government representatives, the members of the Conference Committee may ask questions or make comments. At the end of the discussion, the Conference Committee adopts conclusions on the case in question. Furthermore, in accordance with a resolution adopted by the Conference in 2000,<sup>13</sup> the Conference Committee holds, at each of its sessions, a special sitting on the application by Myanmar of the Forced Labour Convention, 1930 (No. 29).

In its report<sup>14</sup> submitted to the plenary sitting of the Conference for adoption, the Conference Committee on the Application of Standards may invite the member State whose case has been discussed to accept a technical assistance mission by the International Labour Office to increase its capacity to fulfil its obligations, or may propose other types of missions. The Conference Committee may also request a government to submit additional information or address specific concerns in its next report to the Committee of Experts. The Conference Committee also draws the attention of the Conference to certain cases, such as cases of progress and cases of serious failure to comply with ratified Conventions.

## ***Relations between the Committee of Experts and the Conference Committee on the Application of Standards***

In numerous reports, the Committee of Experts has emphasized the importance of the spirit of mutual respect, cooperation and responsibility that has always existed in relations between the Committee of Experts and the Conference Committee. It has accordingly become the practice for the Chairperson of the Committee of Experts to attend the general discussion of the Conference Committee including the discussion on the General Survey as an observer, with the opportunity to address the Conference Committee at the opening of the general discussion and to make remarks at the end of the discussion on the General Survey. Similarly, the Employer and Worker Vice-Chairpersons of the Conference Committee are invited to meet the Committee of Experts during its sessions and discuss issues of common interest within the framework of a special session held for that purpose.

<sup>13</sup> International Labour Conference, 88th Session, 2000; *Provisional Record* Nos 6-1 to 5.

<sup>14</sup> The report is published in the *Record of Proceedings* of the Conference. Since 2007, it has also been issued in a separate publication. See, for the last report, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, International Labour Conference, 99th Session, Geneva, 2010.

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## ***Part I. General Report***



## I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 81st Session in Geneva from 25 November to 10 December 2010. The Committee has the honour to present its report to the Governing Body.

### **Composition of the Committee**

2. The composition of the Committee is as follows: Mr Mario ACKERMAN (Argentina), Mr Anwar Ahmad Rashed AL FUZAIE (Kuwait), Mr Denys BARROW, SC (Belize), Mr Lelio BENTES CORRÊA (Brazil), Mr James J. BRUDNEY (United States), Mr Halton CHEADLE (South Africa), Ms Laura COX, QC (United Kingdom), Ms Graciela Josefina DIXON CARTON (Panama), Mr Rachid FILALI MEKNASSI (Morocco), Mr Abdul G. KOROMA (Sierra Leone), Mr Pierre LYON-CAEN (France), Ms Elena MACHULSKAYA (Russian Federation), Mr Vitit MUNTARBHORN (Thailand), Ms Angelika NUSSBERGER, MA (Germany), Ms Rosemary OWENS (Australia), Ms Ruma PAL (India), Mr Paul-Gérard POUGOUÉ (Cameroon), Mr Raymond RANJEVA (Madagascar), Mr Yozo YOKOTA (Japan). Appendix I of the General Report contains brief biographies of all the Committee members.

3. The Committee notes with regret that Ms Cox was unable to participate in its work this year. The Committee expresses its gratitude to the Director-General for his personal intervention with the authorities of Madagascar with a view to facilitating Mr Ranjeva's travel to enable him to participate in the current session of the Committee. The Committee notes that Ms Nussberger has submitted her resignation in view of her nomination to the European Court of Human Rights as from January 2011. The Committee would like to express its deep appreciation of the outstanding manner in which Ms Nussberger discharged her duties during her six years of service on the Committee.

4. During its session, the Committee welcomed Ms Rosemary Owens, nominated by the Governing Body at its 307th Session (March 2010), as well as Mr James J. Brudney and Ms Elena Machulskaya, nominated by the Governing Body at its 308th Session (June 2010). In view of her recent nomination by the Governing Body at its 309th Session (November 2010), Ms Graciela Josefina Dixon Carton was not able to participate in the work of the Committee at its present session. The Committee looks forward to being able to welcome her at its next session.

5. In accordance with the decision taken by the Committee at its 80th Session (November–December 2009), Mr Yokota's mandate as Chairperson of the Committee took effect at the beginning of the present session. The Committee re-elected Mr Al-Fuzaie as Reporter.

### **Working methods**

6. The Committee has in recent years undertaken a thorough examination of its working methods. In order to guide this reflection on working methods efficiently, a subcommittee was set up in 2001. The mandate of the subcommittee includes examining the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee.<sup>1</sup> The subcommittee met on three occasions between 2002 to 2004.<sup>2</sup> During its

<sup>1</sup> The subcommittee is open to any member of the Committee wishing to participate.

<sup>2</sup> See General Report, 73rd Session (November–December 2002), paras 4–8; General Report, 74th Session (November–December 2003), paras 7–9; General Report, 75th Session (November–December 2004), paras 8–10.

sessions in 2005 and 2006, issues relating to its working methods were discussed by the Committee in plenary sitting.<sup>3</sup> Since 2007, the subcommittee has met at each of the Committee's sessions.<sup>4</sup>

7. This year, the subcommittee on working methods met under the guidance of Ms Pal, who was elected to this function for the first time. The subcommittee undertook a close examination of the comments made on specific aspects of the work of the Committee by members of the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), as well as during the informal tripartite consultations held on the question of the interpretation of international labour Conventions in February, March and November 2010. Following consideration of the recommendations made by the subcommittee, the Committee agreed on the following issues.

8. With respect to its **general observations on the application of Conventions**, having heard the concerns expressed during the Conference Committee, the Committee welcomes the opportunity to explain the role of general observations. It notes that making general observations forms part of the normal discharge of its functions and contributes to the effective implementation of the Conventions concerned. It recalls that general observations are valuable tools, to be used on an occasional and timely basis,<sup>5</sup> primarily for two reasons:

- to draw attention to matters or practices which are of broad application across a number of countries;
- and/or to discuss trends in the application of a Convention.

It may be necessary to that end – as is done in individual comments – to request information from member States. In such instances, member States are invited to respond in their regular reports on the application of Conventions. Should the Committee find that a report form on a particular Convention has proven to be insufficient for the purpose of examining the application of this Convention, the Committee will, as it has done on previous occasions, draw this finding to the attention of the Governing Body so that consideration can be given to a possible revision of the report form.<sup>6</sup>

9. With respect to the **approach followed by the Committee in relation to cases of progress**, it recalls that the matter has twice been discussed extensively in recent years and its conclusion has been published as part of the General Report. The Committee has re-examined the matter and considers that the approach adopted earlier in this respect is sound and clear. It also emphasizes that, in identifying cases of progress, in addition to the information set out in government reports, it closely examines comments made by the employers' and workers' organizations on the application of the Convention. It reiterates that the identification of a case of progress does not necessarily reflect a situation of overall compliance with the Convention by the country in question and that it is limited to a specific issue arising out of the application of the Convention and the nature of the measure taken by the government concerned. However, the Committee acknowledges that it could more effectively highlight the specific elements that are of particular importance to a full understanding of the approach adopted. The Committee has therefore decided to give greater visibility to the description of the approach adopted concerning cases of progress in its General Report.<sup>7</sup> It has also decided that this will be set out at the beginning of Part II<sup>8</sup> of its report, in which its observations on the application of ratified Conventions are published. In this respect, the Committee recalls that its task consists of pointing out discrepancies with the requirements of Conventions, as well as underlining progress in their application. It considers that the publicity given to cases of satisfaction in the observations published in the Committee's report is an important means of encouraging member States to pursue their efforts to improve the application of ratified Conventions. Finally, with respect to **the overall assessment of compliance with a particular Convention**, the Committee notes the information provided by the secretariat on the work undertaken to assess progress towards the full application of fundamental principles and rights at work. The Committee notes that a pilot project has been undertaken by the Office to construct a methodology for the measurement of progress towards the application of Conventions Nos 87 and 98, taking the Committee's comments fully into account.

10. With respect to **its practice when expressing its views on the meaning of certain provisions of Conventions**, the Committee recalls the following elements, which are of particular relevance. In accordance with the

<sup>3</sup> See General Report, 76th Session (November–December 2005), paras 6–8; General Report, 77th Session (November–December 2006), para. 13.

<sup>4</sup> See General Report, 78th Session (November–December 2007), paras 7–8; General Report, 79th Session (November–December 2008), paras 8–9; General Report, 80th Session (November–December 2009), paras 7–8.

<sup>5</sup> Twenty-eight general observations were published in the Committee's reports from 2000 to 2010. Their breakdown is as follows: (i) nine observations concerning fundamental Conventions (Nos 29, 87, 100, 111, 138, 182); (ii) seven observations concerning governance Conventions (Nos 81, 122, 129); (iii) ten observations concerning technical Conventions (Nos 27, 63, 68, 73, 102, 135, 158, 159, 169); (iv) two observations related to the topics of wages and seafarers.

This year, the Committee formulated two general observations, one on the Labour Inspection Convention, 1947 (No. 81) and one on the Indigenous and Tribal Peoples Convention, 1989 (No. 169). These are published in Part II of its report as an introduction to the individual examination of the reports due on the application of the Conventions concerned.

<sup>6</sup> Under article 22 of the ILO Constitution, the Governing Body approves a report form for each Convention. For further information, see para. 36 of the *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev., 2006. All report forms are available on the ILO website, under the following link: <http://www.ilo.org/ilolex/english/reportforms/reportformsE.htm>.

<sup>7</sup> See para. 62 of the General Report.

<sup>8</sup> See Part II, p. 43, of the present report.



mandate given to it by the Governing Body,<sup>9</sup> its task consists of evaluating national law and practice in relation to the requirements of international labour Conventions. It emphasizes in this respect the importance of the principles consistently followed by the Governing Body in appointing members of the Committee. They are appointed in a personal capacity and are selected on the basis of their independent standing, impartiality and competence. The members are drawn from all parts of the world and possess first-hand experience of different legal, economic and social systems. The Committee remains conscious of the fact that its work can have value only to the extent that it remains true to its principles of independence, objectivity and impartiality. Further, the Committee has always considered that its task is carried out in the context of an ongoing dialogue with governments, enhanced by the contribution of the employers' and workers' organizations.

11. Against this background, the Committee reiterates the functional approach that it has followed with regard to its role when examining the meaning of the provisions of Conventions. Although the Committee's mandate does not require it to give definitive interpretations of Conventions, it has to consider and express its views on the legal scope and meaning of certain provisions of these Conventions, where appropriate, in order to fulfil the mandate with which it has been entrusted of supervising the application of ratified Conventions. The examination of the meaning of the provisions of Conventions is necessarily an integral part of the function of evaluating and assessing the application and implementation of Conventions. The application of Conventions being the Committee's mandate, the Governing Body has therefore chosen to ensure that the Committee is composed of persons who are capable of fulfilling such mandate. The Committee ensures that the understanding of the provisions remains constant and uniform so that all member States may be guided in fulfilling their obligations arising from ratification of a Convention.

12. In responding to the request to clarify the methods followed when expressing its views on the meaning of the provisions of Conventions, the Committee reiterates that it constantly and consistently bears in mind all the different methods of interpreting treaties recognized under international public law, and in particular under the Vienna Convention on the Law of Treaties, 1969. In particular, the Committee has always paid due regard to the textual meaning of the words in light of the Convention's purpose and object as provided for by Article 31 of the Vienna Convention, giving equal consideration to the two authentic languages of ILO Conventions, namely the English and French versions (Article 33 of the Vienna Convention). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization's practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role that the tripartite constituents play in standard setting.<sup>10</sup>

13. In examining these matters, the Committee has borne in mind the comments made on **the desirability of greater tripartite involvement in the supervision of the application of international labour Conventions**. In keeping with the spirit of mutual respect, cooperation and responsibility which prevails in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, the Committee engages in a process of continuous improvement of its methods of work consequent to the comments of the Conference Committee, and, where appropriate, refers to the Conference Committee's report in its observations and direct requests. The Committee considers that it would be in the interests of both Committees to further strengthen this relationship, by creating opportunities for an additional and more in-depth exchange of views on matters of common interest. It invites the Office to examine the possibilities for that purpose. It notes in this respect that the importance of reinforcing the complementary relationship between the two Committees was also discussed during its special sitting with the two Vice-Chairpersons of the Conference Committee on the Application of Standards.

## ***Relations with the Conference Committee on the Application of Standards***

14. As it has just emphasized, a spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in particular with regard to specific matters concerning the way in which States fulfil their standards-related obligations. Moreover, the Committee pays close attention to the comments on its working methods that are made by the members of the Committee on the Application of Standards and the Governing Body, which it normally considers through its subcommittee, as it has done this year.

15. In this context, the Committee again welcomed the participation of Ms Bellace as an observer in the general discussion of the Committee on the Application of Standards at the 99th Session of the International Labour Conference

<sup>9</sup> The Committee of Experts and the Conference Committee were established in 1926 under the same resolution by the International Labour Conference (see Appendix VII, proceedings of the Eighth Session of the International Labour Conference, 1926, Vol. 1). The Committee of Experts' terms of reference were extended by the Governing Body in 1947 (see Minutes of the 103rd Session of the Governing Body (1947), Appendix XII, para. 37).

<sup>10</sup> An example of this approach can be found in the Committee's general observation on the application of Convention No. 169 which appears in Part II of the present report.

(June 2010). It noted the decision by the Conference Committee to request the Director-General to renew this invitation for the 100th Session (June 2011) of the Conference. The Committee of Experts accepted this invitation.

16. The Chairperson of the Committee of Experts once again invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010) (Mr Edward Potter and Mr Luc Cortebeek, respectively) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

17. A thorough exchange of views took place on matters of mutual interest. The discussion emphasized the importance of reinforcing the complementary relationship between the two Committees, in the interest of the effective application of international labour Conventions by member States. In line with the spirit of mutual respect governing the relationship between the two Committees, the discussion referred to possible improvements in the way that consideration is given by each Committee to the views expressed by the other Committee, including how such consideration is reflected in their respective work. In particular, the discussion touched upon the appropriate manner in which members of the Conference Committee could express their views on general issues of substance arising out of the application of international labour standards, so as to give ample opportunity to the Committee of Experts to consider their views closely and enhance the dialogue between the two Committees. Reference was also made to the possibility of creating additional opportunities for a direct exchange of views between the two Committees. Further, the special sitting discussed the lessons learnt from the General Survey concerning employment instruments and the related discussion by the Conference Committee at the 99th Session of the International Labour Conference. For the first time, these were both carried out within the framework of the follow-up to the Social Justice Declaration. In this context, questions were raised by both Committees as to the possibility of preserving effectively the value of General Surveys as authoritative documents providing guidance to member States in the application of international labour standards. Particular reference was made in this respect to the forthcoming General Survey on fundamental principles and rights at work, which was to cover all eight fundamental Conventions. It was also pointed out that arrangements should be made to allow for greater impact of General Surveys and their discussion by the Conference Committee on the conclusions of the recurrent discussions<sup>11</sup> at the International Labour Conference.

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<sup>11</sup> See the Reader's note, footnote 9, for explanations on the recurrent discussions.

## **II. Compliance with obligations**

### ***Follow-up to cases of serious failure by member States to fulfil reporting and other standards-related obligations mentioned in the report of the Committee on the Application of Standards***

18. The Committee recalls that, at the instigation of the Committee on the Application of Standards at the 93rd Session (June 2005) of the International Labour Conference, the two Committees, with the assistance of the Office, strengthened the follow-up given to cases of serious failure by member States to fulfil reporting and other standards-related obligations with a view to identifying more accurately the difficulties underlying these failures and helping the countries concerned to identify appropriate solutions to resolve them. As both Committees have recalled on numerous occasions, such failures hinder the functioning of the supervisory system, which is based primarily on the information provided by governments in their reports. Cases of failure to fulfil reporting obligations therefore have to be given the same level of attention as those relating to the application of ratified Conventions. The Committee also recalls that an assessment of the strengthened follow-up in cases of serious failure to comply with reporting obligations was submitted to the Governing Body at its 306th Session (November 2009).<sup>1</sup> The assessment emphasized that the systematic and strengthened technical assistance provided in the context of the follow-up on the basis of the comments of the Committee of Experts and the Conference Committee has had a significant impact on the submission of reports.

19. The Committee notes that, during the general discussion of the Conference Committee at the 99th Session of the International Labour Conference (June 2010) and the special sitting in which it examines these cases of serious failure, several members of the Conference Committee emphasized this positive impact. The Office was invited to continue and intensify technical assistance activities, and particularly to continue identifying the difficulties encountered by member States in compliance with their obligations with a view to resolving them. In the view of certain members, it is also necessary to continue the efforts made to lighten the workload relating to the submission of reports. They also emphasized that, in addition to causes that have their roots at the national level,<sup>2</sup> cases of failure to comply with reporting obligations are related to the workload of governments in sending reports, which illustrates, on the one hand, the need for countries to evaluate their capacity to implement Conventions and to submit the corresponding reports before considering their ratification and, on the other, the need to continue the integration and simplification of ILO Conventions by focusing on essential rules. Finally, the Committee notes that certain members of the Conference Committee once again emphasized that it is essential to provide high-quality information, and that cases of failure to reply to the comments of the Committee of Experts should be addressed more effectively. Other members also expressed concern at the number of reports that arrive late.

20. The Committee was informed that, pursuant to the discussions of the Conference Committee, the Office had sent special letters to the 39 member States mentioned in the relevant paragraphs of the report of the Conference Committee concerning their failure to fulfil their obligations respecting the sending of reports (there were 44 such member States in 2009, 55 in 2008, 45 in 2007, 49 in 2006 and 53 in 2005). The Committee notes that 38 of these 39 member States had already been mentioned for the same failures in the 2008 and 2009 reports of the Conference Committee (and even, in some cases, in earlier reports).

<sup>1</sup> GB.306/LILS/4(Rev.), paras 36–42.

<sup>2</sup> See para. 24.

21. The Committee welcomes the fact that five countries which had experienced persistent difficulties and which as such had been mentioned in several reports of both Committees have this year fulfilled all their constitutional obligations in terms of the submission of reports and information due on the application of ratified Conventions.<sup>3</sup> The Committee notes that since the end of the session of the Conference, certain other member States, often with the assistance of the Office, have fulfilled part of their reporting and other standards-related obligations.<sup>4</sup>

22. This year, the Committee has made general observations<sup>5</sup> respecting compliance with obligations relating to reporting and the provision of the information due on ratified Conventions for 16 of the 39 countries referred to above. Most of these countries have not submitted any report on ratified Conventions for at least the last two years. In seven cases,<sup>6</sup> the Committee expressed deep concern at the number of reports due and the persistence of serious failure to comply with reporting and other standards-related obligations. These cases are priorities for the provision of technical assistance by the Office, even where such assistance cannot be provided immediately in view of the broader difficulties experienced by the countries concerned, of which the failure to submit reports is only one symptom. The Committee invites the Office to examine appropriate and realistic ways of enabling each country concerned to recommence the sending of reports, including measures, where possible, for the combination of reports on Conventions covering the same subject, with a view to simplifying and therefore accelerating their preparation and communication.

23. This year, as indicated below,<sup>7</sup> the Committee notes a worrying increase in the number of comments to which replies have not been received. Moreover, a certain number of countries, which had in the past overcome their difficulties, as the Committee noted in previous reports, are once again experiencing delays in the sending of reports. The Committee also invites the Office to contact these countries to help them identify more sustainable solutions, including in the context of technical cooperation programmes which specifically cover the need for the strengthening of capacities to prepare and send reports.

24. With regard to the reasons for the difficulties experienced by certain member States in fulfilling their reporting obligations, the information available this year (discussion of the Conference Committee, government replies to the Office's letters and information from external offices) confirms yet again that reporting failures are mostly of an institutional nature and, more specifically, the inadequacy of infrastructure, which can be attributed to the lack of human and financial resources affecting ministries of labour and labour administrations in general. The Committee notes that the challenges and perspectives of labour administration were discussed by the Governing Body at its 309th Session (November 2010), based on a paper prepared by the Office,<sup>8</sup> to prepare for the general discussion that will be held on this topic at the 100th Session (June 2011) of the International Labour Conference.

25. In these circumstances, the Committee emphasizes that the measures taken by the Office in the context of the strengthened follow-up, in addition to raising the awareness of the countries concerned with regard to the need to send the reports due, need to focus more on the durability and quality of reporting and the information provided by governments.<sup>9</sup> In view of the constant increase in the number of comments received from employers' and workers' organizations, this would provide the two Committees with full information as a basis for analysing the application of ratified Conventions.

26. The Committee reminds governments that they are required to comply with all the reporting and other standards-related obligations that they have accepted by becoming Members of the ILO. Compliance with these obligations is essential for dialogue between the supervisory bodies and member States on the effective implementation of ratified Conventions. Governments that request technical assistance may benefit from it, yet such assistance can only be useful and adapted to national circumstances if governments inform the Office of their specific difficulties and have the will to adopt lasting solutions. The Committee hopes that the Office will maintain the sustained technical assistance that it has been providing to member States as this is clearly an essential means for overcoming reporting difficulties effectively. Finally, the Committee welcomes the fruitful collaboration that it maintains with the Conference Committee on this matter of mutual interest, which is essential to the proper discharge of their respective tasks.

<sup>3</sup> Cape Verde, Saint Kitts and Nevis, United Republic of Tanzania (Tanganyika), The former Republic of Macedonia and Turkmenistan.

<sup>4</sup> Antigua and Barbuda, Armenia, Burundi, Czech Republic, Libyan Arab Jamahiriya, Seychelles, United Republic of Tanzania (Zanzibar) and Uzbekistan.

<sup>5</sup> See Part II, section I.

<sup>6</sup> Equatorial Guinea, Guinea, Guinea-Bissau, Kyrgyzstan, Sierra Leone, Somalia, United Kingdom (British Virgin Islands).

<sup>7</sup> See paras 45 and 46.

<sup>8</sup> GB.309/ESP/3, "Labour administration and inspection: Challenges and perspectives".

<sup>9</sup> See also para. 46.

## A. Reports on ratified Conventions (articles 22 and 35 of the Constitution)

27. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions that have been ratified by member States and that have been declared applicable to non-metropolitan territories.

### **Reporting arrangements**

28. Reports are requested every two years for the fundamental Conventions and Conventions considered to be most significant from the viewpoint of governance (the governance Conventions),<sup>10</sup> and every five years for other Conventions. In accordance with the procedure adopted by the Governing Body in November 2001 and March 2002,<sup>11</sup> particularly with a view to facilitating the collection of information on related subjects at the national level, requests for reports on Conventions covering the same subject are grouped together and addressed simultaneously to each country.<sup>12</sup> Finally, specific arrangements have been established for the fundamental and governance Conventions, as well as for certain other groups of Conventions containing a large number of instruments. For these Conventions, reports are requested, with a view to balancing their submission, in accordance with the English alphabetical order, the first year by member States beginning with the letters A to J, and the second year by those names beginning with the letters K to Z, or the converse<sup>13</sup> (for a list of Conventions grouped by subject, see page v).

29. The Committee recalls that at its 306th Session (November 2009), the Governing Body decided to increase from two to three years the reporting cycle for the fundamental and governance Conventions and to maintain the cycle at five years for the other Conventions. The Governing Body also discussed the evaluation of the grouping of Conventions by subject for reporting purposes.<sup>14</sup> The evaluation found that the grouping by subject had reduced the administrative burden of reporting and improved the collection of information at the national level, and had also allowed for a comprehensive view of the application of Conventions by subject area. The Committee notes that at the same session the Governing Body decided to adopt a broader grouping of Conventions for reporting purposes. This grouping will be established on the basis of the four strategic objectives of the ILO, as set out in the Social Justice Declaration: employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work. The Committee notes that the idea behind this grouping of Conventions is to: (i) facilitate the choice of instruments to be examined in the context of General Surveys and, to a certain extent, facilitate the use in the preparation of General Surveys of the information on the application of ratified Conventions contained in the reports submitted under article 22 of the Constitution; and (ii) encourage, through the contribution of the General Survey to the recurrent discussion,<sup>15</sup> an improvement in the integration of international labour standards throughout ILO activities. The Committee notes that at its 309th Session (November 2010), the Governing Body examined a specific proposal for the grouping of standards by strategic objective. The Committee notes that arrangements are currently being made to give effect to all of these decisions of the Governing Body, but that the new reporting arrangements are not expected to enter into operation before 2012. Until that time, the reporting arrangements will continue to operate under the arrangements currently in force.

30. In addition to the reports requested according to the reporting cycle, the Committee also had before it reports especially requested from certain governments for one of the following reasons:

- (a) a first detailed report was due after ratification;
- (b) important discrepancies had previously been noted between national law or practice and the Conventions in question;
- (c) reports due for the previous period had not been received or did not contain the information requested;
- (d) reports were expressly requested by the Conference Committee.

The Committee also had before it a number of reports that it was unable to examine at its previous session.

31. In some cases, reports are not accompanied by copies of the relevant legislation, statistical data or other documentation necessary for their full examination. In cases where this material was not otherwise available, the Office, as requested by the Committee, has written to the governments concerned asking them to supply the necessary texts to enable the Committee to fulfil fully its task.

32. Appendix I to this report lists the reports received and not received, classified by country/territory and by Convention. Appendix II shows, for each year in which the Conference has met since 1932, the number and percentage of

<sup>10</sup> These Conventions are also known as "priority Conventions".

<sup>11</sup> GB.282/LILS/5, GB.282/8/2, GB.283/LILS/6 and GB.283/10/2.

<sup>12</sup> Information concerning requests for reports by country and by Convention is available on the ILO website: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

<sup>13</sup> Information concerning the regular reporting schedule by country and by Convention is available on the ILO website: <http://webfusion.ilo.org/public/db/standards/normes/schedules/index.cfm>.

<sup>14</sup> GB.306/LILS/4(Rev.), paras 14–27.

<sup>15</sup> For explanations on recurrent discussions, see Reader's note, footnote 9.

reports received by the prescribed date, by the date of the meeting of the Committee of Experts and by the date of the session of the International Labour Conference.

### **Reports requested and received**

33. This year a total of **2,990** reports (under articles 22 and 35 of the Constitution) were requested from governments on the application of Conventions ratified by member States, compared to 3,121 reports last year. At the end of the present session of the Committee, **2,002** reports had been received by the Office. This figure corresponds to **66.95** per cent of the reports requested. Last year, the Office received a total of 2,053 reports, representing 65.78 per cent.

34. In accordance with article 22 of the Constitution, **2,745** reports were requested from governments. Of these, **1,866** had been received by the Office by the end of the present session of the Committee. This figure corresponds to **67.98** per cent of the reports requested (compared to 68 per cent last year). The Committee wishes to express its gratitude to the 81 member States, which have submitted all the reports due this year.

35. In accordance with article 35 of the Constitution, **245** reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories. Of these, **136** reports, or **55.51** per cent, had been received by the end of the Committee's session (compared to 52 per cent last year).

### **Compliance with reporting obligations<sup>16</sup>**

36. Most of the governments from which reports were due on the application of ratified Conventions have supplied most or all of the reports requested (see Appendix I of this report). However, no reports due have been received for the past two or more years from the following **12** countries: **Congo, Djibouti, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Sierra Leone, Solomon Islands, Somalia, Uganda, United Kingdom (British Virgin Islands), United Kingdom (Falkland Islands (Malvinas)), United Kingdom (St Helena) and Vanuatu**. The Committee examines compliance by each of these countries with their reporting obligations in the observations contained at the beginning of Part II (section I) of this report.

37. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. As it emphasized in paragraph 24, the Committee is aware that where no reports have been sent for some time, it is likely that administrative or other problems are at the origin of the difficulties encountered by governments in fulfilling their constitutional obligations. In certain exceptional cases, the absence of reports is a result of more general difficulties related to the national situation, which often prevents the provision of any technical assistance by the Office. In such cases, it is important for governments to request assistance from the Office as soon as possible and for such assistance to be provided rapidly.

### **Late reports**

38. The reports due on ratified Conventions should be sent to the Office between 1 June and 1 September of each year. Due consideration is given, when setting this date, to the time required to translate the reports and, where necessary, to conduct research into legislation and review other documents that are relevant to the examination of reports.

39. The Committee observes that by **1 September 2010 the proportion of reports received was 31.4 per cent**, compared with 24.9 per cent at its previous session. The number of reports received on time this year has once again risen above 30 per cent, as it did in 2007 and 2008, following a significant decrease last year. The Committee is particularly grateful to the **30 countries which provided all the reports due within the time-limits** with the information requested.<sup>17</sup> It notes that the request it made last year to member States to make a particular effort to ensure that their reports were submitted in time this year has had a certain effect. Nevertheless, the Committee is bound to emphasize once again that the number of reports received on time remains low. A significant number of reports are received after 1 September, during a very short period, thereby disturbing the sound operation of the regular supervisory procedure.

40. Furthermore, the Committee notes that a number of countries sent some or all of the **reports due by 1 September 2009 during the period between the end of the Committee's last session (November–December 2009) and the beginning of the 99th Session of the International Labour Conference (June 2010), or even during the**

<sup>16</sup> In general, the Committee makes observations in the most serious and persistent cases of failure by member States to respect their reporting and other standards-related obligations based on the following criteria: the failure to send reports for two or more years, the failure to supply first reports for two or more years, and the absence of an indication in the reports received (or in the majority of them) for three consecutive years of the representative employers' and workers' organizations to which copies of the reports and information are to be communicated. The Committee makes a direct request when a country has not sent the reports due, or the majority of reports due, in the current year.

<sup>17</sup> **Afghanistan, Australia (Norfolk Island), Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Cameroon, Cape Verde, China, China (Hong Kong Special Administrative Region), China (Macao Special Administrative Region), Colombia, Cuba, Eritrea, Georgia, Honduras, Jordan, Kuwait, Latvia, Malaysia (Peninsular Malaysia), Malaysia (Sabah), Malaysia (Sarawak), Myanmar, Netherlands, Nicaragua, Paraguay, Philippines, Poland, Republic of Moldova, Spain, Suriname, Turkmenistan, United Kingdom (Montserrat) and Uruguay.**

**Conference.**<sup>18</sup> The Committee emphasizes that this practice also disturbs the regular operation of the supervisory system and makes it more burdensome. As requested by the Conference Committee, the Committee notes that the countries which followed this practice over the indicated period are the following: **Afghanistan, Algeria, Armenia, Belgium, Bulgaria, Burkina Faso, Cambodia, Cape Verde, Croatia, Czech Republic, Denmark, Eritrea, Ethiopia, Hungary, Iceland, Islamic Republic of Iran, Italy, Kenya, Kiribati, Lesotho, Liberia, Malawi, Malta, Norway, Pakistan, Panama, Papua New Guinea, San Marino, Sao Tomé and Príncipe, Senegal, Slovakia, Thailand, Togo, Tunisia, Turkey, Turkmenistan, United Kingdom** (Gibraltar) and **Zimbabwe**.

41. In view of the high number of reports this year which do not include information in reply to its comments, the Committee requests all member States to pursue and strengthen their efforts with a view to ensuring that next year a larger number of reports are submitted within the time-limits and with all the required information. The Committee also requests the Office to intensify its technical assistance for this purpose. Finally, in line with the comments of the Conference Committee, the Committee hopes that the measures to streamline the sending and processing of information and reports, including the grouping of Conventions by strategic objective for reporting purposes and the lengthening of the reporting cycle for fundamental and governance Conventions, will facilitate the preparation and sending of reports by member States.

### **Supply of first reports**

42. The Committee notes that **76** of the **130** first reports due on the application of ratified Conventions were received by the time the Committee's session ended, compared to last year when 52 of the 103 first reports due had been received. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received for a number of years from the following **seven** member States:

- **Dominica**
  - since 2006: Convention No. 147;
- **Equatorial Guinea**
  - since 1998: Conventions Nos 68, 92;
- **Kyrgyzstan**
  - since 1994: Convention No. 111;
  - since 2006: Conventions Nos 17, 184;
  - since 2009: Conventions Nos 131, 144
- **Sao Tome and Principe**
  - since 2007: Convention No. 184;
- **Seychelles**
  - since 2007: Conventions Nos 73, 147, 161, 180;
- **Thailand**
  - since 2009: Convention No. 159;
- **Vanuatu**
  - since 2008: Conventions Nos 29, 87, 98, 100, 105, 111, 182.

43. The failure of these countries to send the first reports due is raised in observations at the beginning of Part II (section I) of the present report. In general, the Committee, like the Conference Committee, emphasizes the particular importance of first reports, which provide the basis on which the Committee makes its initial assessment of the application of the specific Conventions concerned and, in certain cases, of all the Conventions ratified by the country. The Committee urges the governments concerned to make a special effort to supply the first reports due. The Committee also requests the Office to provide appropriate technical assistance, particularly since first reports are detailed reports and as such need to be prepared in light of the report form approved by the Governing Body for each Convention.<sup>19</sup>

### **Replies to the comments of the supervisory bodies**

44. Governments are requested to reply in their reports to the observations and direct requests made by the Committee, and the majority of governments have provided the replies requested. In accordance with the established

<sup>18</sup> For the reports received and not received by the end of the Conference, see Report of the Committee on the Application of Standards, Part Two, II, Appendix I (*Provisional Record* No. 16, 99th Session, ILC, 2010). See also information on article 22 reports requested and received on the ILO website: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

<sup>19</sup> Detailed reports have to be drawn up in accordance with the report form approved by the Governing Body for each Convention. Detailed reports are requested in the year following the entry into force of a Convention or when the Committee of Experts or the Conference Committee specifically requests such a report. Simplified reports are then requested on a regular basis. See the Governing Body's decisions in this respect (GB.282/LILS/5 (November 2001) and GB.283/LILS/6 (March 2002)).

practice, the Office has written to all the governments which failed to provide such replies requesting them to supply the necessary information. This year, only two of the governments which were contacted by the Office have provided the information requested.

45. This year, there were 669 cases in which no reply was received to comments (concerning 51 countries).<sup>20</sup> There were 695 such cases (concerning 48 countries) last year. The Committee has made observations to 15 of the countries concerned on compliance with their reporting and other standards-related obligations. These cases of comments to which replies have not been received may be classified as follows:

- (a) no reply has been received to all the reports requested from governments; or
- (b) the reports received contained no reply to most of the Committee's comments (observations and/or direct requests), and/or did not reply to the letters sent by the Office.

46. The Committee notes with *deep concern* that the number of comments to which replies have not been received has increased significantly over the past two years. This increase has led the Conference Committee and the Committee, with the support of the Office, to pay more sustained attention to cases of failure to comply with the obligation to provide information in reply to the Committee's comments. Moreover, the Committee recalls that, for the past five years, with a view to helping the countries to provide the required information, it has made the requests addressed to them in this respect more visible in its comments. The Committee underlines that the value attached by ILO constituents to the dialogue with the supervisory bodies on the application of ratified Conventions is considerably diminished by the failure of governments to fulfil their obligations in this respect. The Committee urges the countries concerned to provide all the information due and to have recourse to the assistance of the Office where necessary. In this respect, it requests the Office to give the highest priority to reinforcing the measures already taken and to the provision of specific assistance to the countries concerned so that they can provide the information requested on the application of ratified Conventions.

## B. Examination by the Committee of Experts of reports on ratified Conventions

47. In examining the reports received on ratified Conventions and Conventions declared applicable to non-metropolitan territories, in accordance with its normal practice, the Committee assigned to each of its members the initial responsibility for a group of Conventions. Reports received early enough are sent to the members concerned in advance of the Committee's session. The members submit their preliminary conclusions on the instruments for which they are responsible to the Committee in plenary sitting for discussion and approval. Decisions on comments are adopted by consensus.

<sup>20</sup> **Algeria** (Conventions Nos 13, 29, 32, 42, 81, 88, 111, 119, 120, 155, 181, 182); **Angola** (Conventions Nos 17, 29, 45, 81, 88, 105); **Bahamas** (Conventions Nos 81, 88, 105, 138, 182); **Barbados** (Conventions Nos 81, 105, 108, 115, 138, 147, 182); **Botswana** (Conventions Nos 29, 87, 100, 105, 138, 151, 176, 182); **Burkina Faso** (Conventions Nos 29, 81, 87, 105, 111, 129, 138, 159, 161, 170, 182); **Burundi** (Conventions Nos 14, 29, 52, 62, 81, 87, 89, 98, 100, 101, 105, 111, 135, 138, 144); **Cambodia** (Conventions Nos 13, 87, 138, 150, 182); **Central African Republic** (Conventions Nos 13, 29, 62, 81, 88, 105, 119, 120, 122, 138, 142, 155, 158, 182); **Chad** (Conventions Nos 29, 81, 105, 138, 182); **Comoros** (Conventions Nos 12, 13, 29, 81, 99, 100, 105, 138, 182); **Congo** (Conventions Nos 29, 81, 87, 89, 95, 98, 100, 105, 111, 138, 144, 149, 150, 152, 182); **Democratic Republic of the Congo** (Conventions Nos 29, 62, 81, 88, 94, 98, 100, 105, 111, 119, 121, 135, 138, 150, 182); **Denmark** (Conventions Nos 29, 115, 138, 139, 148, 155, 169, 182); **Djibouti** (Conventions Nos 9, 16, 19, 23, 26, 29, 38, 55, 56, 63, 71, 73, 81, 87, 88, 94, 95, 96, 98, 100, 101, 105, 111, 115, 120, 122, 138, 144, 182); **Dominica** (Conventions Nos 16, 19, 29, 81, 95, 138, 182); **Equatorial Guinea** (Conventions Nos 1, 29, 30, 87, 98, 103, 105, 111, 138, 182); **Ethiopia** (Conventions Nos 29, 88, 100, 105, 111, 138, 155, 158, 159, 181, 182); **Fiji** (Conventions Nos 8, 45, 105, 159, 169, 182); **Gambia** (Conventions Nos 29, 105, 138, 182); **Grenada** (Conventions Nos 81, 105, 138, 182); **Guinea** (Conventions Nos 3, 13, 16, 26, 29, 62, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 115, 117, 118, 119, 120, 121, 122, 132, 133, 134, 136, 138, 139, 140, 142, 143, 144, 148, 149, 150, 152, 156, 159, 182); **Guinea-Bissau** (Conventions Nos 12, 14, 17, 18, 19, 29, 45, 69, 73, 74, 81, 88, 89, 91, 92, 98, 100, 105, 106, 108, 111); **Guyana** (Conventions Nos 2, 19, 29, 42, 45, 81, 87, 97, 98, 100, 111, 115, 129, 136, 137, 138, 139, 140, 142, 144, 149, 150, 166, 172, 175, 182); **Haiti** (Conventions Nos 29, 45, 81); **Hungary** (Conventions Nos 81, 105, 115, 127, 129, 136, 138, 139, 148, 155, 161, 167, 181, 182); **Ireland** (Conventions Nos 14, 29, 62, 100, 111, 122, 132, 138, 139, 144, 155, 159, 160, 176, 177, 179, 180, 182); **Kazakhstan** (Conventions Nos 87, 98, 100, 111, 122, 144); **Kyrgyzstan** (Conventions Nos 11, 16, 23, 29, 69, 73, 77, 78, 79, 81, 87, 92, 98, 100, 105, 108, 115, 119, 120, 122, 124, 133, 134, 138, 147, 148, 149, 150, 154, 159, 160); **Liberia** (Conventions Nos 29, 87, 98, 111, 112, 113, 114, 144, 150); **Luxembourg** (Conventions Nos 8, 13, 55, 56, 68, 69, 73, 81, 87, 92, 108, 111, 133, 146, 147, 150, 155, 166, 178, 180); **Malawi** (Conventions Nos 87, 98, 100, 111, 144, 150, 159); **Netherlands: Aruba** (Conventions Nos 8, 87, 144, 145); **Nigeria** (Conventions Nos 8, 19, 29, 32, 45, 87, 88, 94, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179, 182); **Pakistan** (Conventions Nos 16, 22, 81, 87, 96, 98, 100, 105, 111, 159); **Papua New Guinea** (Conventions Nos 8, 22, 29, 87, 111, 138); **Rwanda** (Conventions Nos 87, 94, 98, 100, 111); **San Marino** (Conventions Nos 100, 111, 148, 150, 160); **Sao Tome and Principe** (Conventions Nos 18, 29, 81, 87, 88, 98, 100, 105, 106, 111, 144, 159); **Seychelles** (Conventions Nos 8, 22, 81, 105, 138, 148, 150, 151, 155, 182); **Sierra Leone** (Conventions Nos 17, 26, 29, 45, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144); **Singapore** (Conventions Nos 8, 22, 94, 100); **Slovakia** (Conventions Nos 100, 120, 122, 139, 148, 161, 163, 164, 167, 176); **Solomon Islands** (Conventions Nos 8, 14, 16, 26, 29, 45, 81, 94, 95); **Togo** (Conventions Nos 13, 26, 29, 100, 105, 111, 143); **Trinidad and Tobago** (Conventions Nos 87, 98, 100, 111, 125, 144, 147); **Tunisia** (Conventions Nos 87, 88, 98, 100, 107, 111, 122, 150); **Uganda** (Conventions Nos 11, 26, 29, 81, 87, 94, 95, 98, 100, 105, 111, 122, 123, 124, 138, 143, 144, 154, 158, 159, 162, 182); **United Kingdom: Bermuda** (Conventions Nos 23, 98, 147); **United Kingdom: British Virgin Islands** (Conventions Nos 8, 26, 59, 82, 85, 94, 97); **United Kingdom: Falkland Islands (Malvinas)** (Conventions Nos 8, 45, 59, 82); **United Kingdom: St Helena** (Conventions Nos 17, 29, 108); **Yemen** (Conventions Nos 16, 81, 87, 98, 100, 111, 122, 144); **Zambia** (Conventions Nos 87, 98, 100, 103, 111, 122, 136, 144, 148, 150, 159, 176).



## Observations and direct requests

48. In certain cases, the Committee has found that no comment is called for regarding the manner in which a ratified Convention has been implemented.<sup>21</sup> In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form of either “observations”, which are reproduced in the report of the Committee, or “direct requests”, which are not published in the Committee’s report, but are communicated directly to the governments concerned.<sup>22</sup>

49. The Committee’s observations appear in Part II of this report, together with a list under each Convention of any direct requests. An index of all observations and direct requests, classified by country, is provided in Appendix VII to the report.

## Follow-up of procedures for the examination of representations under article 24 of the Constitution and complaints under article 26 of the Constitution

50. In accordance with the established practice, the Committee examines the measures taken by governments pursuant to the recommendations of tripartite committees (established to examine representations under article 24 of the Constitution) and commissions of inquiry (established to examine complaints under article 26 of the Constitution), after they have been approved (tripartite committees) or noted (commissions of inquiry) by the Governing Body. The corresponding information is examined by the Committee and forms an integral part of its dialogue with the governments concerned in the context of the examination of the reports submitted on the application of the respective Conventions, as well as any comments submitted by employers’ and workers’ organizations. The Committee considers it useful to indicate more clearly the cases in which it follows up on the effect given to the recommendations made under other constitutional supervisory procedures, as indicated in the following table.

List of cases in which the Committee has examined the <b>measures taken by governments to give effect to the recommendations of tripartite committees</b> (representations under article 24) <b>and commissions of inquiry</b> (complaints under article 26):	
State	Conventions Nos
Belarus <sup>23</sup>	87, 98
Bosnia and Herzegovina	81
Chile	35
Eritrea	111
Ethiopia	111
France	111
Japan	159
Mexico	155
Myanmar	29
Russian Federation	179
Zimbabwe	87, 98

## Special notes

51. As in the past, the Committee has indicated by special notes at the end of the observations (traditionally known as footnotes) the cases in which, because of the nature of the problems encountered in the application of the Conventions

<sup>21</sup> 238 reports.

<sup>22</sup> ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev., 2006. Observations and direct requests are accessible through the ILOLEX database, which is available on CD-ROM and accessible via <http://www.ilo.org/ilolex/english/index.htm>.

<sup>23</sup> “The Committee recalls that, when taking note of the report of the Commission of Inquiry, the Governing Body decided to refer the follow-up of the Commission’s recommendations to the Committee on Freedom of Association, while observing that the Committee of Experts would continue to examine the legislative aspects involved in respect of Conventions Nos 87 and 98.”

concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2011.

52. In order to identify cases for which it inserts special notes, the Committee uses the basic criteria described below, while taking into account the following general considerations. First, the criteria are indicative. In exercising its discretion in the application of the criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, the criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as a “double footnote”. The difference between these two categories is one of degree. Third, a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) when there has been a recent discussion of the case in the Conference Committee. Finally, the Committee wishes to point out that it exercises restraint in its recourse to “double footnotes” in deference to the Conference Committee’s decisions as to the cases it wishes to discuss.

53. The criteria to which the Committee has regard are the following:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers’ health, safety and well-being, as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government’s response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

54. At its 76th Session (November–December 2005), the Committee decided that the identification of cases in respect of which a government is requested to provide detailed information to the Conference would be a two-stage process: first, the expert initially responsible for a particular group of Conventions recommends to the Committee the insertion of special notes; second, in light of all the recommendations made, the Committee will, after discussion, take a final, collegial decision once it has reviewed the application of all the Conventions.

55. This year, under the present reporting cycle the Committee has requested early reports after an interval of either one, two or three years, according to the circumstances, in the following cases:

List of the cases in which the Committee has requested <b>early reports</b> after an interval of either one, two or three years:	
State	Conventions Nos
Albania	181
Angola	88
Antigua and Barbuda	138
Argentina	96, 184
Australia	155
Azerbaijan	13, 119
Bolivia, Plurinational State of	96
Brazil	155, 161, 167
Canada	88, 162
Chile	122, 161
China	155, 167, 170
Colombia	2, 81, 88, 159, 161, 170
Costa Rica	1, 81, 96, 129
Cuba	81

List of the cases in which the Committee has requested <b>early reports</b> after an interval of either one, two or three years:	
State	Conventions Nos
Djibouti	115
Dominican Republic	167
Ecuador	115, 119, 136, 139, 148, 162
Egypt	96, 148
France	96
France – French Polynesia	115
Gabon	81
Georgia	52, 88, 181
Germany	162
Ghana	96
Greece	95, 150, 154
Grenada	144
Guatemala	81, 117, 127, 129
Honduras	81
India	174
Japan	159
Liberia	144
Libyan Arab Jamahiriya	81
Malawi	159
Malta	96, 148
Mexico	155
Mongolia	144
Mozambique	144
Namibia	144
Netherlands	159
Netherlands - Aruba	94
Pakistan	96, 159
Peru	169
Philippines	94
Russian Federation	119, 162
Rwanda	62

List of the cases in which the Committee has requested <b>early reports</b> after an interval of either one, two or three years:	
State	Conventions Nos
Saint Kitts and Nevis	144
Saint Lucia	158
Senegal	96
Spain	88
Sri Lanka	103, 144
Syrian Arab republic	96
Tajikistan	143
Ukraine	81, 129
United Kingdom – Isle of Man	150
Uruguay	181
Zimbabwe	140, 159

56. The Committee has also requested governments to supply full particulars to the Conference at its next session in June 2011 in the following cases:

List of the cases in which the Committee has requested governments to <b>supply full particulars to the Conference</b> at its next session in June 2011:	
State	Conventions Nos
Azerbaijan	138
Belarus	98
Democratic Republic of the Congo	29
Guatemala	87
Malaysia – Peninsular Malaysia	19
Uzbekistan	182

57. In addition, in certain cases, the Committee has requested governments to furnish detailed reports when simplified reports would otherwise be due:

List of the cases in which the Committee has requested to <b>supply detailed reports</b> when simplified reports would otherwise be due:	
State	Conventions Nos
Albania	174, 176
Antigua and Barbuda	155
Armenia	174, 176
Bolivia, Plurinational State of	81
Bosnia and Herzegovina	119, 136, 139, 148, 155, 161, 162
Cameroon	162
Cape Verde	155

List of the cases in which the Committee has requested to <b>supply detailed reports</b> when simplified reports would otherwise be due:	
State	Conventions Nos
Croatia	162
Ghana	115, 119
Guatemala	161, 162
Japan	81
Moldova, Republic of	152
Niger	148
Russian Federation	152
Seychelles	152
Tajikistan	32, 119

### **Practical application**

58. It is customary for the Committee to note the information contained in governments' reports allowing it to assess the application of Conventions in practice, such as information relating to judicial decisions, statistics and labour inspection. The supply of this information is requested in almost all report forms, as well as under the specific terms of some Conventions.

59. The Committee notes that **413** reports received this year contain information on the practical application of Conventions. Of these, 44 reports contain information on national jurisprudence. The Committee also notes that 369 of the reports contain information on statistics and labour inspection.

60. The Committee wishes to emphasize to governments the importance of submitting such information, which is indispensable to complete the examination of national legislation and to help the Committee to identify the issues arising from real problems of application in practice. The Committee also wishes to encourage employers' and workers' organizations to submit clear and up to date information on the application of Conventions in practice.

### **Cases of progress**

61. Following its examination of the reports supplied by governments, and in accordance with its standard practice, the Committee refers in its comments to cases in which it expresses its **satisfaction** or **interest** at the progress achieved in the application of the respective Conventions.

62. At its 80th Session (November–December 2009) and at its present session, the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) **The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters which, in its view, have not been addressed in a satisfactory manner.**
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

63. Since first identifying cases of **satisfaction** in its report in 1964,<sup>24</sup> the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a**

<sup>24</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee’s appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

64. Details concerning these cases of progress are to be found in Part II of this report and cover 63 instances in which measures of this kind have been taken in 40 countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>express its satisfaction</b> at certain measures taken by the governments of the following countries:	
State	Conventions Nos
Albania	138
Argentina	87, 138
Bangladesh	81
Belgium	87
Cape Verde	19
China	23
China – Macau Special Administrative Region	138
Colombia	13
Côte d'Ivoire	138, 182
Croatia	138, 162
Cuba	155
Czech Republic	132
Egypt	138, 182
France	81, 129, 148, 149
Italy	127
Jamaica	81, 182
Jordan	81, 182
Kenya	98, 105, 129
Kiribati	105
Kuwait	87, 98
Mauritius	87, 98
Mexico	161
Moldova, Republic of	87
Norway	81
Panama	16, 87, 182

List of the cases in which the Committee has been able to <b>express its satisfaction</b> at certain measures taken by the governments of the following countries:	
State	Conventions Nos
Papua New Guinea	182
Paraguay	182
Peru	139
Philippines	87, 98
Portugal	98, 155, 162
San Marino	103
Saudi Arabia	100
Slovakia	115
Spain	87, 148
Swaziland	98
Thailand	182
The former Yugoslav Republic of Macedonia	87
Togo	138, 182
Turkey	29, 98
United Kingdom	98
Uruguay	98, 184

65. Thus the total number of cases in which the Committee has been led to **express its satisfaction** at the progress achieved following its comments has risen to **2,803** since the Committee began listing them in its report.

66. Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979.<sup>25</sup> In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

<sup>25</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

67. Details concerning the cases in question are to be found either in Part II of this report or in the requests addressed directly to the governments concerned, and include **341** instances in which measures of this kind have been adopted in **122** countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Albania	16, 143, 150, 155, 156, 182
Algeria	81
Angola	81
Argentina	87, 139, 182
Armenia	150, 176
Australia	81, 100, 111, 155, 160, 182
Austria	81, 122, 138
Azerbaijan	111, 148
Bahamas	22, 147
Bahrain	29
Bangladesh	81, 111
Barbados	98, 111, 135
Belarus	138, 150, 160
Belgium	62, 100, 111, 147, 180
Benin	138, 150, 182
Bosnia and Herzegovina	81, 119
Brazil	81, 166, 176
Bulgaria	22, 68, 73, 146, 147, 163, 164, 166, 178, 179, 180
Burkina Faso	100, 111
Cameroon	81, 162
Canada	100, 160
Cape Verde	81, 87, 98, 182
Central African Republic	19, 81
Chile	63, 111, 161, 169, 182
China	150, 155, 182
China – Hong Kong Special Administrative Region	122, 150, 160
China – Macau Special Administrative Region	88, 122, 138, 150, 155, 182
Colombia	81, 129, 136, 160, 170, 182
Costa Rica	138, 150, 182



List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Côte d'Ivoire	81, 136
Croatia	13, 22, 23, 69, 73, 92, 100, 111
Cuba	63, 187
Cyprus	88, 100, 111, 150, 155, 160
Czech Republic	144, 182, 187
Democratic Republic of the Congo	144, 158, 182
Denmark	100, 160, 162, 167
Dominica	26
Dominican Republic	182
Ecuador	81
Egypt	29, 62, 88, 148
El Salvador	81, 150
Estonia	111, 122
Fiji	111, 155
Finland	139, 148, 155, 160, 167
France	63, 81, 111, 137, 149
France – New Caledonia	95, 111
Gabon	182
Gambia	111
Germany	129, 139, 160, 170, 182
Ghana	182
Greece	160
Guatemala	88, 159
Haiti	182
Honduras	81
Hungary	24, 122
Iceland	111, 139, 155
India	81, 160, 174
Indonesia	111, 182
Iran, Islamic Republic of	14, 182
Iraq	182

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Israel	111, 182
Italy	13, 111, 150, 160
Jamaica	81, 182
Japan	29
Jordan	81, 100, 138, 159
Kazakhstan	81, 155
Kenya	129, 144
Korea, Republic of	159
Kuwait	52, 81, 144, 159
Kyrgyzstan	52
Latvia	81, 108
Lebanon	29, 81, 120
Liberia	22, 133, 147
Lithuania	81, 87, 108
Luxembourg	29
Malaysia	81
Malta	81, 148
Mauritania	81
Mauritius	150, 159
Mexico	87, 182
Moldova, Republic of	81, 87, 144, 150
Mongolia	159
Montenegro	98, 144
Morocco	81, 129, 182
Mozambique	81
Netherlands	129, 162
Norway	22, 68, 69, 73, 81, 92, 111, 129, 144, 147, 162, 163, 164, 167, 170, 178, 179, 180
Oman	29
Panama	9, 22, 23, 32, 68, 92, 182
Papua New Guinea	182

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Paraguay	138, 182
Peru	81, 98, 139
Philippines	87, 111, 144
Portugal	81, 155, 176
Qatar	81
Romania	29, 144
Russian Federation	115, 120, 179
Rwanda	62, 81, 138, 182
Saint Vincent and the Grenadines	16, 180
Saudi Arabia	81
Senegal	182
Serbia	159
Seychelles	152
Singapore	81
Slovakia	115, 144
Slovenia	81, 98, 129
Spain	9, 22, 68, 69, 81, 92, 136, 146, 147, 155, 163, 166
Swaziland	81, 87
Syrian Arab Republic	111
Tajikistan	111
Thailand	138, 182
The former Yugoslav Republic of Macedonia	98, 144
Togo	87, 138, 144, 182
Trinidad and Tobago	81, 150
Tunisia	81
Turkey	81, 87, 105, 115, 182
Ukraine	69
United Arab Emirates	29, 81
United Kingdom – Gibraltar	59
United Kingdom – Jersey	98
United States	144

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Uruguay	63, 144, 181
Venezuela, Bolivarian Republic of	26, 81
Viet Nam	81
Zambia	29, 122
Zimbabwe	87, 98, 155

### **Cases of good practice**

68. In accordance with the decision taken at its 78th Session (November–December 2007), the Committee highlights cases of **good practice** to express its appreciation of the special efforts made in applying a Convention, and so that they might where appropriate serve as a model for other countries to assist in the implementation of ratified Conventions and the furtherance of social progress. At its 79th Session (November–December 2008), the Committee agreed on the general criteria that it would apply to identify cases of good practice. The Committee further agreed that it would continue to follow a two-stage process for the identification of cases of good practice: first, the expert initially responsible for a particular group of Conventions recommends to the Committee that a measure or measures should be identified as a case of good practice; second, in light of all the recommendations made, the Committee will, after discussion, take a final collegial decision once it has reviewed the application of all the Conventions.<sup>26</sup>

69. At its 80th Session (November–December 2009), the Committee focused, in particular, on clarifying the distinction between cases of good practice and cases of progress. In this respect, the Committee wishes to underline at the outset that cases of good practice are necessarily also cases of progress, although the reverse is not always true. The Committee wishes to point out that the identification of a case of good practice **does not in any way imply additional obligations for member States under the Conventions that they have ratified**. Moreover, mere compliance with the requirements of a Convention is not sufficient for the identification of a case of good practice, as compliance is a basic requirement deriving from ratification of the Convention. Cases of good practice are therefore of an informative rather than of a prescriptive nature. Their identification forms part of the ongoing dialogue with the government concerned on the application of a ratified Convention and can relate to any measure taken in national legislation, policy or practice. A certain caution must clearly be exercised in the identification of cases of good practice so as to minimize the possibility that such practices may with hindsight come to be viewed as unsatisfactory.

70. Bearing in mind these aspects, the Committee wishes to confirm the following three criteria, which were identified at its 79th Session (November–December 2008), on the understanding that they are indicative, but not exhaustive.

- (1) A case of good practice may consist of a **new approach** to achieving or improving compliance with the Convention and could therefore be useful as a **model** for other countries in implementing that Convention.
- (2) The practice may reflect an **innovative** or **creative way** of either implementing the Convention, or of addressing difficulties which arise in its application.
- (3) Recognizing that Conventions lay down minimum standards, the practice may offer an **example** of a country extending the application or coverage of the Convention to enhance the achievement of its objectives, particularly in cases where the Convention contains flexibility clauses.

### **Cases in which the need for technical assistance has been highlighted**

71. The combination of the work of the supervisory bodies and the practical guidance given to member States through technical cooperation and assistance has always been one of the key dimensions of the ILO supervisory system. Further, since 2005, at the initiative of the Conference Committee, heightened attention has been given to the complementarity between examination by the ILO supervisory bodies and the Office's technical assistance. As pointed out in paragraphs 18 to 26, this has led to enhanced follow-up of cases of serious failure by member States to fulfil reporting and other standards-related obligations. In addition, the Conference Committee has made more systematic references to technical assistance in its conclusions regarding individual cases concerning the application of ratified Conventions. The aim of this strengthened combination between the work of the supervisory bodies and the Office's technical assistance is

<sup>26</sup> It will be recalled that this two-stage process is also used for the so-called "double footnotes": see para. 54 above.

to provide an effective framework to member States for full compliance with their standards-related obligations, including the implementation of the Conventions which they have ratified.

72. In this context, the Committee decided at its 79th Session (November–December 2008) to highlight the cases for which, in the Committee's view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions. These cases are highlighted in the following table and details can be found in Part II of the report of the Committee of Experts. The Committee also examined a certain number of cases in relation to which the Conference Committee emphasized the need for technical assistance at the last session of the Conference.<sup>27</sup>

List of the cases for which <b>technical assistance</b> would be particularly useful in helping member States	
State	Conventions Nos
Afghanistan	111
Antigua and Barbuda	155, 182
Argentina	87
Armenia	174
Bangladesh	182
Belarus	98
Benin	143
Bolivia, Plurinational State of	45
Bosnia and Herzegovina	119, 136, 139, 148, 155, 161, 162
Botswana	87, 98
Bulgaria	87, 98
Burundi	87
Cambodia	87, 100
Cameroon	162
Cape Verde	98
Colombia	169
Costa Rica	14, 106
Cuba	155
Democratic Republic of Congo	87, 94
Djibouti	94
Egypt	45, 62
El Salvador	100
Equatorial Guinea	98

<sup>27</sup> The cases are the following: **Belarus** (Convention No. 87); **Cambodia** (Convention No. 87); **Central African Republic** (Convention No. 138); **Egypt** (Convention No. 87); **Guatemala** (Convention No. 87); **Islamic Republic of Iran** (Convention No. 111); **Peru** (Convention No. 169); **Russian Federation** (Convention No. 111); **Sudan** (Convention No. 29); **Swaziland** (Convention No. 87); **Turkey** (Convention No. 87); **Ukraine** (Convention No. 95); **Uzbekistan** (Convention No. 182); **Bolivarian Republic of Venezuela** (Convention No. 87). The corresponding observations made by the Committee are published in Part II of the present report.

List of the cases for which <b>technical assistance</b> would be particularly useful in helping member States	
<b>State</b>	<b>Conventions Nos</b>
Ethiopia	87
Ghana	96, 115, 119
Guatemala	45, 87
Guinea	87
Honduras	62
Kuwait	98, 111
Kyrgyzstan	148
Lesotho	182
Malaysia	98
Mali	111
Mauritania	87, 98
Mauritius	87
Mexico	87
Moldova, Republic of	98
Montenegro	98
Mozambique	100
Myanmar	87
Nepal	98
Pakistan	87, 98
Panama	87, 98
Peru	139, 169
Portugal	155
Romania	87, 98
Russian Federation	87, 98
Sao Tome and Principe	98, 154
Senegal	87
Seychelles	87, 98, 111
Sierra Leone	95, 125
Sudan	29, 100
Syrian Arab Republic	87, 98, 144
Tanzania, United Republic of	87

List of the cases for which <b>technical assistance</b> would be particularly useful in helping member States	
State	Conventions Nos
Trinidad and Tobago	87, 98
Tunisia	87
Turkey	87, 98
Ukraine	47, 95, 106
Venezuela, Bolivarian Republic of	87
Zimbabwe	87

### **Questions concerning the application of certain Conventions**

73. A general observation appears as an introduction to the examination of individual reports due under the Labour Inspection Convention, 1947 (No. 81). This general observation covers the obligation set out in the Convention for the publication and communication to the Office each year of an annual report on the work of the labour inspection services. It also encourages a widespread ratification of the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

74. A general observation appears as an introduction to the examination of individual reports due under the Indigenous and Tribal Peoples Convention, 1989 (No. 169), covering the right to consultation as envisaged in the Convention.

### **Comments made by employers' and workers' organizations**

75. At each session, the Committee draws the attention of governments to the important role of employers' and workers' organizations in the application of Conventions and Recommendations. Moreover, it highlights the fact that numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes that almost all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the Office. The Committee however emphasizes that, for the second time in two years, it had to make an observation to one country which has omitted this indication for the third consecutive year in its reports on ratified Conventions.<sup>28</sup> The Committee recalls that, in accordance with the tripartite nature of the ILO, compliance with this constitutional obligation is intended to enable representative organizations of employers and workers to participate fully in supervision of the application of international labour standards. As recalled by the Chairperson of the Committee of Experts before the Conference Committee this year, if a government fails to comply with this obligation, these organizations are denied their opportunity to comment and an essential element of tripartism is lost. The Committee calls on all member States, with particular reference to the country referred to above, to discharge their obligation under article 23, paragraph 2, of the Constitution. The Committee also requests governments to provide copies of reports to representative employers' and workers' organizations so that they have enough time to send any comments that they may wish to make.

76. Since its last session, the Committee has received **794** comments (compared to 705 last year), **119** of which (compared to 115 last year) were communicated by employers' organizations and **675** (compared to 590 last year) by workers' organizations. The Committee recalls the importance it attaches to this contribution by employers' and workers' organizations to the work of the supervisory bodies. This contribution is essential for the Committee's evaluation of the application of ratified Conventions in national law and in practice.

77. The majority of the comments received (**661**) relate to the application of ratified Conventions (see Appendix III).<sup>29</sup> Some **358** of these comments relate to the application of fundamental Conventions, **68** relate to governance Conventions and **235** concern the application of other Conventions. Moreover, **133** comments concern reports provided under article 19 of the Constitution on the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).<sup>30</sup>

<sup>28</sup> Liberia. See Part II of the report.

<sup>29</sup> An indication of the observations made by employers' and workers' organizations on the application of Conventions received during the current year is available on the ILO website: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

<sup>30</sup> See Report III (Part 1B), ILC, 100th Session, Geneva, 2011.

78. The Committee notes that, of the comments received this year, 556 were transmitted directly to the Office which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. The Committee emphasizes that comments submitted by employers' and workers' organizations should be received by the Office by 1 September at the latest to allow governments to have a reasonable time to respond, thereby enabling the Committee to examine the issues in question at its session in November the same year. Comments received later than 1 September will be examined by the Committee at its session the following year. In 238 cases, the governments transmitted the comments made by employers' and workers' organizations with their reports, sometimes adding their own comments.

79. The Committee also examined a number of other comments by employers' and workers' organizations, consideration of which had been postponed from its previous session because the comments of the organizations or the replies of the governments had arrived just before, during or just after the session. It again had to postpone until its next session the examination of a number of comments when they were received too close to or even during the Committee's present session.

80. The Committee has paid particular attention to the comments made by the Single Confederation of Workers of Colombia (CUT), the International Trade Union Confederation (ITUC) and Education International (EI) in relation to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in Colombia and which refer, inter alia, to longstanding issues of violence against trade unionists and a climate of impunity. Cognizant of the Government's invitation for a high-level tripartite mission to visit the country in February 2011, the Committee considers that it will be best placed to make a full evaluation of the application of the Convention when it has available to it the report of this upcoming mission, as well as the Government's detailed report on the application of the Convention, due next year, and its observations on the CUT, ITUC and EI comments. For these reasons, the Committee has decided to examine the application of this Convention, including the issues raised in these comments, at its next session in November–December 2011.

81. The Committee notes that in general the employers' and workers' organizations concerned endeavoured to gather and present elements of law and fact on the application in practice of ratified Conventions. The Committee recalls that it is essential for the organizations, when referring specifically to the Convention or Conventions deemed relevant, to provide detailed information that has real additional value with regard to the information provided by governments and the issues addressed in the Committee's comments. Such information should help to update or renew the analysis of the application of Conventions and emphasize real problems concerning their application in practice. The Committee invites the organizations interested to request technical assistance from the Office to this end.

### ***Treatment of comments received from employers' and workers' organizations in a non-reporting year***

82. The Committee recalls that at its 77th Session (November–December 2006), it gave guidance to the Office as to the procedure to be followed in determining the treatment of comments received from employers' and workers' organizations concerning the application of a ratified Convention in a non-reporting year. At its 80th Session (November–December 2009), the Committee examined this procedure in light of the decision by the Governing Body to extend the cycle for the submission of reports from two to three years for the fundamental and governance Conventions. In this respect, the Committee is fully aware of the need to apply in a fair and judicious manner the decisions taken by the Governing Body to extend the reporting cycle and to ensure that employers' and workers' organizations comments may effectively draw its attention to areas of concern, even when no report on the Convention in question is due from the government that year.

83. The Committee confirms that, where the comments received from employers' and workers' organizations simply repeat comments made in previous years, or refer to matters already raised by the Committee, they will be examined in accordance with the normal cycle in the year when the government's report is due, and a report will not be requested from the government outside that cycle. This procedure may also be followed in the case of comments which provide additional information on law and practice concerning matters already raised by the Committee, or on minor legislative changes, although consideration may be given, depending on the specific circumstances, to requesting an advanced report in such cases.

84. However, where the comment raises more serious allegations of important acts of non-compliance with a particular Convention – as opposed to mere repetitions – the government will be requested to reply to these allegations outside the normal reporting cycle and the Committee will consider the comments in the year in which they are received, where the allegations go beyond mere declarations. Comments referring to important legislative changes, or to proposals which have a fundamental impact on the application of a Convention will be considered in the same manner, as will comments which refer to minor, new legislative proposals or draft laws not yet examined by the Committee, where their early examination may assist the government at the drafting stage.

85. The Committee emphasizes that the procedure set out above aims at giving effect to decisions taken by the Governing Body which have both extended the reporting cycle and provided for safeguards in that context to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the



Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due; in such cases, comments received directly by the Office are communicated to the governments concerned in a timely fashion so as to ensure respect for due process. The Committee will continue to give full and careful consideration to all the elements made available to it in order to ensure the effective, up to date and regular monitoring of the application of ratified Conventions in the context of the new extended reporting cycle for the fundamental and governance Conventions.

86. Part II of this report contains most of the observations made by the Committee on cases in which the comments raised matters relating to the application of ratified Conventions. Where appropriate, other comments are examined in requests addressed directly to governments.

### C. Submission of instruments adopted by the Conference to the competent authorities (article 19, paragraphs 5, 6 and 7, of the Constitution)

87. In accordance with its terms of reference, the Committee this year examined the following information supplied by the governments of member States pursuant to article 19 of the Constitution of the Organization:

- (a) additional information on measures taken to submit to the competent authorities the instruments adopted by the Conference from 1967 (51st Session) to June 2007 (96th Session) (Conventions Nos 128 to 188, Recommendations Nos 132 to 199 and Protocols);
- (b) Replies to the observations and direct requests made by the Committee at its 80th Session (November–December 2009).

88. Appendix IV of Part II of the report contains a summary indicating the competent authority to which the instruments adopted by the Conference at its 96th Session were submitted and the date of submission.

89. Other statistical information is to be found in Appendices V and VI of Part II of the report. Appendix V, compiled from information sent by governments, shows where each member State stands in terms of its constitutional obligation of submission. Appendix VI shows the overall submission status of instruments adopted since the 51st Session (June 1967) of the Conference. The statistical data in Appendices V and VI are regularly updated by the competent branches of the Office and can be accessed via the Internet.

90. The Committee points out that the International Labour Conference adopted no international labour Conventions or Recommendations at its 97th Session (June 2008) or its 98th Session (June 2009).

### 96th Session

91. At its 96th Session in May–June 2007, the Conference adopted the Work in Fishing Convention, 2007 (No. 188), and Recommendation, 2007 (No. 199). The 12 month period for submission to the competent authorities of Convention No. 188 and Recommendation No. 199 ended on 14 June 2008, and the 18-month period on 14 December 2008. In all, 71 governments out of the 178 member States have already submitted the instruments adopted at the 96th Session. At this session, the Committee examined new information on the steps taken regarding Convention No. 188 and Recommendation No. 189 by the following Governments: **Argentina, Austria, Bosnia and Herzegovina, Costa Rica, Cuba, Gambia, Kenya, Lao People's Democratic Republic, Latvia, Paraguay, Portugal and Bolivarian Republic of Venezuela.**

### Cases of progress

92. The Committee notes with *interest* the information sent in the course of the period concerned by the governments of the following countries: **Bosnia and Herzegovina, Gambia, Kenya, Lao People's Democratic Republic, Nepal, Paraguay, Bolivarian Republic of Venezuela and Zambia.** It welcomes the efforts made by these governments to make up for the significant delay in submission and thus fulfil their obligation to submit to their parliamentary bodies the instruments adopted by the Conference over a number of years.

### Special problems

93. To facilitate the work of the Committee on the Application of Standards, this report only mentions governments that have neither submitted to the competent authorities nor ratified instruments adopted by the Conference for at least the seven sessions held from 2001 (i.e. from the 89th Session to the 96th Session in 2007). This timeframe was deemed long enough to warrant inviting the governments concerned to a special sitting of the Conference Committee so that they could account for the delays in submission.

94. The Committee notes that at the closure of its 81st Session, on 10 December 2010, the following 37 countries are in the situation specified in paragraph 93: **Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Ghana, Guinea, Haiti, Ireland, Kiribati, Libyan Arab**

**Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda and Uzbekistan.**

95. The Committee is constantly aware of the exceptional circumstances which have affected these countries for years and as a result of which some of them have been deprived of the institutions needed to fulfil the obligation to submit instruments. At the 99th Session of the Conference (June 2010), the Government representatives of 11 delegations supplied information explaining why their countries had been unable to meet the constitutional obligation to submit Conventions, Recommendations and Protocols to national parliaments. As the Committee of Experts had done before it, the Conference Committee expressed great concern at the failure to respect this obligation. It pointed out that compliance with this constitutional obligation, which means submitting the instruments adopted by the Conference to national parliaments, is of the utmost importance in ensuring the effectiveness of the Organization's standards-related activities.

96. The abovementioned countries have been identified in observations published in section III of Part II of this report and the Conventions, Recommendations and Protocols that have not been submitted are indicated in the statistical appendices. The Committee considers it worthwhile to alert the governments concerned so as to enable them immediately and as a matter of urgency to take appropriate steps to bring themselves up to date and allow them to benefit from the measures the Office will take to assist them in the steps required for the rapid submission to parliament of the pending instruments.

### **Comments of the Committee and replies from governments**

97. As in its previous reports, the Committee makes individual observations in section III of Part Two of this report on the points that should be brought to the special attention of governments. Observations are made in cases where there has been no information for five or more sessions of the Conference. Furthermore, requests for additional information on other points have been addressed directly to a number of countries (see the list of direct requests at the end of section III).

98. The Committee hopes that the 75 observations and the 48 direct requests that it is addressing this year to governments will enable them better to discharge their constitutional obligation of submission, thereby contributing to the promotion of the standards adopted by the Conference.

99. As the Committee has already pointed out, it is important that governments send the information and documents required by the questionnaire at the end of the Memorandum adopted by the Governing Body in March 2005. The Committee must receive for examination a summary or a copy of the documents submitting the instruments to the parliamentary bodies and be informed of the proposals made as to the action to be taken on them. The obligation of submission is discharged only once the instruments adopted by the Conference have been submitted to parliament and the competent authorities have taken a decision on them. The Office has to be informed of this decision, as well as of the submission of instruments to parliament.

100. The Committee hopes to be able to note progress in this matter in its next report. It again reminds governments that they may seek technical assistance from the ILO, particularly through the standards specialists in the field.

## **D. Instruments chosen for reports under article 19 of the Constitution**

101. The Committee recalls that at its 303rd Session (November 2008), the Governing Body decided to align the subjects of General Surveys with those of the annual recurrent discussions in the Conference under the follow-up to the Social Justice Declaration. This year, in accordance with the decision taken by the Governing Body at its 304th Session (March 2009),<sup>31</sup> governments were requested to supply reports under article 19 of the Constitution as a basis for the General Survey on the following instruments: the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).

102. A total of **681** reports were requested and **424** were received (compared to last year when 826 reports were requested and 460 were received). This represents **62.26** per cent of the reports requested. The Committee notes that the number of reports received under article 19 for the General Survey has increased significantly over the past two years. It welcomes this trend and also notes that the reports received this year contain in general the information requested.

103. The Committee notes with *regret* that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the Constitution have been received from the following **25** countries: **Cambodia, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, Georgia, Guinea, Guinea-Bissau, Ireland, Kyrgyzstan, Libyan Arab Jamahiriya, Luxembourg, Malta, Russian Federation, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkmenistan, Uzbekistan, Vanuatu.**

<sup>31</sup> GB.304/LILS/5 and GB.304/9/2, para. 73.

**104.** The Committee once again urges governments to provide the reports requested so that its General Surveys can be as comprehensive as possible. It hopes that the Office will supply all the necessary technical assistance to this end.

**105.** Part III of this report (issued separately as Report III (Part 1B)) contains the General Survey concerning *social security instruments*.<sup>32</sup> In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising six members of the Committee.

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<sup>32</sup> See Report III (Part 1B), ILC, 100th Session, Geneva, 2011.

### **III. Collaboration with other international organizations and functions relating to other international instruments**

#### **A. Cooperation in the field of standards with the United Nations**

**106.** In the context of collaboration with other international organizations on questions concerning supervision of the application of international instruments relating to subjects of common interest, the United Nations, certain specialized agencies and other intergovernmental organizations with which the ILO has entered into special arrangements for this purpose are being asked to indicate whether they have information on how Conventions are being applied. The list of the Conventions concerned and the international organizations that were consulted is as follows:

- the Indigenous and Tribal Populations Convention, 1957 (No. 107): United Nations Food and Agriculture Organization (FAO), Inter-American Indian Institute of the Organization of American States, United Nations (UN), United Nations Office of the High Commissioner for Human Rights (OHCHR), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Health Organization (WHO);
- the Radiation Protection Convention, 1960 (No. 115): International Atomic Energy Agency;
- the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117): FAO, UN, OHCHR and UNESCO;
- the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147): International Maritime Organization (IMO);
- the Rural Workers' Organisations Convention, 1975 (No. 141): FAO, UN and OHCHR;
- the Human Resources Development Convention, 1975 (No. 142): UNESCO;
- the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143): UN, OHCHR, UNESCO and WHO;
- the Nursing Personnel Convention, 1977 (No. 149): WHO;
- the Indigenous and Tribal Peoples Convention, 1989 (No. 169): FAO, Inter-American Indian Institute of the Organization of American States, UN, OHCHR, UNESCO and WHO.

**107.** The Committee notes that at its Ninth Session in May 2010, the United Nations Permanent Forum on Indigenous Issues (UNPFII) addressed certain recommendations to the ILO with regard to Convention No. 169, and the supervision of its application, including specific reference to the work of the Committee of Experts.

**108.** The Committee also notes that, at its Fifteenth Session in September 2010, the Human Rights Council decided to appoint for a period of three years a special rapporteur on the rights to freedom of peaceful assembly and of association.<sup>1</sup> The Committee notes in particular that, in determining the mandate of the special rapporteur, the Human Rights Council was careful to indicate that the special rapporteur should undertake his or her activities such that his or her mandate will not include those matters of specific competence of the International Labour Organization and its specialized supervisory mechanisms and procedures with respect to employers' and workers' rights to freedom of association, with a view to avoiding any duplication. The resolution of the Human Rights Council specifies that the special rapporteur should

<sup>1</sup> Resolution A/HRC/RES/15/21, adopted by the Human Rights Council on 30 September 2010.

work in coordination with other mechanisms of the Council, other competent United Nations bodies and human rights treaty bodies, and to take all necessary measures to avoid unnecessary duplication with those mechanisms.

## **B. United Nations treaties concerning human rights**

**109.** The Committee recalls that international labour standards and the provisions of related United Nations human rights treaties are complementary and mutually reinforcing. It emphasizes that continuing cooperation between the ILO and the United Nations with regard to the application of relevant instruments is essential, particularly in the context of United Nations reforms aimed at greater coherence and cooperation within the United Nations system and the human rights-based approach to development.

**110.** The Committee welcomes the fact that the Office has continued to provide information on the application of international labour standards to the United Nations treaty bodies on a regular basis, in accordance with the existing arrangements between the ILO and the United Nations. It has also continued to follow the work of these bodies and to take their comments into consideration where appropriate. The Committee considers that coherent international monitoring is an important basis for action to enhance the enjoyment of and compliance with economic, social and cultural rights at the national level. The Committee itself had the opportunity to continue its collaboration with the United Nations Committee on Economic, Social and Cultural Rights in the context of the annual meeting between the two Committees which took place on 25 November 2010, at the invitation of the Friedrich Ebert Stiftung. This year the topic selected for discussion was “Regression in the realization of social rights in light of current austerity measures”.

**111.** The Committee notes that the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 10 December 2008, has obtained 35 signatures to date. The Committee considers it essential for its collaboration with the Committee on Economic, Social and Cultural Rights to be strengthened, especially when the Optional Protocol enters into force.

## **C. European Code of Social Security and its Protocol**

**112.** In accordance with the supervisory procedure established under Article 74, paragraph 4, of the European Code of Social Security, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 21 reports on the application of the Code and, as appropriate, its Protocol. At the sitting in which the Committee examined the reports on the Code and its Protocol, the Council of Europe was represented by Ms Ana Gomez Heredero. The conclusions of the Committee regarding these reports will be sent to the Council of Europe for examination by its Committee of Experts on Social Security. Once approved, the Committee’s comments should lead to the adoption of resolutions by the Committee of Ministers of the Council of Europe on the application of the Code and the Protocol by the countries concerned.

**113.** With its dual responsibility for the application of the Code and for international labour Conventions relating to social security, the Committee is seeking to develop a coherent analysis of the application of European and international instruments and to coordinate the obligations of the States parties to these instruments. The Committee also draws attention to the national situations in which recourse to technical assistance from the Council of Europe and the Office may prove to be an effective means of improving the application of the Code.

\* \* \*

**114.** Lastly, the Committee would like to express its appreciation for the invaluable assistance again rendered to it by the officials of the Office, whose competence and devotion to duty make it possible for the Committee to accomplish its increasingly voluminous and complex task in a limited period of time.

Geneva, 10 December 2010

(Signed) Yozo Yokota  
Chairperson

Anwar Ahmad Rashed Al-Fuzaie  
Reporter

## Appendix to the General Report

### Composition of the Committee of Experts on the Application of Conventions and Recommendations

#### Mr Mario ACKERMAN (Argentina)

Professor of Labour Law, Director of the Labour Law and Social Security Department and Director of Specialist Postgraduate Labour Law Studies at the Faculty of Law of the University of Buenos Aires; Director of the *Revista de Derecho Laboral*; former advisor to the Parliament of the Republic of Argentina; former National Director of the Labour Inspectorate of the Ministry of Labour and Social Security of the Republic of Argentina.

#### Mr Anwar Ahmad Rashed AL-FUZAIE (Kuwait)

*Docteur en droit*; Professor of Law; Professor of Private Law of the University of Kuwait; Legal adviser to the Central Commission for the Rehabilitation of the Environment; former Special adviser to the Audit Bureau President; attorney; former member of the International Court of Arbitration of the International Chamber of Commerce (ICC); member of the Administrative Board of the Centre of Arbitration of the Chamber of Commerce and Industry of Kuwait; former Member of the Governing Body of the International Islamic Centre for Mediation and Commercial Arbitration (Abu Dhabi); former Director of Legal Affairs of the Municipality of Kuwait; former Director of Legal Affairs of the Bank KFH; former Adviser to the Embassy of Kuwait in Paris.

#### Mr Denys BARROW, SC (Belize)

Justice of Appeal of the Court of Appeal of Belize; former Justice of Appeal of the Eastern Caribbean Supreme Court; former High Court Judge for Belize, Saint Lucia, Grenada and the British Virgin Islands; former Chairperson of the Social Security Appeals Tribunal in Belize; former member of the Committee of Experts for the Prevention of Torture in the Americas.

#### Mr Lelio BENTES CORRÊA (Brazil)

Judge at the Labour Superior Court (Tribunal Superior do Trabalho) of Brazil, former Labour Public Prosecutor of Brazil, LL M of the University of Essex, United Kingdom; Professor (Labour Team and Coordinator of the Human Rights Centre) at the *Instituto de Ensino Superior de Brasilia*.

#### Mr James J. BRUDNEY (United States)

Newton D. Baker-Baker and Hosteler Chair in Law, Ohio State University, Moritz College of Law, Columbus, Ohio; Co-Chair of the Public Review Board of the United Automobile Workers Union of America (UAW); former Visiting Faculty, Fordham University Law School, NY, NY; former Visiting Fellow, Oxford University, United Kingdom; former Visiting Faculty, Harvard Law School; former Chief Counsel and Staff Director of the United States Senate Subcommittee on Labour; former attorney in private practice; and former law clerk to the United States Supreme Court.

**Mr Halton CHEADLE** (South Africa)

Professor of Labour Law at the University of Cape Town; former special Advisor to Minister of Justice; former Chief Legal Counsel of the Congress of South African Trade Unions; former Special Adviser to the Labour Minister; former Convener of the Task Team to draft the South African Labour Relations Act.

**Ms Laura COX, QC** (United Kingdom)

Justice of the High Court, Queen's Bench Division and Judge of the Employment Appeal Tribunal; LL B, LL M of the University of London; previously a barrister specializing in employment law, discrimination and human rights; Head of Cloisters Chambers, Temple (1995–2002); Chairperson of the Bar Council Sex Discrimination Committee (1995–99) and Equal Opportunities Committee (1999–2002); Bencher of the Inner Temple; member of the Independent Human Rights Organization Justice (former Council member) and one of the founding Lawyers of Liberty (the National Council for Civil Liberties); previously a Vice-President of the Institute of Employment Rights and member of the Panel of Experts advising the Cambridge University Independent Review of Discrimination Legislation; Chairperson of the Board of INTERIGHTS, the International Centre for the Legal Protection of Human Rights (2001–04) and Chairperson of the Equality and Diversity Advisory Committee of the Judicial Studies Board (since 2003); appointed Honorary Fellow of Queen Mary College, London University (2005); member of Council of the University of London (2003–06); Honorary President of the Association of Women Barristers and Vice President of the United Kingdom Association of Women Judges.

**Mr Rachid FILALI MEKNASSI** (Morocco)

*Docteur en droit*; Professor at the University Mohammed V of Rabat (Morocco); consultant with national and international public bodies, including the World Bank, UNDP, FAO, UNICEF and USAID; national coordinator of the ILO project “Sustainable Development through the Global Compact” (2005–08); former research project manager at the Foreign Department of the Central Bank (1975–78); former head of the legal department of the Office of the High Commissioner for Former Resistance Fighters (1973–75).

**Mr Abdul G. KOROMA** (Sierra Leone)

Judge at the International Court of Justice since 1994; former President of the Henri Dunant Centre for Humanitarian Dialogue in Geneva; former member of the International Law Commission; former Ambassador and Ambassador Plenipotentiary to many countries as well as to the United Nations.

**Mr Pierre LYON-CAEN** (France)

Honorary Advocate-General, Court of Cassation (Social Division); member of the National Security Ethics Commission; National Advisory Committee on Human Rights; President, Journalists Arbitration Commission; Former Deputy Director, Office of the Minister of Justice; Public Prosecutor at the Nanterre Tribunal de Grande Instance (Hauts de Seine); former President of the Pontoise Tribunal de Grande Instance (Val d'Oise); graduate of the Ecole Nationale de la Magistrature.

**Ms Elena MACHULSKAYA** (Russian Federation)

Professor of Law, Department of Labour Law, Faculty of Law, Moscow State Lomonosov University; Professor of Law, Department of Labour and Social Law, Russian State University of Oil and Gas; former lawyer with the Moscow State Poligraphic Institute; Secretary, Russian Association for Labour and Social Security Law; and expert, Moscow–Helsinki Group on Human Rights.

**Mr Vitit MUNTARBHORN** (Thailand)

Professor of Law, Chulalongkorn University, Bangkok; former United Nations Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea; former United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; former Chairperson of the National Subcommittee on Child Rights (Thailand); Commissioner of the International Commission of Jurists; member of the Advisory Council of Jurists, Asia Pacific Forum of National Human Rights Institutions; Co-Chairperson, Civil Society Working Group for an ASEAN Human Rights Body; member, Advisory Group of Eminent Persons (UNHCR).

**Ms Angelika NUSSBERGER, MA** (Germany)

Doctor of Law; Professor of Law at the University of Cologne; Vice-President of the University of Cologne; Director of the Institute for Eastern European Law of the University of Cologne, substitute member of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe,

member of the Pontifical Academy of Social Sciences (since 2008); former legal adviser in the Directorate General of Social Cohesion of the Council of Europe (2001–02).

**Ms Rosemary OWENS** (Australia)

Professor and Dean of Law, Adelaide Law School, The University of Adelaide; former Editor and currently member of the editorial board of the *Australian Journal of Labour Law*; International Reader for the Australian Research Council; Chairperson of the South Australian Governments' Ministerial Advisory Committee on Work/Life Balance; former Chairperson and member of the Board of Management of the Working Women's Centre (SA).

**Ms Ruma PAL** (India)

Former judge of the Supreme Court of India; former judge in the Calcutta High Court; founding member of the Asia-Pacific Advisory Forum on Judicial Education on equality law; Executive Council member of the Commonwealth Human Rights Initiative and member of various other national and regional bodies; former Professor, Ford Foundation Chair on Human Rights (NUJS).

**Mr Paul-Gérard POUYOUÉ** (Cameroon)

Professor and Vice-Rector of the University of Yaoundé II; member of the International Society for Labour and Social Security Law, the International Foundation for the Teaching of Business Law, the Association Henri Capitant and the Society of Comparative Law; former member of the Scientific Council of the AUPELF-UREF (*Agence universitaire francophone*) from 1993 to 2001; guest or associate professor at several foreign universities; founder and Director of the *Revue Juridis périodique*; President of the Association for the Promotion of Human Rights in Central Africa (APDHAC).

**Mr Raymond RANJEVA** (Madagascar)

Member of the International Court of Justice (1991–2009); Vice-President (2003–06), President (2005) of the Chamber formed by the International Court of Justice to deal with the case concerning the Frontier Dispute; senior judge of the Court since February 2006; Bachelor's degree in law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; Agrégé of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux-Montesquieu. Professor at the University of Madagascar (1981–91) and other institutions; a number of administrative posts held, including First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegations to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties, Vienna (1976–77); First Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the International Court of Arbitration of the International Chamber of Commerce; member of the Court of Arbitration for Sport; member of the Institute of International Law. Member of numerous international and national professional and academic societies. Member of Pontifical Council for Justice and Peace.

**Mr Yozo YOKOTA** (Japan)

Professor, Chuo Law School; President, Japan Association for United Nations Studies; President, Centre for Human Rights Affairs (Japan); Commissioner, International Commission of Jurists; Board Member, Japan Association of International Human Rights Law and Japan Association of World Law; former Professor, University of Tokyo and International Christian University; former member, UN Sub-commission on the Promotion and Protection of Human Rights.



  


## ***Part II. Observations concerning particular countries \****

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\* In accordance with the decision taken at its 81st Session (November–December 2010), the Committee recalls that it follows a specific approach in identifying in its comments cases of progress. This approach is described in paragraphs 61 to 67, Part I (General Report) of the present report. In particular, the Committee recalls that the identification of a case of progress does not mean that it considers the country in question to be in general conformity with the Convention. Further, an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.



## **I. Observations concerning reports on ratified Conventions** *(articles 22, 23, paragraph 2, and 35, paragraphs 6 and 8, of the Constitution)*

### **General observations**

#### **Congo**

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received and that 18 reports are now due (Conventions Nos 13, 14, 29, 81, 87, 89, 95, 98, 100, 105, 111, 119, 138, 144, 149, 150, 152 and 182), most of which should include information in reply to the Committee's comments. The Committee takes due note of the explanations provided by the Government representative to the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010) indicating the need for the training of officials who have recently been made responsible for the preparation of reports following staff movements within the Ministry of Labour. The Committee hopes that the Office will be in a position to provide all appropriate technical assistance, as indicated in its letter of 16 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards, also in the context of the technical cooperation from which the Government has been benefiting for several years. It requests the Government to take the necessary measures without delay for the submission of all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

#### **Djibouti**

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 37 reports are now due (Conventions Nos 1, 9, 13, 16, 19, 22, 23, 26, 29, 38, 53, 55, 56, 63, 69, 71, 73, 81, 87, 88, 94, 95, 96, 98, 100, 101, 105, 106, 108, 111, 115, 120, 122, 124, 138, 144 and 182), most of which should include information in reply to the Committee's comments. As emphasized by the Office in its letter of 16 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), the Committee notes that, despite the efforts made in 2008 to resolve the difficulties encountered in the sending of reports, the Government is once again faced by a significant backlog in this respect. The Committee requests the Government to take the necessary measures without delay, including through the Office's technical assistance, with a view to identifying more long-term solutions and to submit the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

#### **Dominica**

The Committee notes that the reports due on the application of ratified Conventions have not been received and that nine reports are now due: a first report on Convention No. 147 (due since 2006) and eight other reports (Conventions Nos 16, 19, 29, 81, 95, 105, 138 and 182), most of which should include information in reply to the Committee's comments. It notes the efforts made by the Government in 2009 to submit the great majority of reports have not been followed up this year. In accordance with the indications in its letter of 15 July 2010 pursuant to the conclusions adopted

by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), the Office raised the issue of the preparation of reports in a mission carried out in July 2010, with emphasis on the importance of providing replies to the Committee's comments. In response to the difficulties related to the lack of personnel, as indicated by the Government, the Office reiterated its availability to supplement the support provided in 2009. The Committee requests the Government to take the necessary measures without delay, including requesting technical assistance from the Office with a view to identifying long-term solutions, and to submit the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Equatorial Guinea

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received and that 14 reports are now due: two first reports on Conventions Nos 68 and 92 (due since 1998) and 12 other reports (Conventions Nos 1, 14, 29, 30, 87, 98, 100, 103, 105, 111, 138 and 182), most of which should include information in reply to the Committee's comments. With the exception of one report submitted in 2008, the Government has not provided reports since 2006. The Committee therefore wishes to express its *deep concern* at this situation, which has continued despite the numerous initiatives taken by the Office to offer technical assistance, including through its letter of 16 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010). The Committee urges the Government to take the necessary measures without delay, including by requesting technical assistance from the Office, with a view to the submission of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## France

### *Non-metropolitan territories*

In its previous general observation, the Committee referred to a statement communicated by the Government in accordance with article 35 of the Constitution with regard to the status of the non-metropolitan territories and the Conventions declared applicable therein. So that the statement could be registered and take effect, the Government was invited to provide certain specifications relating to the territories which maintain the status of non-metropolitan territories within the meaning of the Constitution of the ILO. As the Government provided the necessary specifications, the statement was registered and took effect on 31 August 2009, the date of its receipt by the Director-General.

The Committee notes that as a result of the statement five territories, Guadeloupe, French Guiana, Martinique, Réunion and St Pierre and Miquelon, are no longer considered to be non-metropolitan territories within the meaning of the Constitution of the ILO. Accordingly, all the Conventions ratified by France are applicable to them and the reports provided under article 22 of the Constitution on the application of ratified Conventions are also considered to cover those territories. The Committee accordingly included the examination of the pending issues relating to these five territories in its examination of the reports submitted under article 22 of the Constitution. The Committee also notes that the Government specified that three territories, Clipperton Island, St Martin and St Barthélemy, the status of which in relation to the Constitution of the ILO had never been specified, are in the same legal situation as the five territories referred to above.

The Committee further notes that, under the terms of the statement submitted by France, three territories, New Caledonia, French Polynesia and the French Southern and Antarctic territories, retain the status of non-metropolitan territories within the meaning of article 35 of the Constitution. The Committee notes in this respect that, according to the information provided by the Government, the Conventions applicable therein remain unchanged. The Committee has decided to take up once again the examination of the reports concerning the Conventions declared applicable to these three non-metropolitan territories, which it suspended at its last session while awaiting further information from the Government. Noting that the reports due this year have not been received with regard to one non-metropolitan territory (the French Southern and Antarctic territories), it hopes that the Government will take the necessary measures for their submission in the near future, in accordance with its constitutional obligation.

## Guinea

The Committee notes with *deep concern* that, for the fourth consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 47 reports are now due (Conventions Nos 3, 11, 13, 14, 16, 26, 29, 45, 62, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 115, 117, 118, 119, 120, 121, 122, 132, 133, 134, 135, 136, 138, 139, 140, 142, 143, 144, 148, 149, 150, 151, 152, 156, 159 and 182), most of which should include information in reply to the Committee's comments. The Office once again drew the Government's attention to this worrying situation in its letter of 15 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), in which it emphasized that the resolution of the difficulties encountered by the Government constituted a priority for technical assistance. The Committee notes that the Government benefited from a training scholarship for international labour standards in May 2010 and that the organization of an

important tripartite training workshop on constitutional obligations, also envisaged for 2010, had to be postponed due to the situation in the country. The Committee firmly hopes that, as soon as the national situation so permits, the Office will be able to provide all the necessary assistance to the Government so that it can submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Guinea-Bissau

The Committee notes with *deep concern* that, for the fourth consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 26 reports are now due: the first report on Convention No. 182, due this year, and 25 other reports (Conventions Nos 1, 12, 14, 17, 18, 19, 27, 29, 45, 68, 69, 73, 74, 81, 88, 89, 91, 92, 98, 100, 105, 106, 107, 108 and 111), most of which should include information in reply to the Committee's comments. The Office once again drew the Government's attention to this worrying situation in its letter of 20 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), in which it indicated that the technical assistance provided regularly to the Government since 2008 would be supplemented. According to the Office, discussions are being held on the organization of training in 2011. The Committee firmly hopes that this training will be organized as soon as possible so that the Government is able to submit the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Guyana

The Committee notes that, for the third consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 31 reports are now due (Conventions Nos 2, 12, 19, 29, 42, 45, 81, 87, 97, 98, 100, 105, 108, 111, 115, 129, 135, 136, 137, 138, 139, 140, 142, 144, 149, 150, 151, 166, 172, 175 and 182), most of which should include information in reply to the Committee's comments. The Office once again drew the Government's attention to this situation in its letter of 15 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010). The Committee further notes that the officials responsible for the preparation of reports received training in July 2010 and that, on that occasion, the Government expressed its commitment to improving the sending of reports. The Committee notes with *regret* that, despite these assurances and the regular follow-up action taken by the Office, the sending of reports was not recommenced this year. The Committee urges the Government to take the necessary measures without delay for the submission of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Kyrgyzstan

As in its previous general observation of 2009, the Committee notes with *deep concern* that the reports due on the application of ratified Conventions have not been received. A total of 39 reports are now due: five first reports on Convention No. 111 (due since 1994), Conventions Nos 17 and 184 (due since 2006) and Conventions Nos 131 and 144 (due since 2009), and 34 other reports (Conventions Nos 11, 16, 23, 29, 69, 73, 77, 78, 79, 81, 87, 92, 95, 97, 98, 100, 105, 108, 115, 119, 120, 122, 124, 133, 134, 138, 147, 148, 149, 150, 154, 157, 159 and 160), most of which should include information in reply to the Committee's comments. In its letter of 26 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), the Office reminded the Government that it is available, as soon as the national situation so permits, to provide any assistance in addition to that regularly provided until 2009. The Committee firmly hopes that the Government will respond to this offer with a view to coping with an important backlog of reports. It urges the Government to take the necessary measures for the submission of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Liberia

The Committee notes that, for the third consecutive year, the Government has not indicated in the reports received the representative organizations of employers and workers to which copies of the reports on the application of ratified Conventions are to be communicated in accordance with article 23, paragraph 2, of the Constitution. It also refers to its comments on the application of Convention No. 144. The Committee requests the Government to take the necessary measures without delay, including by requesting technical assistance from the Office, with a view to discharging its obligations under the Constitution and the above Convention.

## Sao Tome and Principe

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received. A total of 13 reports are now due: the first report on Convention No. 184 (due since 2007) and 12 other reports (Conventions Nos 18, 29, 81, 87, 88, 98, 100, 105, 106, 111, 144 and 159), all of which should include information in

reply to the Committee's comments. However, the Committee notes that six of the seven first reports due have been received this year and that the Government has recommenced the sending of reports after receiving technical assistance from the Office at the end of 2009. As indicated by the Office in its letter of 20 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), this assistance is to be supplemented. The Committee hopes that the Office will be in a position to provide all appropriate technical assistance in the near future. It requests the Government to take the necessary measures without delay to pursue its efforts for the sending of reports and for the submission of all of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## **Seychelles**

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received. A total of 14 reports are now due: four first reports on Conventions Nos 73, 147, 161 and 180, which have been due since 2007, and ten other reports (Conventions Nos 8, 22, 81, 105, 138, 148, 150, 151, 155 and 182), all of which should include information in reply to the Committee's comments. However, the Committee notes that two first reports have been submitted this year, in addition to six other reports. The Government has accordingly taken measures to recommence the sending of reports after benefiting from two training sessions this year on the preparation of reports and on international labour standards in general. In its letter of 22 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), the Office indicated that this training will be supplemented with additional assistance. The Committee hopes that the Office will be in a position to provide all appropriate technical assistance in the near future. It requests the Government to take the necessary measures without delay to pursue its efforts for the submission of all of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## **Sierra Leone**

The Committee notes with *deep concern* that, for the fifth consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 26 reports are now due (Conventions Nos 8, 16, 17, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126 and 144), most of which should include information in reply to the Committee's comments. The Office drew the Government's attention to this worrying situation in its letter of 22 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), in which it emphasized that the resolution of the difficulties encountered by the Government was a priority for technical assistance. Discussions are being held on the practical arrangements for the provision of such assistance to enable the Government to recommence the sending of reports. The Committee hopes that the discussions between the Office and the Government will result in the adoption of solutions so that the Government can take the necessary measures without delay for the submission of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## **Solomon Islands**

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received and that 13 reports are now due (Conventions Nos 8, 14, 16, 19, 26, 29, 42, 45, 81, 84, 94, 95 and 108), most of which should include information in reply to the comments of the Committee of Experts. In its letter of 22 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), the Office indicated its availability to the Government to supplement the training provided in 2008 and 2009, which had enabled the Government to make up part of the backlog in the sending of reports. The Committee hopes that the Office will be in a position to provide any appropriate technical assistance in the near future. It requests the Government to take the necessary measures without delay for the identification of more long-term solutions and for the submission of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## **Somalia**

The Committee notes with *deep concern* that, for the fifth consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 13 reports are now due (Conventions Nos 16, 17, 19, 22, 23, 29, 45, 84, 85, 94, 95, 105 and 111). As indicated by the Office in its letter of 15 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), the Committee hopes that, as soon as the national situation so permits, the Office will be in a position to provide all the necessary assistance so that the Government can submit the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Thailand

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received. A total of five reports are now due: the first report on Convention No. 159 (due since 2009) and four other reports (Conventions Nos 29, 100, 122 and 182), most of which should include information in reply to the Committee's comments. The Committee requests the Government to take the necessary measures without delay, including by requesting technical assistance from the Office, for the submission of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Uganda

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 25 reports are now due (Conventions Nos 11, 12, 19, 26, 29, 45, 81, 87, 94, 95, 98, 100, 105, 111, 122, 123, 124, 138, 143, 144, 154, 158, 159, 162 and 182), most of which should include information in reply to the Committee's comments. The Committee takes due note of the explanations provided by the Government representative to the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), reporting administrative and financial difficulties in the collection of information. Discussions are being held with the Office to find solutions to these difficulties. In its letter of 16 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards, the Office emphasized that the measures taken by the Government in 2008 to improve the preparation of reports should be reinforced. In this respect, according to the information provided to the Committee, it is important to reinforce the labour administration, which is affected by a significant lack of resources. The Committee hopes that the discussions between the Office and the Government will lead to solutions so that the Government can take the necessary measures without delay for the submission of the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## United Kingdom

### Bermuda

The Committee notes that the measures adopted in 2008 and 2009 for the submission of the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been followed up this year as none of the reports have been received. A total of ten reports are now due (Conventions Nos 16, 22, 23, 58, 82, 87, 98, 108, 133 and 147).

### British Virgin Islands

The Committee notes with *deep concern* that, for the fourth consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received. A total of 16 reports are now due (Conventions Nos 8, 10, 14, 23, 26, 29, 58, 59, 82, 85, 87, 94, 97, 98, 105 and 108), some of which should include information in reply to the Committee's comments.

### Falkland Islands (Malvinas)

The Committee notes with *deep concern* that, for the fourth consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received. A total of 16 reports are now due (Conventions Nos 8, 10, 14, 22, 23, 29, 32, 45, 58, 59, 82, 87, 98, 105, 108 and 182), some of which should include information in reply to the Committee's comments.

### St Helena

The Committee notes that, for the second consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received. A total of 21 reports are now due (Conventions Nos 8, 10, 11, 12, 14, 16, 17, 19, 29, 58, 59, 63, 82, 85, 87, 98, 105, 108, 150, 151 and 182), certain of which should include information in reply to the Committee's comments.

\* \* \*

The Committee notes the statement by the Government representative to the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), recalling that the difficulties relating to the submission of reports in three territories (Falkland Islands (Malvinas), British Virgin Islands and St Helena) were due to a lack of resources, as the territories in question have largely independent administrations, but which have available very limited human and financial resources. In general, the Government is working with the non-metropolitan territories with a view to extending the application to them of a number of fundamental Conventions. While noting the measures taken in this respect, the Committee hopes that due account will be taken of the issue of resources for the sending of the

corresponding reports. With regard to the three territories referred to above, for which the backlog in the sending of reports is the most significant, the Committee urges the Government to take all the necessary measures to provide them with the indispensable support, including with the assistance of the Office. It requests the Government to identify long-term solutions for the territory (Bermuda) which is once again experiencing difficulties. The Committee trusts that the Government will be in a position to submit all of the reports and information due on the Conventions declared applicable to all of these non-metropolitan territories, in accordance with its constitutional obligation.

## **Vanuatu**

The Committee notes that, for the third consecutive year, the reports due on the application of ratified Conventions have not been received. It recalls that these reports are all first reports: namely the first reports on Conventions Nos 29, 87, 98, 100, 105, 111 and 182, which have been due since 2008, and the first report due this year on Convention No. 185. According to the information provided to the Committee by the Office, numerous training activities have been organized for the Government which, for the first time, participated in a training programme on international labour standards in May 2010. In its letter of 22 July 2010 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), the Office indicated that it would provide further assistance. The Committee hopes that the Office will be in a position to provide all appropriate technical assistance in the near future, including in the context of the implementation of technical cooperation programmes, through which the available resources can be reinforced. Nevertheless, in view of the training from which the Government has already benefited and so that a first evaluation of the application of all of the ratified Conventions can be undertaken, the Committee urges the Government to take the necessary measures without delay for the submission of the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Bahamas, Barbados, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Denmark, Ethiopia, Fiji, France, Gambia, Grenada, Haiti, Hungary, Ireland, Kazakhstan, Lao People's Democratic Republic, Liberia, Luxembourg, Republic of Moldova, Myanmar, Netherlands: Aruba, Nigeria, Pakistan, Rwanda, Samoa, San Marino, Singapore, Togo, Trinidad and Tobago, Ukraine, Yemen, Zambia.*



## Freedom of association, collective bargaining, and industrial relations

### Argentina

#### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)**

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 24 August 2010 and of the Confederation of Argentinean Workers (CTA) of 31 August 2010, which refer to legislative matters already raised by the Committee, and to violations of trade union rights in practice (including the refusal to register the Branch Association of Workers of Subte and Premetro, the dismissal of workers for engaging in protests, and acts of violence against trade union leaders and members in the provinces of Rio Negro and Chubut). **The Committee requests the Government to provide its observations on this subject.** The Committee observes that some of the alleged acts of violence are the subject of a complaint to the Committee on Freedom of Association. Taking into account the nature of the alleged acts, the Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected.

The Committee also notes the comments of the General Confederation of Labour (CGT) dated 13 October 2010.

The Committee further notes the report of the mission undertaken in the month of May 2010 in relation to the application of the Convention, which was of an exploratory nature.

#### **Application by the CTA for trade union status**

The Committee recalls that since 2005 it has been noting in its observations that the CTA's application for trade union status (filed in August 2004) is pending. On several occasions the Committee of Experts, in the same way as the Conference Committee on the Application of Standards and the Committee on Freedom of Association (in Case No. 2477), has urged the Government to secure a decision on this matter without delay. In its 2010 comments, the CTA indicates that up to now there has been no decision on its application for trade union status. The Committee notes that, according to the report of the mission which visited the country in 2010, draft resolutions have been submitted in the Chamber of Deputies and the Senate calling for trade union status to be granted to the CTA. The Committee notes the Government's indication in its report that there are doubts concerning the interpretation of the legal provisions with regard to the possibility of the coexistence of trade union federations covering multiple sectors and that the intervention in the proceedings of the Office of the Prosecutor General of the Ministry of Finance is being considered in its capacity as the highest legal advisory body of the public administration, with a view to obtaining a decision on the matter. In this respect, while noting the new information provided by the Government, the Committee **deeply regrets** the length of time that has elapsed – over six years – without any decision from the administrative authority on the CTA's application for trade union status. **In these circumstances, taking into account the importance of this matter, the Committee once again urges the Government to ensure that a decision is reached on the matter without delay and to provide information on any developments in this regard.**

#### **Act on Trade Union Associations and its implementing Decree**

The Committee recalls that it has been referring for many years in its comments to certain provisions of the Act on Trade Union Associations (No. 23551) of 1998 and its enabling regulations issued by Decree No. 467/88, which are not in conformity with the Convention. The Committee notes the Government's indications that: (1) the observations relating to the Act were challenged in previous reports and the will of the Government to bring the legislation into conformity was demonstrated once again with the request for ILO technical assistance, which was provided in May 2010; (2) it was indicated to the mission that the views on the need to amend the labour legislation are not unanimous or convergent, and that there has not yet been a decision by the Government on this matter; (3) it is significant that the mission report referred to the existence of positive developments in this respect, emphasizing the broad debate that is being held in society and the convergent opinions of all those concerned to find a solution through dialogue, and that the Government will continue to facilitate dialogue with a view to compliance with its ILO obligations through social dialogue; (4) the climate of social dialogue and the accompanying will to seek solutions is reflected in the statistical trends on existing occupational organizations: 3,025 trade union associations at the first, second and third levels that have been legally registered; 1,534 with trade union status; 1,442 are first level unions or federations; 85 federations; and seven confederations. In June 2009, a total of 3,826,366 workers were members of first-level organizations and 40 per cent of employed persons belong to a union; and (5) when the new officers of the CTA take up their functions, the social partners will be convened in the context of Convention No. 144 to formulate a working agenda covering the subjects which have to be resolved in the light of the Committee's comments.

While welcoming this information, the Committee recalls that its comments concerned the following matters:

### *Trade union status*

- Section 28 of the Act, under which, in order to challenge an association’s trade union status, the petitioning association must have a “considerably larger” membership; and section 21 of implementing Decree No. 467/88, which qualifies the term “considerably larger” by laying down that the association claiming trade union status must have at least 10 per cent more dues-paying members than the organization which currently holds the status. The Committee points out that a requirement of a considerably larger membership, amounting to 10 per cent more members than the union currently holding most representative status, is unduly high and is contrary to the Convention, as in practice, it stands in the way of trade unions that are merely registered being able to claim trade union status.
- Section 29 of the Act, under which an enterprise trade union may be granted trade union status only when no other organization with trade union status exists in the geographical area, occupation or category; and section 30 of the Act, under which, in order to be eligible for trade union status, unions representing a trade, occupation or category must show that they have different interests from the existing trade union or federation and the latter’s status must not cover the workers concerned. The Committee considers that the requirements that unions representing enterprises, trades or categories have to meet in order to obtain trade union status are unduly demanding, and in practice restrict their access to trade union status, giving preferential treatment to existing organizations even where unions representing enterprises, trades or categories of workers are more representative, in accordance with section 28.

### *Benefits deriving from trade union status*

- Section 38 of the Act, under which the check-off of trade union dues is allowed only for associations with trade union status, and not for associations that are merely registered. The Committee recalls that, as emphasized by the Supreme Court of Justice of the Nation (SCJN), the “most representative” status should not imply privileges other than priority of representation in collective bargaining, in consultations with the authorities and in the appointment of delegates to international bodies. The Committee consequently considers that this provision adversely affects and discriminates unduly against organizations that are merely registered.
- Sections 48 and 52 of the Act give special protection (trade union immunity) only to representatives of organizations that have trade union status. The Committee considers that sections 48 and 52 provide preferential treatment for representatives of organizations with trade union status in the event of acts of anti-union discrimination, and that this exceeds the privileges that may be granted to the most representative organizations by virtue of the principle set out in the previous paragraph.

The Committee emphasizes that it has been making these comments for many years and that tangible measures have not been taken to make the requested changes. The Committee recalls that the Conference Committee on the Application of Standards requested the Government in 2007 to join forces with the social partners, with ILO assistance, to formulate draft legislation to give full effect to the Convention.

The Committee notes with *interest* that the Supreme Court of Justice of the Nation (CSJN) found section 52 of the Act on Trade Union Associations to be unconstitutional in the case *Rossi, Adrianna Maria v. National State–Argentine Navy*, and that the IVth Chamber of the National Labour Appeal Court found section 29 of the same Act to be unconstitutional in the case *Ministry of Labour v. Staff Association of the Catholic University* in relation to the Act on Trade Union Associations. The Committee also recalls that in its previous observation it noted the ruling of the CSJN in the case *Association of State Workers v. The Ministry of Labour* in relation to the Act on Trade Union Associations, in which it found that section 41(a) of Act No. 23551 is in violation of the right to freedom of association, as protected both by article 14bis of the National Constitution and by standards of international rank, since it requires “staff delegates” and the members of the “internal commissions and similar bodies” envisaged in section 40 to be members of “the respective trade union associations with trade union status and to be elected in the elections convened by that association”. With regard to this ruling, the Committee notes the Government’s indication in its report that: (1) section 41 of the Act remains in force in accordance with the constitutional rules as any decision which finds a provision to be unconstitutional, even when issued by the Supreme Court of Justice, is restricted in scope to the particular legal case or question on which it was given and does not in any event imply the repeal or nullity of the provision which will continue to remain in force until it is repealed or amended by the legislative or executive authority which is competent to do so; (2) the system guarantees compliance with the principle of the division of powers, thereby preventing the judicial authorities from taking over areas of competence which are reserved by the National Constitution for other authorities; and (3) the ruling will never have an effect on sections 48 and 52 of the Act on Trade Union Associations, as those provisions were not examined and were not covered by the ruling of the Supreme Court, as they were not applicable to the facts examined in the specific judicial case. ***The Committee emphasizes that these rulings have the effect of overcoming a significant number of the problems under examination and trusts that they will be taken into account in the process of tripartite dialogue that the Government is endeavouring to pursue.***

The Committee also notes that the mission which visited the country in May 2010 noted that various sectors of the Chamber of Deputies submitted draft legislation to amend the trade union laws and that it expressed concern that the

proliferation of such drafts would give rise to confusion and delays and that effect would not be given to the Committee's comments. ***Under these conditions, the Committee requests the Government, taking into account the court rulings finding various sections of the Act on Trade Union Associations (No. 23551) to be unconstitutional, to take the necessary measures, in consultation with all of the social partners, to make the legislative changes requested in relation to the matters covered by these rulings, as well as in relation to all of the pending issues. The Committee requests the Government to provide information in this respect in its next report.***

#### **Determination of minimum services**

In its previous comments, the Committee noted that the CTA had referred to Decree No. 272/2006 issued under section 24 of Act No. 25877 on collective labour disputes and, specifically, that it objected to the fact that, under the terms of section 2(b) of the Decree, the Guarantees Commission, which includes representation of workers' and employers' organizations and of other independent persons for the determination of minimum services, may only act in an advisory capacity, as the final decision on the determination of the necessary minimum services lies with the Ministry of Labour in final instance in cases where "the parties have not come to an agreement" or "when the agreements are inadequate". In this respect, the Committee requested the Government to: (1) provide information on the cases in which the Guarantees Commission had intervened regarding minimum services and, more specifically, information on the number of occasions on which the administrative authority had not followed the opinion of the Guarantees Commission; and (2) ensure that the Guarantees Commission becomes operational. The Committee notes with **satisfaction** Decree No. 362 of the National Executive Authorities establishing the Guarantees Commission and appointing its members (with representatives of the Argentine Industrial Union, the Argentine Federation of Law Societies, the National Inter-University Council, the Confederation of Argentinean Workers, the General Confederation of Labour of the Republic of Argentina and the executive authorities). The Committee notes the Government's indication that up to now there has been no collective dispute with the characteristics in which the intervention of the Guarantees Commission is envisaged. ***The Committee requests the Government to provide information in its next report on other cases, during the period covered by the report, in which the Guarantees Commission has intervened in relation to minimum services and whether the administrative authorities followed its recommendations in practice.***

***Finally, the Committee trusts that, as indicated by the Government in its report, the social partners will meet in the near future to examine the report of the preliminary exploratory mission which was undertaken from 3 to 7 May 2010 with a view to identifying shared solutions for all of the pending matters. The Committee hopes that the outcome of this examination, in which it is to be hoped that the criteria of constitutionality set forth by the judicial authorities referred to above are taken into account, will serve as a basis for the next technical assistance mission with a view to achieving full conformity with the Convention.***

## **Bangladesh**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1972)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010, concerning issues already raised by the Committee as well as serious allegations on killings and physical assaults of protesters and arrests of trade union leaders. The Committee recalls that freedom of association and in particular the right to organize under the Convention can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of workers' organizations and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular. ***In these circumstances, the Committee urges the Government to provide full particulars in respect of all the allegations of killings, physical assaults and detention of trade unionists and trade union leaders.***

***The Committee also requests the Government to send information on the other matters raised by the Committee in its 2009 observation (80th Session), for examination in the context of the regular reporting cycle in 2011.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1972)**

The Committee notes the Government's reply to the comments on the application of the Convention made by the International Trade Union Confederation (ITUC) in 2009. It further notes the comments submitted by the National Level Trade Union Federation of Workers (NCCWE), sent along with the Government's report, stating that there is a weak implementation of labour law in general, and more particularly an unwillingness of employers to recognize trade unions and collective bargaining. ***The Committee requests the Government to provide its observations thereon.***

***Article 1 of the Convention. Protection of workers in export processing zones (EPZs) against anti-union discrimination.*** In its previous comments, the Committee had noted that in its 2009 communication, the ITUC referred to numerous problems concerning the application of the Convention in the EPZ sector, particularly in the garment industry. The ITUC further stated that although the law provides for the establishment of an EPZ labour tribunal and an

EPZ labour appellate, these two bodies had yet to be established, thus denying workers access to the judicial system for their grievances. The Committee had requested the Government to provide information in respect of these matters, including information on the number of complaints of anti-union discrimination in the EPZ sector submitted to the competent authorities, as well as the outcomes of those complaints.

As concerns the 2009 ITUC comments on harassment, dismissal and violence against workers in the EPZ sector, the Committee notes that the Government indicates in its report that the Bangladesh EPZ Authority (BEPZA) is not aware of any harassment, dismissal and violence against workers in the EPZ sector.

As concerns the establishment of an EPZ Labour Tribunal and an EPZ Labour Appellate, the Committee had previously noted that according to the Government, EPZ workers could seek judicial redress in cases of anti-union discrimination. The Committee notes that the Government indicates in its present report that it has decided to allow the existing labour courts of the country (established under the Labour Act, 2006) to dispose of EPZs industrial disputes and settle the workers' complaints, by incorporating necessary modifications in sections 56 and 59 of the EPZ Workers Welfare Association and Industrial Relation Act (EWAIR Act 2004) (the EPZ labour law). In this respect, the Committee further notes that the EWAIR Act 2004, as amended by the EWAIR Act 2010 is now in the process of being adopted by the Parliament. ***In these circumstances, the Committee requests the Government to indicate any development in this regard in its next report and to provide a copy of the EWAIR Act 2010, once adopted.***

***Article 2. Lack of legislative protection against acts of interference.*** The Committee had previously noted that the Labour Act 2006 did not contain a prohibition of acts of interference designed to promote the establishment of workers' organizations under the domination of employers or their organizations, or to support workers' organizations by financial or other means with the object of placing them under the control of employers or their organizations, and had requested the Government to indicate the measures taken to adopt such a prohibition. The Committee notes the Government's indication that protective measures are laid down in the Labour Act, particularly in sections 195 and 196 concerning "unfair labour practice on the part of the employer", and that such act by the employer is an offence punishable under section 291 of the Labour Act, which provides that such offence is punishable by imprisonment for a term which may extend two years or with a fine of up to 10,000 Taka, or both. The Committee further notes the Government's indication that the Tripartite Labour Law Review Committee (TLLRC) may consider adopting a more comprehensive prohibition, as requested by the Committee. ***In these circumstances, the Committee requests the Government to indicate in its next report the measures taken or contemplated so as to adopt a comprehensive prohibition that covers acts of financial control of trade unions or trade union leaders, as well as acts of interference in internal trade union affairs. The Committee hopes that as a first step, the TLLRC will include in its recommendations that a comprehensive prohibition covering acts of financial control of trade unions or trade union leaders, as well as acts of interference in internal trade union affairs should be adopted.***

***Article 4. Legal requirements for collective bargaining.*** In its previous comments, the Committee had referred to section 179(2) of the Labour Act, which provides that a trade union may only obtain registration if it represents 30 per cent of the workers in an establishment, as well as to section 202(15) of the Labour Act, which provides that if there is more than one trade union in an enterprise, the Director of Labour shall hold a secret ballot to determine the collective bargaining agent. The Committee notes that according to the Government, there is no percentage requirement for the recognition of a collective bargaining agent. However, the Committee notes that section 202(15)(e) of the Labour Act provides that the trade-union that secures the highest votes is declared as the collective bargaining agent, providing that no trade union shall be declared to be the collective bargaining agent unless it obtains the votes of at least one third of the total workers employed in the establishment. The Committee recalls once again that the percentage requirements for registration of a trade union, and for the recognition of a collective bargaining agent set out in sections 179(2) and 202(15) of the Labour Act 2006, may impair in certain cases, in particular in respect of large enterprises, the development of free and voluntary collective bargaining. The Committee recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all unions in this unit, at least on behalf of their own members (see the General Survey, paragraph 241). ***In these circumstances, the Committee requests the Government to provide in its next report information on the measures taken or contemplated so as to ensure that, where no union represents one third of the employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members.***

The Committee further notes that according to NCCWE, collective bargaining is limited as there is no legal provision for collective bargaining at the industry, sector or at national levels. ***The Committee requests the Government to provide its observations in this regard.***

***Promotion of collective bargaining in the EPZs.*** In its previous comments, the Committee had requested the Government to provide information on the extent of collective bargaining in the EPZ sector, including statistics on the number of collective agreements concluded and the number of workers they cover. The Committee notes the Government's indication that 274 enterprises are eligible for workers' associations among 325 in operation and that workers' associations referendums were held in 198 enterprises – or 72.3 per cent of the total number of eligible enterprises. However, no additional information was provided by the Government concerning the conclusion of collective agreements. ***The Committee therefore requests the Government to provide information in its next report on the extent***

*of collective bargaining in the EPZ sector, including statistics on the number of collective agreements concluded since 2008, and the number of workers they cover.*

*Tripartite wages commissions in the public sector.* The Committee recalls that in its previous comments, it had requested the Government to take the necessary legislative or other measures to end the practice of determining wage rates and other conditions of employment in the public sector by means of government-appointed tripartite wages commissions (section 3 of Act No. X of 1974). The Committee notes that the Government indicates in its report that this system does not prevent free and voluntary collective bargaining. Nevertheless, the Committee, while recognizing the singularity of the public sector which allows special modalities, considers that simple consultation with unions of public servants not engaged in the administration of the State do not meet the requirements of *Article 4* of the Convention. **Therefore, the Committee urges the Government to take the necessary measures to end the practice of determining wage rates and other conditions of employment of public servants not engaged in the administration of the State by means of government-appointed tripartite wages commissions, so as to favour free and voluntary negotiations between workers' organizations and employers or their organizations. The Committee once again requests the Government to indicate any measures taken or contemplated in this regard.**

## Barbados

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1967)**

The Committee takes note of the Government's reply to the comments made by the International Trade Union Confederation (ITUC) dated 26 August 2009. The Committee also notes the communication made by the ITUC dated 24 August 2010.

*Article 3 of the Convention.* *The right of organizations freely to organize their activities and to formulate their programmes.* The Committee recalls that for numerous years it has advised the Government to amend section 4 of the Better Security Act, 1920, according to which any person who wilfully breaks a contract of service or hiring, knowing that this could endanger real or personal property, is liable to a fine or up to three months' imprisonment, so as to eliminate the possibility of employers invoking it in cases of strikes. The Committee notes that the Government indicates in its report that the administrative authority has recently undertaken to move towards the drafting of an essential services legislation. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and measures of imprisonment should not be imposed on any account, including as regards strikes in essential services. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. **The Committee trusts that the Government will take duly into account the abovementioned principle when drafting the essential services legislation. The Committee requests the Government to keep it informed of any developments in this respect and to provide a copy of the legislation once adopted. Moreover, the Committee once again requests the Government to amend section 4 of the Better Security Act, 1920, so as to bring it into conformity with the Convention.**

Finally, the Committee recalls that it has been requesting the Government since 1998 to provide information on developments in the process of reviewing legislation regarding trade union recognition to which the Government had referred, or to indicate whether the drafting legislation process concerning trade union recognition could be considered as abandoned. In its previous observation, the Committees had also noted that the Congress of Trade Unions and Staff Associations of Barbados indicated that the Government submitted an amended Trade Union Act Cap. 361 to trade unions for comment and review. The Committee notes that the Government indicates in its report that the drafting process regarding legislation or trade union recognition is ongoing. **The Committee requests the Government to provide with its next report information on any development in this respect.**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1967)**

The Committee takes note of the Government's reply to the comments made by the International Trade Union Confederation (ITUC) dated 26 August 2009. The Committee also notes the communication made by the ITUC dated 24 August 2010.

*Article 1 of the Convention.* *Protection against acts of anti-union discrimination.* The Committee recalls that in previous observations, it had requested the Government to take all the necessary measures to ensure that the legislation provides adequate protection against all acts of anti-union discrimination, in taking up employment and throughout the course of employment, including at the time of termination, and covering all measures of anti-union discrimination (dismissals, demotions, transfers and other prejudicial acts) as well as adequate and dissuasive sanctions. The Committee also noted the comments made by the ITUC referring to the inadequacy of remedies for workers discharged for their union activity since courts may not reinstate dismissed workers. The Committee notes that the Government indicates in its report that section 40A of the Trade Union Act, CAP 361 provides that any employer who dismisses a worker or adversely

affects the employment or alters the position of a worker, or threatens to dismiss or to adversely affect or alter the position of a worker, because that worker is, or seeks to become, an officer, delegate or member of a trade union or takes part in trade union activities can be subject to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months or to both. As regards the amount of the fines, the Committee recalls the importance of making sanctions sufficiently dissuasive against acts of anti-union discrimination or interference. The Committee notes with *interest* that the Government indicates in its report that it is in the final stages of drafting a new employment rights legislation, which will, inter alia, make provisions for an employment rights tribunal to hear cases of unfair dismissals and to make awards where necessary. ***Given that it appears that the envisaged protection would only cover cases of unfair dismissals, the Committee requests the Government to take the necessary measures to bring the legislation into conformity with the Convention as regards not only anti-union dismissals, but also other prejudicial acts perpetrated against union leaders and members because of their affiliation or trade union activities and in particular, to strengthen the amount of the legal fines and other relevant means which can be applied by the tribunal. The Committee requests the Government to provide a copy of the new employment rights legislation once adopted.***

### **Workers' Representatives Convention, 1971 (No. 135) (ratification: 1977)**

*Article 1 of the Convention. Protection of workers' representatives.* The Committee notes that the Government indicates in its report that a proposed employment rights legislation is at an advanced stage of drafting and is expected to be imminently enacted. The Committee notes with *interest* that this legislation will, inter alia, provide protection from dismissal by reason of being, or seeking to become, an officer, a shop steward, a safety and health officer, or a delegate of a trade union. Moreover, it will provide for cases to be referred by the Chief Labour Officer to a tribunal in the event that a resolution was not achieved at the level of the Labour Department. The penalty which has been ascribed for breaches of the Act, when passed, is in the range of US\$2,000 to US\$20,000 and compensation may also be awarded to the complainant under certain circumstances. ***The Committee requests the Government to provide a copy of the new employment rights legislation when adopted.***

## **Belarus**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1956)**

#### ***Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)***

The Committee notes the information provided by the Government and the discussion that took place in the Conference Committee on the Application of Standards in June 2010. The Committee further notes the comments made by the Congress of Democratic Trade Unions (CDTU) on the application of the Convention in law and in practice in a communication dated 30 August 2010.

*Article 2 of the Convention.* The Committee recalls that in its previous observation it had encouraged the Government to continue its close cooperation with the social partners in addressing the difficulties with registration of trade union organizations in law and in practice. In this respect, the Committee urged the Government to take the necessary measures to amend without delay Presidential Decree No. 2, its rules and regulations, so as to eliminate the obstacles to trade union registration (legal address and 10 per cent minimum membership requirements). The Committee notes the Government's indication that at its sitting of 14 May 2010, the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") discussed the issue of the legislation and prospects of work aimed at fulfilment of the Plan of Action on implementation of the Commission's recommendations. On that occasion, the Council established a working group of six members – which include two Government representatives, two worker representatives (one from the Federation of Trade Unions of Belarus (FPB) and one from the CDTU) and two employer organizations representatives – to examine the issues identified by the Council's members and prepare suggestions regarding the Council's decisions, taking into account positions of all parties. The Committee notes that in its communication, the CDTU points out that there have been no concrete proposals to amend Decree No. 2. ***The Committee is bound to note with regret the absence of any tangible measures taken by the Government to amend the Decree despite the numerous requests by the ILO supervisory bodies and once again urges the Government to take the necessary steps to that effect in consultation with the social partners so as to ensure that the right to organize is effectively guaranteed. The Committee requests the Government to indicate all measures taken in this respect.***

The Committee had previously requested the Government to provide information on the number of registered organizations and those denied registration during the reporting period. The Committee notes the Government's indication that 283 new organizational structures have been registered within the first six months of 2010. The Committee notes that while the Government provides no information on the number of denied registrations, the CDTU alleges that its proposals concerning registration of trade union organizations are ignored and not considered and refers to the refusal to register the "Razam" trade union, confirmed by the Supreme Court, and the primary trade union organization of the Belarus Independent Trade Union (BITU) at the "Delta Style" enterprise. ***The Committee requests the Government to provide its observations on the CDTU allegations and to provide a copy of the Supreme Court Decision on the "Razam" case. It***

*strongly encourages the Government to continue cooperation with the social partners in addressing the issue of registration in practice and to indicate in its next report all progress made in this respect.*

*Articles 3, 5 and 6.* The Committee recalls that it had previously expressed its concern at the allegations of repeated refusals to authorize the CDTU, the BITU and the Radio and Electronic Workers' Union (REWU) to hold pickets and meetings and requested the Government to conduct independent investigations into these allegations and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests. The Committee once again notes with *regret* that no information has been provided by the Government in this respect. *Recalling that protests are protected by the principles of freedom of association and that public meetings and demonstrations should not be arbitrarily refused, the Committee notes the conclusions of the Commission of Inquiry in this regard (see Trade Union Rights in Belarus, paragraphs 625–627) and once again requests the Government to indicate the measures taken to investigate the alleged cases of refusals to authorize the holding of pickets and meetings and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests.*

The Committee notes with *concern* from the CDTU's communication that the chairperson of the Soligorsk BITU regional organization was detained by the police on 4 August 2010 and subsequently found guilty of committing administrative offence and fined. According to the CDTU, the court had decided that having met members of the union near the entrance gate of the company, the trade union leader had violated the Law on Mass Activities. The CDTU explains that following a refusal by the "Delta Style" company's management to authorize a trade union meeting, the chairperson met with several women workers (on their way to their workplaces) near the entrance. *Recalling that the right to meet with workers and trade union members is an essential aspect of trade union rights, that the exercise of legitimate trade union activities should not be dependent on registration, and that authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed or its maintenance seriously and imminently endangered thereby, the Committee requests the Government to provide its observations on the facts alleged by the CDTU. In this connection, the Committee recalls that for a number of years it has been requesting the Government to amend the Law on Mass Activities and regrets that no information has been provided by the Government on concrete measures taken in this respect.*

The Committee further *regrets* that the Government has not provided any information in relation to the measures taken to amend Presidential Decree No. 24 concerning the use of foreign gratuitous aid and sections 388, 390, 392 and 399 of the Labour Code, regarding the exercise of the right to strike. The Committee also once again notes with *regret* that aside from the general statement to the effect that a meeting of the tripartite working group took place on 15 October 2010 to discuss the conclusions of the Conference Committee and questions of further work on the improvement of the legislation, and that members of the group were requested to provide their views on further steps in this regard, there was no indication of concrete proposals to amend the abovementioned pieces of legislation. *Recalling that the abovementioned legislative texts (Law on Mass Activities, Decree No. 24 and sections 388, 390, 392 and 399 of the Labour Code) are not in conformity with the right of workers to organize their activities and programmes free from interference by the public authorities and their amendment had been requested by the Commission of Inquiry over six years ago, the Committee reiterates its previous requests and requests the Government to indicate all concrete measures taken in this respect.*

*The Committee also once again requests the Government to indicate the measures taken to ensure that National Bank employees may have recourse to industrial action without penalty.*

The Committee recalls that the Government had previously reduced by ten times the price of rent for trade unions irrespective of their affiliation. The Committee notes the CDTU's allegation that the Government has cancelled its previous decision and resumed the practice of hindering trade union activities through financial pressure. The CDTU indicates in this respect that despite numerous promises of the Government, it is still not included in the list of public associations enjoying the right for 0.1 reduction factor in rent payment. The Committee notes the information provided by the Government, according to which, on 5 November 2010, Presidential Decree No. 569 "On making amendments and additions to Presidential Decrees Nos 148 of 24 March 2005 and 518 of 23 October 2009" was adopted to improve the renting mechanism and reduce rental fees for premises rented by trade unions. According to the Government, all trade unions, regardless of their affiliation, can now benefit from the tenfold reduction of rental fee.

The Committee notes with *regret* that no substantial progress has been made by the Government towards implementing the recommendations of the Commission of Inquiry and improving the application of this Convention in law and in practice during the reporting year. Indeed, the Government has not provided any information on steps taken to amend the legislative provisions in question, as previously requested by this Committee, the Conference Committee, the Commission of Inquiry and the Committee on Freedom of Association. The Committee notes that in 2010, it has only been informed of one meeting of the Council (14 May) and one meeting of its tripartite working group (15 October). It further notes that the only indicated outcome of the 15 October meeting was a proposal for its members to submit their views on further steps to take with a view to improving the legislation in light of the recommendations of the Commission of Inquiry, something that the Council has been said to be considering for a number of years already. *The Committee therefore urges the Government to intensify its efforts to ensure that freedom of association is fully and effectively*

*guaranteed in law and in practice and expresses the firm hope that the Government will intensify its cooperation with all the social partners in this regard.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1956)**

#### *Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)*

The Committee notes the information provided by the Government and the discussion that took place in the Conference Committee on the Application of Standards in June 2010. The Committee further notes the comments made by the Congress of Democratic Trade Unions (CDTU) on the application of the Convention, in law and in practice, in a communication dated 30 August 2010 and the Government's reply thereon.

*Articles 1, 2 and 3 of the Convention.* The Committee recalls that it had previously noted with concern the 2009 comments made by the CDTU on the continuing discriminatory use of fixed-term contracts. The CDTU alleged, in particular, that members of free and independent unions are forced to leave their unions under the threat of non-renewal of their contracts and provided the following statistics on the impact of threats of non-renewal of fixed-term contracts on its affiliates: primary trade union at "Grodno-Azot" enterprise had lost 930 members since 2006; primary trade union at "Belshina" enterprise in Bobruisk – 50 members since 2006; primary trade union at "Polimir" chemical company in Novopolotsk – nearly 400 members since 2006; and primary trade union at Mozyr oil refinery company – at least 50 members since the beginning of 2009. The CDTU further alleged that trade union membership of primary trade unions at "Zenit" company in Vileika (Minsk region), Brest Pedagogical University, hydraulic power station in Novolukoml, and other small union organizations also suffered. According to the CDTU, the scenario of pressure on workers in all these cases was almost the same: the floor managers or managers on ideology would invite trade union members to sign statements indicating that they were leaving independent unions and discontinuing payment of trade union membership dues. Those who refused were threatened with dismissal and non renewal of their fixed-term contracts. The Committee had expressed the firm hope that the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") would examine the allegations of anti-union discrimination and interference suffered by the CDTU-affiliated trade unions and their members at the abovementioned enterprises, as well as at "Mogilev ZIV", "Avtopark No. 1", with regard to the members affiliated to the Radio and Electronic Workers' Union (REWU) and requested the Government to inform it of the outcome of the discussion and of measures taken to redress the damages suffered. The Committee *regrets* that no information has been provided by the Government in this respect.

The Committee further notes with *concern* that in its recent communication, the CDTU alleges that this pressure on independent trade unions, through the short-term contract system, has continued and that Presidential Decree No. 164 of 31 March 2010 (to improve contract-based scheme of employment) has not solved the problem. The Committee understands that this Decree entitles an employer to conclude an employment contract for an indefinite term with an employee who has not violated labour discipline and who has worked for the employer for no less than five years, but does not deal with unfair use of the system.

The Committee further notes with *concern* the CDTU's allegation that the number of violations of trade union rights has been increasing and that its members are still suffering from anti-union discrimination, including dismissal, non-renewal of labour contracts, pressure and harassment. In particular, the Committee notes with *regret* a case where a trade union activist of the Belarus Independent Trade Union (BITU) was dismissed from the Lukoml Power Station. The Committee observes that while at its June 2010 session, the Conference Committee noted the Government's statement that this person was reinstated in December 2009 following the court decision, it appears now that the dismissal was confirmed on 21 May 2010 following an appeal by the employer and the prosecutor's office.

The Committee further notes the allegations of threats and interference in internal trade union affairs and a new wave of pressure put on workers to leave their union at the Bobruisk plant of tractor parts and units (Belarusian Free Trade Union primary trade union), "Grodno-Azot" company, "Delta Style" company in Soligorsk, "Lavanstroj" construction company, Minsk automated line company (all BITU primary trade unions).

The Committee notes with *regret* that according to the CDTU, the Government refuses to use the tripartite council to discuss in substance the issue of trade union rights' violation. The Committee notes with *regret* that in this regard, the Government has not referred to any discussions taking place at the Council sitting on 14 May 2010 or at the meeting of 15 October 2010 of a tripartite working group created by the Council, with reference to anti-union dismissals, threats, interference and pressure.

*The Committee therefore urges the Government to take the necessary measures to ensure that all of the abovementioned allegations of anti-union discrimination and interference relating to the CDTU and REWU-affiliated trade unions and their members at all of the abovementioned enterprises, are brought to the attention of the Council without further delay. It requests the Government to inform it of the outcome of the discussion and of any remedial measures taken should it be found that anti-union discrimination and interference have occurred.*

*Furthermore, the Committee once again urges the Government to take measures to ensure that enterprise managers do not interfere in the internal affairs of trade unions and, on the other, instructions to the Prosecutor-*



**General, Minister of Justice and court administrators that all complaints of interference and anti-union discrimination are thoroughly investigated. Should such complaints prove true, the necessary measures should be taken to put an end to such acts and punish those responsible.**

*Article 4.* The Committee recalls that it had previously noted that at its meeting of 26 November 2009, the tripartite council discussed the issue of collective bargaining at enterprises with several trade union organizations, as well as development of social partnership including the conclusion of collective agreements at “Grodno-Azot” and “Naftan” enterprises. It requested the Government to keep it informed of the outcome of this discussion. The Committee notes the Government’s indication that the situation with the collective agreement at “Naftan” has been positively resolved and that the CDTU-affiliated trade union had joined the agreement concluded by the Federation of Trade Unions of Belarus (FPB). The Committee notes with *concern*, however, the CDTU’s indication that its proposals with regard to social partnership at “Naftan” and “Grodno-Azot” have been ignored or not considered at all. **The Committee requests the Government to provide its observations thereon.**

The Committee welcomes the Government’s indication that a tripartite working group, where trade unions are represented by both the FPB and the CDTU, has been created to prepare a new General Agreement for 2011–13. **The Committee requests the Government to provide all relevant information in this respect.**

**The Committee strongly encourages the Government to intensify its efforts to ensure full implementation of the recommendations of the Commission of Inquiry without delay, in close cooperation with all the social partners and with the assistance of the ILO. The Committee further expresses the firm hope that the Government and the social partners will continue the cooperation within the framework of the tripartite Council and that the latter will have a real impact on ensuring that the right to organize is effectively guaranteed in law and in practice.**

*[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]*

## Belgium

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1951)**

*Comments from trade union organizations.* The Committee notes the communication dated 21 December 2009 from the Confederation of Christian Trade Unions (CSC), the General Labour Federation of Belgium (FGTB) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB) concerning in particular a court decision restricting the autonomy of trade unions in the exercise of their disciplinary powers, and also the systematic recourse by employers to the judicial authority in order to prohibit collective action on the part of the trade unions, particularly the installation of strike pickets. The Committee recalls that it previously noted the observations of the International Trade Union Confederation (ITUC) dated 26 August 2009 concerning this same point. **The Committee requests the Government to send its observations in reply to the comments made by the ITUC and to the communication from the CSC, FGTB and CGSLB.**

*Article 3 of the Convention.* The Committee also recalls that it has been commenting for many years on the need to take steps to adopt objective, pre-established and precise legislative criteria determining the rules for access of the occupational organizations of workers and employers to the National Labour Council. In its previous observation the Committee noted the information to the effect that a political agreement was reached in September 2009 in consultation with the most representative workers’ and employers’ organizations to amend the Organic Act of 29 May 1952 in such a way as to establish quantitative and qualitative criteria which the most representative organizations wishing to be represented on the National Labour Council would have to meet. The Committee notes with *satisfaction* the adoption of the Act of 30 December 2009 issuing various provisions, in particular Chapter 6 of Title 10 of the aforementioned Act, which amends the principal laws relating to collective labour relations, including the Organic Act of 22 May 1952 of the National Labour Council. The Committee notes that, under the terms of the Act, workers’ organizations must now satisfy in a cumulative manner the following criteria of representativeness: being constituted at national level and operating on an inter-occupational basis; representing the majority of sectors and staff categories in the public and private sectors; having a minimum number of paid-up members; and including the defence of workers’ interests among the objectives laid down by its rules.

## Botswana

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1997)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 as well as the Government’s reply. The Committee also notes the comments made by the Education International and the Botswana Teachers’ Union (BTU) in a communication dated 26 August 2010 concerning the Government’s interference in the internal organization of the BTU by imposing the retirement of its

President from his teaching duties to prevent him from heading the teachers' union. ***The Committee requests the Government to provide its observations thereon.***

*Articles 2 and 3 of the Convention.* The Committee recalls that it had previously requested the Government to:

- amend section 48B(1) of the Trade Union and Employers' Organizations (TUEO) Act, which grants certain facilities (access to an employer's premises for purposes of recruiting members, holding meetings or representing workers; the deduction of trade union dues from employees' wages, recognition by employers of trade union representatives in respect of grievances, discipline, and termination of employment) only to unions representing at least one third of the employees in an enterprise;
- amend section 10 of the TUEO Act, so as to afford industrial organizations the opportunity to rectify the absence of some of the formal registration requirements provided for in that section, and to repeal sections 11 and 15, which result in the automatic dissolution and banning of activities of non-registered organizations;
- amend section 43 of the TUEO Act, which provides for inspection of accounts, books and documents of a trade union by the registrar at "any reasonable time" and indicate the practical application of sections 49 and 50 of the TUEO Act which provide for the inspection by the minister of the financial affairs of a trade union "whenever he considers it necessary in the public interest", including the frequency with which these sections are invoked to inspect trade unions finances;
- amend sections 9(1)(b), 13 and 14 of the Trade Disputes Act, which empower the commissioner and the minister to refer a dispute in essential services to arbitration, or to the industrial court for determination; and to amend the list of essential services specified in the Schedule of the Trade Disputes Act, which includes, among others, the Bank of Botswana, railway services, and the transport and telecommunications services necessary to the operation of all of these services.

In this regard, the Committee notes that the Government indicates in its report that consultations with the social partners on amendments of all labour legislations are still ongoing. ***The Committee hopes that due account will be taken of its comments in the process of amending the relevant labour legislations. The Committee requests the Government to provide information, in its next report, on any progress made in this regard. The Committee encourages the Government to avail itself of the technical assistance of the Office if it so wishes.***

*Employees in the prison service.* In its previous comments, the Committee had requested the Government to amend section 2(1)(iv) of the TUEO (Amendments) Act, 2003 and section 2(11)(iv) of the Trade Disputes Act, both of which specifically exclude employees of the prison service from their scope of application, as well as section 35 of the Prisons Act, which prohibits prison officers from becoming members of a trade union or any body affiliated to a trade union. The Committee notes that the Government indicates in its report that it has no intention to grant the employees of the prison service the right to unionize since their staff association, as provided for in the Prison Act, supposedly caters adequately for the negotiations on their welfare, and terms and conditions of employment. However, the Committee notes that according to section 35(3) of the Prison Act, a prison officer may only become a member of an association established by the minister and regulated in the manner prescribed and that there is no other provision concerning the right to unionize under the Prison Act. ***In these circumstances, the Committee once again requests the Government to amend the abovementioned sections of the TUEO, the Trade Disputes Act and the Prison Act in order to grant to prison staff the right to establish and join organizations of their own choosing.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1997)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, and the Government's reply.

*Scope of the Convention. Application of the Convention to prison staff.* The Committee had previously requested the Government to amend section 2 of the Trade Disputes Act, section 2 of the Trade Union and Employers' Organizations (Amendment) Act (TUEO), and section 35 of the Prison Act, so as to ensure that prison staff are afforded all the guarantees provided under the Convention. The Committee notes from the Government's report that it has no intention to grant prison staff the right to unionize since their staff association, as provided for in the Prison Act, supposedly caters adequately for the negotiations on their welfare, terms and conditions of employment. However, the Committee notes that according to section 35(3) of the Prison Act, a prison officer may only become a member of an association established by the Minister and regulated in the manner prescribed; and that under section 35(4), any prison officer who becomes a member of a trade union or any body affiliated to a trade union shall be liable to be dismissed from the service. The Committee recalls that all public service workers other than those engaged in the administration of the State should enjoy protection against acts of anti-union discrimination and interference and their union should enjoy bargaining rights. ***Therefore, the Committee once again requests the Government to amend the Trade Disputes Act, the TUEO Act and the Prison Act to ensure to prison staff the rights enshrined in the Convention.***

*Article 1 of the Convention.* In its previous comments, the Committee had further noted the Government's statement that consultation was ongoing concerning the ITUC's previous observation according to which if a trade union is not registered, union committee members are not protected against anti-union discrimination (e.g. article 23 of the

Employment Act). The Government does not refer to this issue in its report. ***In these circumstances, recalling that the Government is responsible for preventing all acts of anti-union discrimination in order to give effect to Article 1 of the Convention, the Committee once again requests the Government to take the necessary measures to ensure that all union committee members, including those of unregistered trade unions, enjoy an adequate protection against anti-union discrimination.***

*Articles 2 and 4. Protection against acts of interference and promotion of collective bargaining.* In its previous comments, the Committee had requested the Government to provide information on the progress made with respect to the following legislative changes:

- the adoption of specific legislative provisions ensuring adequate protection against acts of interference by employers or employers’ organizations in the establishment, functioning or administration of trade unions, coupled with effective and sufficiently dissuasive sanctions;
- the repeal of section 35(1)(b) of the Trade Disputes Act, which permits an employer or employers’ organization to apply to the Commissioner to withdraw the recognition granted to a trade union on the grounds that the trade union refuses to negotiate in good faith with the employer; and
- the amendment of section 20(3) of the Trade Disputes Act, so as to ensure that compulsory arbitration of disputes of interest is permissible only in the following instances: (1) where the party requesting arbitration is a trade union seeking a first collective agreement; (2) disputes concerning public servants directly engaged in the administration of the State; and (3) disputes arising in essential services. In this respect, the Committee notes the Government’s indication that it has included in the National Development Plan 10 a project to establish an independent dispute resolution system.

The Committee notes from the Government’s report that consultations with the social partners on all labour legislation are still ongoing. ***The Committee requests the Government to indicate, in its next report, any progress made on the abovementioned provisions and it hopes that the Government will make every effort to take the necessary action in the very near future. The Committee encourages the Government to avail itself of the technical assistance of the Office if it so wishes.***

*ITUC’s comments.* The Committee notes the ITUC’s comments concerning the necessity for a trade union to represent a significant proportion of the workforce in order to bargain collectively. The Committee notes the Government indication that in terms of section 48 of the TUEO Act as read with section 32 of the Trade Dispute Act, the minimum threshold to be recognized by the employer is set at one third of the workforce of any organization. The Committee recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all unions in this unit, at least on behalf of their own members. ***The Committee requests the Government to provide in its next report information on the measures taken or contemplated so as to ensure that where no union represents one third of the employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members.***

### ***Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1997)***

The Committee notes with ***regret*** that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the Trade Union and Employers’ Organizations (TUEO) (Amendment) Act, 2003, and the Trade Disputes (Amendment) Act, 2004.

*Article 1 of the Convention.* The Committee had noted that the TUEO Act had been amended and now includes the “public officers”, including the unified local government service and the unified teaching service. However, the Committee noted that the Botswana prison service is still excluded from the scope of the Public Service Act, the TUEO Act and the Trade Disputes Act. The Committee also noted the Government’s statement that the Botswana prison service has been determined by national laws and regulations to be providing a security service. In this respect, the Committee recalled that under *Article 1*, only the police, the armed forces, high-level employees, whose functions are normally considered as policy-making or managerial, and employees whose duties are of a highly confidential nature, may be excluded from the scope of the Convention. ***Accordingly, the Committee requests the Government to amend section 2 of the Trade Union and Employers’ Organizations (TUEO) (Amendments) Act, 2003, section 2 of the Trade Disputes Act, and section 35 of the Prisons Act so as to guarantee for the prison service the rights enshrined in the Convention.***

*Article 5.* The Committee notes that the current legislation does not provide adequate protection to public employees’ organizations from acts of interference by the public authorities in their establishment, functioning or administration. The Committee notes that, according to the Government, the Public Service Act is being reviewed and consideration will be given to the Committee’s comments. ***Therefore, the Committee requests the Government to ensure that draft legislation contains precise provisions providing adequate protection to public employees’ organizations from acts of interference by the public authorities in their establishment, functioning or administration.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Bulgaria

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1959)**

*Article 3 of the Convention.* The Committee notes the Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) and the Confederation of Independent Trade Unions of Bulgaria (CITUB) on the issues it has been raising for a number of years and, in particular, the need to amend the following provisions:

- section 11(2) and (3) of the Collective Labour Disputes Settlement Act, which provide that the decision to call a strike shall be taken by a simple majority of the workers in the enterprise or the unit concerned, and section 11(3) which requires the duration of the strike to be declared;
- section 51 of the Railway Transport Act of 2000, which provides that, where industrial action is taken under the Act, the workers and employers must provide the population with satisfactory transport services corresponding to no less than 50 per cent of the volume of transportation that was provided before the strike. The Committee recalled previously that, as the establishment of too broad a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, workers' organizations should be able to participate in defining such a service, along with employers and the public authorities; in cases where agreement is not possible, the issue should be referred to an independent body; and
- the restrictions on the right to strike of public servants under the terms of section 47 of the Civil Servant Act, including public servants who cannot be considered as exercising authority in the name of the State.

The Committee notes that in its report, the Government: (i) with regard to the strike vote, reiterates its commitment to the tripartite consultations with a view to reaching a mutually acceptable solution that would address the recommendations of the Committee; (ii) on the issue of the right to strike in the railway transport sector, stresses its will to resolve this issue and achieve progress in the near future, and indicates that it has initiated internal expert discussions about a possible amendment of the Railway Transport Act; and (iii) states that is ready to reopen the discussion on the right to strike of civil servants with a view to finding a solution, welcomes ILO technical assistance, and indicates that a working group was established to make proposals for legislative amendments to ensure compliance with the Convention. ***The Committee welcomes the information provided by the Government and hopes that in the process of legislative amendments due note will be taken of its comments as well as of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2696. The Committee requests the Government to transmit any new legislative text once adopted.*** It trusts that the ILO will continue providing its technical assistance as requested by the Government.

With regard to its previous comments on section 11(3) of the Collective Labour Disputes Settlement Act, which requires the duration of the strike to be declared, the Committee takes due note of the Government's indication that a strike could be declared for an indefinite period of time or until fulfilment of the demands made.

***The Committee once again requests the Government to provide the legal text which repealed the prohibition on strikes in the energy, communication and health sectors.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1959)**

The Committee recalls that it had previously requested the Government to provide its observations on the comments submitted by the International Trade Union Confederation (ITUC) and the Confederation of Independent Trade Unions in Bulgaria (CITUB) on the lengthiness of anti-union discrimination proceedings. The Committee notes that the Government refers to section 310(1) of the Code of Civil Procedure (entered into force in 2008), according to which, claims of illegal dismissal, reinstatement, compensation are examined through summary procedure. ***The Committee requests the Government to indicate the average length of anti-union discrimination proceedings in practice.***

*Article 2 of the Convention. Protection against acts of interference.* Previously, the Committee had requested the Government to take the necessary measures to ensure adequate protection, including by means of dissuasive sanctions, against acts of interference by employers' organizations. The Committee notes that the Government once again refers to section 33 of the Labour Code – which provides for the autonomy of workers' and employers' organizations in formulating their statutes, electing their representatives, and adopting their programmes of action. The Government considers that it is not necessary to have an explicit ban on the acts of interference. In this respect, the Committee once again recalls that under *Article 2* of the Convention, all acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial means with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference. The Committee further recalls that legislation should explicitly prohibit all such acts of interference and make express provision for rapid appeals procedures, coupled with effective and sufficiently dissuasive sanctions against acts of interference, in order to ensure the application in practice of *Article 2*. Moreover, to ensure that these measures receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay

down these substantive provisions, as well as appeals and sanctions to guarantee their application (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 232). ***Noting that the legislation contains no provisions concerning such protection as described above, the Committee requests the Government to indicate the measures taken or envisaged to ensure adequate protection, including by means of dissuasive sanctions, against acts of interference by employers' organizations.***

*Article 4.* The Committee had previously noted that sections 51(b)(1) and (2) of the Labour Code provided that collective agreements at the level of the branch or industry are concluded between the representative workers' and employers' organizations on the basis of an agreement between the national organizations to which they are respectively affiliated. It further noted, in this respect, the Government's statement that organizations not affiliated to a national representative organization cannot conclude collective agreements at the branch and sectoral levels, though they may do so at the enterprise level. Considering that requiring organizations to be affiliated with a national organization in order to be able to conclude sectoral and branch level agreements is incompatible with the principle of free and voluntary collective bargaining established in *Article 4* of the Convention, the Committee requested the Government to amend sections 51(b)(1) and (2) of the Labour Code. The Committee notes the Government's indication that it is ready to conduct the necessary consultations with the aim of reaching a mutually acceptable decision on this matter. ***The Committee welcomes the statement of the Government and expects that the necessary legislative amendments will be adopted in the near future and requests the Government to provide information on any developments in this regard.***

*Articles 4 and 6.* The Committee had previously taken note of the comments made by the ITUC and the CITUB on the denial of collective bargaining rights to public servants and requested the Government to take the steps necessary to amend the Civil Service Act so as to ensure the right to collective bargaining of all public servants, with the only possible exception being those engaged in the administration of the State. The Committee notes that the Government reiterates that, despite the absence of the right of collective bargaining in the narrow sense of the term, under section 44(3) of the Civil Service Act, trade unions are able to represent and defend the rights of civil servants on civil service and social security issues through proposals, requests, and participation in the drafting of relevant internal regulations and ordinances, as well as in the discussion of issues of economic and social interest. Legislatively regulated issues could not be subject to collective bargaining. The Government adds that representatives of organizations of civil servants may take part in the competition commission for the selection of candidates to the civil service, as well as participate in the process for the appraisal of civil servants. Issues related to income and social security in the public service, however, are discussed in the National Council for Tripartite Cooperation, in which all nationally representative employers' and workers' organizations are represented. The Committee further notes the Government's indication that it is ready to conduct the necessary consultations with the aim of reaching a mutually acceptable decision on this matter. ***The Committee welcomes the statement of the Government and expects that the necessary legislative amendments will be adopted in the near future and requests the Government to indicate any development in this regard.***

The Committee had previously noted the comments of the Bulgarian Industrial Association (BIA) on the application of the Convention. The BIA indicated that section 51(a), (b) and (c) of the Labour Code grants workers' organizations the right to submit draft collective agreements but that the same right is not extended to employers' organizations. The Committee requested the Government to respond to the BIA's comments. The Committee notes that the Government confirms that according to the legislation in force, the draft collective agreement is prepared and presented by trade unions. At the time of negotiations, however, each of the parties is free to propose amendments to the draft. Employers' organizations are free to make their own proposal and are not obliged to accept the draft as proposed by the union. Only a collective agreement that satisfies the interests of both parties is signed.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future. It reminds the Government that it may avail itself of ILO technical assistance.***

## Burkina Faso

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)***

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 24 August 2010 concerning the application of the Convention and reporting dismissals of trade union delegates and members for participation in strikes. ***The Committee requests the Government to provide its observations on these matters and on the ITUC's comments of 2009.***

*Article 3 of the Convention. Occupation of premises in the event of a strike.* The Committee noted previously that, under section 386 of the Labour Code, the exercise of the right to strike shall on no account be accompanied by occupation of the workplace or its immediate surroundings, subject to the penal sanctions established in the legislation in force. In this respect, the Committee recalled that any restrictions on strike pickets and workplace occupations should be limited to cases where the action ceases to be peaceful or where observance of the freedom of non-strikers to work, or the right of management to enter the premises, are impeded. The Committee notes that the Government's report does not provide any information on this subject. ***The Committee therefore requests the Government to take the necessary measures to amend section 386 of the Labour Code as indicated above so that the restrictions that it envisages only***

*apply in cases in which a strike ceases to be peaceful or where observance of the freedom of non-strikers to work and the right of management to enter the premises are impeded.*

*Requisitioning of public employees.* In its previous comments, the Committee recalled the need to amend sections 1 and 6 of Act No. 45-60/AN of 25 July 1960 under which, in order to ensure continuity of administration and the safety of persons and property, public servants may be required to perform their duties. The Committee pointed out that it would be advisable to restrict the powers of the public authorities to requisition workers to cases in which the right to strike may be limited or even prohibited. Noting the Government's statement that it was planning to revise Act No. 45-60/AN, the Committee requested the Government to indicate any amendment or repeal of sections 1 and 6 of that Act. ***Noting the absence of information in this respect, the Committee reiterates its request to the Government to indicate any measures taken to amend or repeal sections 1 and 6 of Act No. 45-60/AN to take into account the principles referred to above.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1962)**

The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 26 August 2009 and 24 August 2010 concerning anti-union practices, particularly dismissals and transfers. ***The Committee requests the Government to send its observations in this respect.***

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee had hoped that the Government would soon be able to indicate the approximate number of workers and sectors covered by the collective agreements in force and had asked it to give an account of all measures to promote collective bargaining (including in the bakery, road transport and media sectors, in relation to which the Committee asked for information in its previous comments), particularly those taken by the Directorate of Labour Relations and Promotion of Social Dialogue (DRPPDS).

As regards the approximate number of workers and sectors covered by the collective agreements in force, the Committee notes the Government's indication that constraints due to the elections have prevented the compilation of the requested information. However, the Government adds that it hopes that the elections will take place as soon as possible and will enable the numbers of workers covered by the collective agreements in force to be determined. ***The Committee requests the Government to send the requested information as soon as it is available.***

As regards the measures to promote collective bargaining, particularly those taken by the DRPPDS, the Committee notes the Government's indication that: (1) the DRPPDS has held consultations with the social partners concerning the revision of the inter-occupational collective agreement; (2) during these consultations, the social partners expressed the wish focus on negotiations aimed at the conclusion or revision of sectoral agreements; (3) the DRPPDS has therefore identified the sectors of activity covered by previous agreements and those which are not covered, in order to encourage the social partners to engage in collective negotiations; and (4) training aimed at strengthening the capacity of the social partners for collective negotiations have been held and other training, in cooperation with the Programme of Social Dialogue in Francophone Africa (PRODIAF), is planned. The Committee also notes with regard to the media sector that the sectoral collective agreement was negotiated and signed on 6 January 2009 and dialogue is ongoing with respect to the bakery, road transport, banking and financial establishment sectors. ***The Committee requests the Government to send information on any developments in this sphere and indicate the collective agreements which have been concluded.***

*Collective bargaining in the public sector.* As regards the public service advisory bodies, including the tripartite Public Service Advisory Council, which has competence for dialogue (section 51 of Act No. 013/98/AN of 28 April 1998 concerning the public service), the Committee previously noted the indication that the employees had not yet appointed their representatives and asked the Government to supply information on any new developments in this respect. The Committee also asked the Government to specify the categories of public servants not engaged in the administration of the State who enjoy the right to collective bargaining.

In this respect, the Committee notes the adoption of Act No. 019-2005/AN of 18 May 2005 amending Act No. 013/98/AN of 28 April 1998. It also notes the Government's indication that all public officials, with the exception of officials having the duties of director-general, technical director or departmental director who are engaged in the administration of the State, fully enjoy the right to collective bargaining. ***Noting that the Government's report does not contain any information concerning the representatives to the Public Service Advisory Council, the Committee requests the Government to: (1) indicate whether these representatives have been appointed and also any new developments in this area and; (2) send a copy of Act No. 019-2005/AN of 18 May 2005 amending Act No. 013/98/AN of 28 April 1998 in order to evaluate the application of the right to collective bargaining of public servants not engaged in the administration of the State.***

## **Burundi**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1993)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

**The Committee requests the Government to send its observations on the comments submitted by the International Trade Union Confederation (ITUC) and by the Trade Union Confederation of Burundi (COSYBU) on the application of the Convention.**

*Article 2 of the Convention. Right of public employees without distinction whatsoever to establish and join organizations of their own choosing. The Committee once again notes with regret the lack of the statutory provisions on the right to organize of magistrates and observes that this situation is the reason behind difficulties of registration of the Trade Union of Magistrates of Burundi (SYMABU). The Committee trusts that the Government will take the necessary measures without delay in order to adopt such statutory provisions so as to ensure and clearly define the right to organize of magistrates.*

*Right to organize of minors.* For several years, the Committee has been raising the matter of the compatibility of section 271 of the Labour Code with the Convention, as this section provides that minors under the age of 18 may not join a trade union without the explicit permission of their parents or guardians. **The Committee requests the Government to recognize the right to join trade unions of minors under 18 years of age who are engaged in an occupational activity without the permission of their parents or guardians being necessary.**

*Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programmes without interference by the public authorities. Election of trade union officers.* The Committee recalls that its previous comments related to section 275 of the Labour Code which sets the following conditions for holding the position of trade union officer or administrator:

- *Criminal record.* Under section 275(3) of the Labour Code, holders of trade union office may not have been sentenced to imprisonment without suspension of sentence for more than six months. The Committee recalls that conviction for an act which, by its nature, does not call into question the integrity of the person and implies no real risk for the performance of trade union duties should not constitute grounds for exclusion from trade union office.
- *Belonging to the occupation.* Section 275(4) of the Labour Code requires trade union leaders to have belonged to the occupation or trade for at least one year. The Committee previously requested the Government to make the legislation more flexible by allowing persons who had previously worked in the occupation to stand for office or by lifting this requirement for a reasonable proportion of trade union officers.

**The Committee once again requests the Government to take the necessary measures to amend section 275(3) and (4) of the Labour Code, taking fully into account the principles recalled above.**

*Right to strike.* In its previous comments, the Committee raised the matter of the succession of compulsory procedures to be followed before calling a strike (sections 191–210 of the Labour Code), which appear to authorize the Minister of Labour to prevent all strikes. **Recalling that the right to strike is one of the essential means available to trade unions to further and defend the interests of their members, the Committee urges the Government to adopt and provide a copy of the text to be issued under the Labour Code on the modalities for the exercise of the right to strike, taking into account the principles recalled above.**

The Committee also noted that, under section 213 of the Labour Code, strikes are lawful when they are called with the approval of a simple majority of the employees of the workplace or enterprise. The Committee recalled that, when voting on strikes, the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult in practice. If a member State sees fit to establish in its legislation provisions requiring a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required majority and quorum are fixed at a reasonable level (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 170). **The Committee urges the Government to indicate in its next report the measures taken to amend section 213 of the Labour Code in the light of the comments made above.**

In its previous observation, the Committee noted that the Government had adopted a legislative decree prohibiting the exercise of the right to strike and to demonstrate throughout the national territory during the period of the elections. According to the Government, this legislative decree has not been used in practice. **The Committee requests the Government to indicate whether this legislative decree was repealed following the elections.**

**The Committee expresses the firm hope that the Government will take the necessary measures to ensure that trade union organizations can exercise in full their right to organize their activities freely without interference from the public authorities.**

The Committee notes that the Government has set up a tripartite committee responsible for rapidly proposing new provision of the Labour Code which would take into account the claims of the social partners, the reports of the labour inspection and the comments of the Committee. **The Committee requests the Government to indicate any progress made in revising the Labour Code and recalls that technical assistance of the Office is at its disposal.**

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**

Finally, the Committee notes the comments made by the ITUC, dated 24 August 2010, concerning the application of the Convention, in particular, the allegations of death threats against trade union leaders, the attack against the President of the Free Trade Union of Medical Doctors of Burundi (SYMABU), as well as other acts of intimidation. The Committee recalls that the rights of the workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. **The Committee requests the Government to provide its observations in this respect.**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1997)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*The Committee urges the Government to send its observations in response to the comments submitted by the International Trade Union Confederation (ITUC) and the Trade Union Confederation of Burundi (COSYBU) concerning the application of the Convention.*

*Articles 1, 2 and 3 of the Convention. Non-dissuasive nature of the sanctions established by the Labour Code for violations of Article 1 (protection of workers against acts of anti-union discrimination) and Article 2 (protection of employers' and workers' organizations against any acts of interference by each other) of the Convention. In its past comments, the Committee had noted that, according to the Government, the provisions in question would be amended with the collaboration of the social partners. **The Committee regrets that no amendments have been made to the legislation and, recalling the need to establish sufficiently dissuasive sanctions, hopes that the Government will be able to make the necessary amendments to the legislation in the near future. The Committee requests the Government to keep the Office informed of any progress achieved in this respect.***

*Article 4. Right of collective bargaining in practice. The Committee noted previously that there was only one collective agreement in Burundi. The Committee noted that, according to the Government, it is for the social partners to take the initiative to propose collective agreements and that in practice they limit themselves to concluding enterprise agreements of which there are many in para-public enterprises. The Committee recalls that, although nothing in the Convention places a duty on the Government to enforce collective bargaining by compulsory means with the social partners, this does not mean that governments should abstain from any measure whatsoever aiming to establish a collective bargaining mechanism. **The Committee notes the launch of a capacity-building programme for the social partners and once again asks the Government to provide information on the precise measures adopted to promote collective bargaining, together with information of a practical nature on the situation with regard to collective bargaining and, in particular, to indicate the number of collective agreements concluded up to now and the sectors covered. The Committee hopes that the Government will be able to indicate substantial progress in its next report.***

*Article 6. Right of collective bargaining for public servants not engaged in the administration of the State. The Committee notes the shortcomings in social dialogue in the public service pointed out by the ITUC and the COSYBU. The Committee previously requested the Government to specify whether provisions that imply restrictions on the scope of collective bargaining for the public service as a whole are still in force in Burundi, particularly as regards the determination of wages, such as: (1) section 45 of Legislative Decree No. 1/23 of 26 July 1988, which provides that, following approval by the relevant ministry, the governing councils of public establishments set the level of remuneration for permanent and temporary posts and determine the conditions for appointment and dismissal; and (2) section 24 of Legislative Decree No. 1/24, which provides that governing councils of public establishments draw up staff regulations for personalized administrations subject to the approval of the competent minister. The Committee noted that, in its reply, the Government indicated that these provisions were still in force, but that, in practice, state employees participate in determining their terms and conditions of employment. According to the Government, they are aware of the right of collective bargaining, and this is the reason for the existence of agreements in the education and health sectors. In the case of public establishments and personalized administrations, the employees participate in the determination of remuneration as they are represented on the governing councils, and wage claims are submitted to the employer by enterprise councils or trade unions, with the competent minister only intervening to safeguard the general interest; in certain ministries, trade union organizations have obtained bonuses to supplement wages. **The Committee once again asks the Government to take measures to align the legislation with practice and, in particular, to amend section 45 of Legislative Decree No. 1/23 and section 24 of Legislative Decree No. 1/24 so as to ensure that organizations of public servants and employees who are not engaged in the administration of the State can negotiate their wages and other terms and conditions of employment.***

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Cambodia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1999)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010, concerning acts of violence and harassment against trade union leaders and members as well as other violations of the Convention. The Committee notes, in particular, the information provided by the ITUC regarding the absence of a labour court, the overall deficiency of the judicial system in respect of the murders of trade unionists Chea Vichea and Ros Sovannareth and the persistent climate of repression towards trade union activities.

The Committee further notes the comments made by the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) dated 31 August 2010, indicating that independent trade unions remain fragile, under-resourced and operating in an extremely difficult context; that the FTUWKC struggles to be recognized by the Government as a valid stakeholder in the policy-making process; and that there has been no let up in anti-union harassment, intimidation and dismissal of union members, who continue to face police violence, attacks, weak law enforcement and employer impunity. The Committee also notes that the FTUWKC indicates that the 2009 Law on Peaceful Demonstrations severely impacts on the organization of strikes, rallies and other union activities and that the 2009 Penal Code, by retaining defamation and disinformation as criminal offences, potentially affects trade union activities. **The Committee urges the Government to send its observations on all the issues raised by the ITUC and the FTUWKC in its next report.**

In addition, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association concerning the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy and the continuing repression of unionists (Case No. 2318) as well as the denial of the right to form trade unions of public employees (Case No. 2222).



As regards the impunity prevailing in the murder of the abovementioned trade unionists, the Committee recalls that two individuals were convicted for the murder of Chea Vichea (Sok Sam Oeun and Born Samnang) and Thach Saveth was convicted of the murder of Ros Sovannareth in trials that were fraught with judicial irregularities and an absence of due process. Despite international calls for full, independent and impartial investigations since the moment of these murders, as well as that of Hy Vuthy, the Government has failed to provide any information on the steps taken in this regard or to provide any independent report. While noting that the convictions of Sok Sam Oeun and Born Samnang were remanded to the Appeal Court by the Supreme Court and that they have now been released on bail, the Government has yet to provide any information on the investigations to be carried out to determine the actual murderers and instigators of the assassination of Chea Vichea. Moreover, Thach Saveth has been awaiting a review of his conviction by the Supreme Court for several years now. No information has been provided on the progress made of investigations into the murder of Hy Vuthy.

Finally, the Committee takes note of the discussions on Cambodia in the Conference Committee on the Application of Standards (June 2010). It notes in particular that the Conference Committee regretted the lack of information relating to the long-awaited independent investigations into these murders. The Conference Committee recalled that freedom of association rights of workers and employers can only be exercised in a climate free from violence, pressure and threats and urged the Government to ensure respect for this fundamental principle and bring an end to impunity by taking the necessary steps, as a matter of urgency, to ensure full and impartial investigations into the murders of these trade union leaders and to bring, not only the perpetrators, but also the instigators of these heinous crimes to justice. Moreover, noting the serious flaws observed in the judicial process, as already observed by the Supreme Court, the Conference Committee indicated that it expected that the criminal charges against those earlier convicted for these murders would be immediately dropped and that the Supreme Court would rapidly review the appeal by Thach Saveth and ensure his release.

*Trade union rights and civil liberties.* In its previous observation, the Committee urged the Government to take all the necessary measures to ensure that the trade union rights of workers were fully respected and that trade unionists were able to engage in their activities in a climate free of intimidation and risk. The Committee takes note of the comments made by the ITUC as well as of the discussion during the Conference Committee, regarding the persistent climate of violence and intimidation towards union members. The Committee recalls, once again, that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular. The Committee further recalls that workers have the right to participate in peaceful demonstrations to defend their occupational interests. ***In light of the above, the Committee once again urges the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation and risk to their personal security and their lives, in accordance with the abovementioned principles.***

As regards the murders of trade unionists Chea Vichea, Ros Sovannareth and Hy Vuthy, in its previous observation the Committee requested the Government, to take concrete and tangible steps, as a matter of urgency, to carry out independent inquiries and to facilitate an expedited review of the convictions of Born Samnang and Sok Sam Oeun for the murder of Chea Vichea as well as of the conviction of Thach Saveth for the murder of Ros Sovannareth, and to take steps for their release pending the outcome of the above independent inquiries. The Committee notes that the Government indicated during the discussions in the Conference Committee that Born Samnang and Sok Sam Oeun had been released on bail, pending the re-hearing of their case by the Appeal Court, after the Supreme Court found inadequacies in the criminal procedure. The Government adds in its report that it had not received information on the prospective date of the re-hearing. The Committee notes that the FTUWKC indicates that, while on 17 August 2009, the Appeal Court ordered Chea Vichea's case to be reopened for further investigation, no subsequent inquiries were carried out. The Committee notes with ***concern*** that the Government does not provide any information in its report on any progress made with regard to the investigations into these three murders. ***The Committee therefore once again urges the Government to bring an end to impunity by taking the necessary steps, as a matter of urgency, to ensure full and impartial investigations into the murders of the abovementioned trade union leaders and to bring, not only the perpetrators, but also the instigators of these heinous crimes to justice. In particular, the Committee urges the Government to provide, with its next report, precise and detailed information on:***

- (i) ***the steps taken to exonerate Born Samnang and Sok Sam Oeun of all charges brought against them and to return the bail paid, as well as to reopen a full investigation into the murder of Chea Vichea as requested by the Supreme Court;***
- (ii) ***the awaited review by the Supreme Court of the decision of the Appeal Court regarding the conviction of Thach Saveth for the murder of Ros Sovannareth, and the opening of an investigation into that crime; and***
- (iii) ***the outcome of the investigation into the murder of Hy Vuthy.***

*Independence of the judiciary.* In its previous observation, the Committee, noting the conclusions of the ILO direct contacts mission of April 2008, referring to serious problems of capacity and lack of independence of the judiciary, requested the Government to take concrete and tangible steps, as a matter of urgency, to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against

corruption. In this regard, the Committee notes the report of the UN Special Rapporteur on the situation of human rights in Cambodia of 16 September 2010, which recommends various steps to enhance the independence of the judiciary and, in particular, the adoption without delay of the Law on the Status of Judges and Prosecutors and the Law on the Organization and Functioning of the Courts. ***The Committee requests the Government to provide, with its next report, information on the measures taken or contemplated to ensure the independence and effectiveness of the judicial system, in particular as regards the adoption of the Law on the Status of Judges and Prosecutors and the Law on the Organization and Functioning of the Courts, together with a copy of the relevant legislations.***

*Rule of law and legislative developments.* Finally, the Committee notes that the Government recalled during the discussions in the Conference Committee that: (i) it was considering the creation of a labour court in accordance with international standards; and (ii) the draft Trade Union Law on which it is working in cooperation with the ILO will be adopted by Parliament in 2011 and it expects the law to guarantee the right of workers and employers to organize and bargain collectively. The Government adds in its report that the Working Group of the Ministry of Labour and Vocational Training has finished its review of the draft Trade Union Law consisting of 17 chapters (90 articles), that the draft has now been sent to the ILO for review, that it will then be brought to consult with workers' and employers' associations separately and that it will then be put in the open multi-party meeting (gathering representatives of Government's institutions, trade unions, employer associations and international organizations, including the ILO and the International Finance Corporation (World Bank Group)). ***The Committee requests the Government to provide, with its next report, information on the creation of the labour court and the adoption of the Trade Union Law, as well as on the consultation processes held in that respect.***

***Recalling its request to the Government to make every effort to take the necessary action to bring its legislation into conformity with the Convention, the Committee reminds the Government that, if it so wishes, it may have recourse to the technical assistance of the Office.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1999)***

The Committee notes the comments submitted on 24 August 2010 by the International Trade Union Confederation (ITUC) which refer to matters already under examination, as well as to serious and numerous acts of anti-union discrimination and interference, obstacles to collective bargaining and social dialogue. The Committee also notes the comments submitted on 31 August 2010 by the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). ***The Committee requests the Government to provide its observations thereon in its next report.***

The Committee notes that in the framework of the discussions on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Conference Committee on the Application of Standards in June 2010 (99th Session) emphasizes the need to ensure that the current reform process brings the legislation into greater conformity with the Convention. It also notes the recommendations of the Committee on Freedom of Association regarding the deficient legislative framework for cases of anti-union discrimination and the non-recognition of collective bargaining rights for civil servants (see Cases Nos 2443, 2655 and 2222).

*Articles 1 and 3 of the Convention. Protection against anti-union discrimination.* In its previous observation, the Committee referred to the need for appropriate legal protection against acts of anti-union discrimination, including sufficiently dissuasive sanctions, and had requested the Government to indicate the measures adopted in order to modify the legislation so as to provide for such sanctions. The Committee notes that in its comments of 24 August 2010, the ITUC reports severe cases of anti-union discrimination and anti-union dismissals, including of pregnant women. The Committee also notes that the discussion during the Conference Committee in June 2010 pointed out the persistent climate of violence and intimidation towards union members, including the failure of the system to protect trade union leaders and members from acts of anti-union discrimination. The Committee notes that the Government indicates in its report that the efficiency of the implementation of the Labour Law improved thanks to the ILO's technical assistance and that at the end of March 2010, a high-level tripartite consultation on industrial relations finalized a consensus between trade union and employers' associations on nine points that will assist the harmonization of industrial relations pending the drafting of the new law on trade union. ***The Committee underlines the need to take steps without delay to adopt an appropriate legislative framework in full consultation with the social partners to ensure adequate protection against all acts of anti-union discrimination, dismissals and other prejudicial acts, including by means of sufficiently dissuasive sanctions.***

*Article 4. Recognition of trade unions for purposes of collective bargaining.* In its previous observation, the Committee took note of Prakas No. 13 of 2004, which lays down the procedure for granting most representative status to professional organizations at the enterprise or institutional level. The Committee noted in particular that section 1 of Prakas No. 13 provides that the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) may refuse to grant most representative status to a trade union when an objection is put forward from a member of the Labour Advisory Committee, or from enterprises, institutions or a concerned third party. The Committee considered in this respect that permitting the objections of third parties as grounds for refusing a union most representative status ran counter to the principle of promoting collective bargaining expressed in *Article 4* of the Convention. The Committee recalls that the determination of the most representative organizations must be based on objective, pre-

established and precise criteria so as to avoid any possibility of bias or abuse (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 97). The Committee notes with *regret* that the Government indicates in its report that no progress has been made in this respect. ***The Committee therefore once again requests the Government to amend section 1 of Prakas No. 13 accordingly, and to provide information on the progress made in this respect in its next report.***

*Articles 4 and 6. Right to collective bargaining of public servants.* The Committee had previously noted that according to section 1 of the Labour Law, certain categories of workers, which include persons appointed to a temporary or a permanent post in the public service, are not covered by this legislation. It had further noted that the Committee on Freedom of Association (see Case No. 2222, 334th and 356th Reports) had requested the Government to take the necessary measures to amend the Common Statute of Civil Servants so as to guarantee the right to collective bargaining of civil servants not engaged in the administration of the State, and requested the Government to indicate whether the categories of workers in question benefit from the guarantees provided for in the Convention under other legal provisions and, if not, to take the necessary measures in order to ensure the application of the Convention to these categories of workers. The Committee noted in this regard the Government's statement that since the rights of judges, teachers, and temporary and permanently appointed officials in the public service were provided for by separate laws pertaining to public ministries or institutions, it was unable to amend the labour law in accordance with the Committee's requests.

The Committee notes the information provided by the Government in its report, that under the Common Statute of Civil Servants, salaries of civil servants should be automatically increased on their third year of employment and if their salary is not increased within two years, in the third year, civil servants can complain to the public function secretariat or to the court. The Committee recalls however that wages, benefits and other labour conditions constitute matters of collective bargaining. The Committee also notes that the Government indicated during the discussions in the Conference Committee in June 2010, that it was considering guaranteeing the right of collective bargaining to civil servants.

Concerning the application of the Convention in practice, the Committee notes with *concern* the comments made by the ITUC recalling that the Cambodian Independent Teachers Association and the Cambodian Independent Civil Service Association (civil servants' association) are not recognized as trade unions by the Ministry of Labour and therefore do not enjoy collective bargaining rights. ***The Committee once again requests the Government to take the necessary measures to amend the laws pertaining to all public sector workers, so as to ensure the right to collective bargaining for all public servants, including teachers, with the only possible exception of those engaged in the administration of the State. More particularly, the Committee urges the Government to immediately take the necessary measures to amend the Common Statute of Civil Servants so as to guarantee fully the right to collective bargaining. The Committee requests the Government to provide with its next report information regarding any developments in this respect.***

*Revision of the legislation.* The Committee notes that the Government indicated during the discussions in the Conference Committee on the Application of Standards in June 2010, that it was working in cooperation with the ILO on a draft Trade Union Law to be adopted by Parliament in 2011 and that it expected the Law to guarantee the right of workers and employers to bargain collectively through the streamlining of rules for the certification of the union with the most representative status, the creation of a legal framework for collective bargaining agreements and the definition of unfair labour practices by employers and workers. ***The Committee requests the Government to take the necessary measures in the near future to ensure full consultation with the social partners concerned with respect to labour law reform and to ensure their full and equal participation in all relevant social dialogue forums. The Committee requests the Government to provide, with its next report, information on these matters, as well as a copy of the legislation once adopted.***

*Application of the Convention in practice.* ***Noting the comments made by the ITUC in August 2010 according to which collective bargaining is rare and difficult and only a few unions have managed to conclude collective agreements, the Committee expresses its concern about this information and reiterates its request to the Government to communicate in its next report statistics on the collective agreements (workers and sectors covered in the different regions, and number of collective agreements).***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Cape Verde

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1979)***

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee notes the conclusions of the Committee on Freedom of Association in Case No. 2622 (March 2010 meeting) asking the Government to take all necessary steps, in consultation with the social partners, to amend or repeal section 110 of the Labour Code requiring the parties to a collective agreement to bear the cost of publishing it in the *Official Journal*. The Committee on Freedom of Association drew the Committee of Experts' attention to this matter. The Committee notes with *interest* that Legislative

Decree No. 5/2010 of 16 June 2010 now provides that collective agreements may be published on the Ministry of Labour's website.

In its previous comments the Committee noted that very few collective agreements had been concluded. It noted that the Government had sent a copy of two collective agreements (telecommunications and private security), and pointed out that collective bargaining must be voluntary and that the role of the Government was to promote it without forcing it. The Government added that technical assistance from the Office for building the capacity of the social partners in collective bargaining techniques would contribute to improving the situation. The Government indicated that the social partners agreed to a request for such assistance.

The Committee notes in this connection the comments of 19 February 2010 by the National Workers' Union of Cape Verde–Trade Union Confederation (UNTC-CS) and the Cape Verde Confederation of Free Trade Unions (CCSL). According to the UNTC-CS, there are various reasons for the drop in the number of collective agreements concluded and these include a lack of commitment on the part of the institutions engaged in the promotion of collective bargaining, and a lack of resolve in enforcing the few collective agreements that do exist. The CCSL, for its part, asserts that the Government has been unable to raise awareness and promote collective agreements as measures consist only of seminars or workshops that produce nothing concrete in terms of collective agreements. The main sectors of the economy (air transport, dock work, insurance, water and energy supply, health, education, public administration) are in the charge of the Government, which lacks the legitimacy and credibility to promote and order the conclusion of collective agreements in other sectors.

The Committee also notes the information from the Government that despite a slight increase in the number of collective conventions concluded, the total number of agreements is still low. As regards the economic sectors referred to by the CCSL, it notes the Government's statement that a collective agreement has been adopted with the enterprise ELECTRA SA and that an agreement concluded with the enterprise TAP-Air Portugal is to be published shortly.

The Committee expresses *concern* that so few collective agreements have been concluded. It notes that the Government has asked for technical assistance from the ILO Dakar Office to promote voluntary collective bargaining and that it has already planned a series of conferences to this end, which are now under way. *The Committee expresses the firm hope that the Government will pursue its efforts and requests it to indicate any developments in this area. It hopes that the technical assistance requested will be forthcoming in the very near future.*

## Congo

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the comments from the International Trade Union Confederation (ITUC) on the application of the Convention. *The Committee requests the Government to provide its observations on the ITUC comments, dated 26 August 2009 and 24 August 2010.*

The Committee recalls that in its previous comments it requested the Government to amend the legislation on the minimum service organized by the employer to be maintained in the public service that is indispensable for safeguarding the general interest (section 248-15 of the Labour Code), in order to limit the minimum service to operations which are strictly necessary to meet the basic needs of the population, within the framework of a negotiated minimum service. In this regard, the Committee noted that the Government had indicated that section 248-15 had indeed been amended but that it was not in a position to produce the copy of the text amending the provisions of the said section. The Committee recalls that, since the definition of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161). *The Committee again expresses the hope that the text amending section 248-15 of the Labour Code takes account of these principles and requests the Government to send a copy of the text as soon as possible.*

*The Committee requests the Government to send a copy of the draft revised Labour Code.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Croatia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1991)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010.

*Article 3 of the Convention.* In its previous comments, the Committee recalled that since 1996, it has been commenting over the issue of the distribution of trade union assets and urged the Government to determine the criteria for the division of trade union assets in consultation with workers' organizations and to fix a specific time frame for completing the division of the property. The Committee had noted the Government's indication that for the division of trade union assets to be addressed, it was first necessary to establish the criteria for determining the representativeness of trade unions. The Committee notes that the Government indicates in its report that, in April 2009, the Minister of the Economy, Labour and Entrepreneurship issued a decision specifying the names of the associations meeting the requirements laid down in article 2 of the Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level (OG 18/99) and the number of trade unions affiliated to these associations. ***In these circumstances, taking into account that the representativeness criteria has been defined, the Committee hopes that the Government will take the necessary measures in the very near future to address the issue of the distribution of trade union assets and requests the Government to provide information thereon in its next report.***

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1991)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010 on the application of the Convention, in particular as regards the impact on collective bargaining of the 2009 Act on the Basis for Wages in Public Services. It also notes the comments made by the Trade Union of State and Local Government Employees (TUSLGE) dated 16 August 2010. ***The Committee requests the Government to provide its observations thereon in its next report.***

*Article 1 of the Convention.* In its previous observation, the Committee, referring to allegations of excessive court delays in dealing with cases of anti-union discrimination, had noted that a comprehensive process of reform had been initiated to enhance the efficiency of the judicial process and reduce the backlog of cases and that a pilot project on mediation in courts showed positive results. The Committee notes that, while the Government does not provide further information in this respect, the ITUC indicates that there has been an important reduction of the backlog of cases but that procedures remain too long, that monitoring and follow-up by the State Inspectorate and the judicial system of violations of workers' rights remain weak, and that trade unions call for the establishment of genuine labour courts in order to expedite the resolution of labour conflicts. ***The Committee requests the Government to provide information in its next report on the progress made with respect to the measures aimed at improving the efficiency of the legal protection, as well as a copy of the instruments adopted as a result of the reform process.***

*Articles 4 and 6.* In its previous observation, the Committee had requested the Government to comment upon the allegations that the Act on Salaries in Public Services limits collective bargaining rights in the public sector by setting coefficients for the workplace, with the result that public sector workers can negotiate on their basic salaries only. The Committee notes the information provided by the Government in its report regarding salaries' adjustment clauses, in particular, that certain collective agreements include clauses on adjustment of wages according to the economic policy in place, and that others may vary contingent on the level of non-taxable income. The Committee further notes that the TUSLGE indicates that the Local and Regional Self-Government Wage Act of 19 February 2010 restricts the rights to organize and bargain collectively of employees of local and regional self-governments, in particular their right to bargain collectively over the wage formation basis. ***The Committee requests the Government to provide information thereon in its next report.***

Furthermore, the Committee had noted the allegations that the Act on the realization of the Government's budget of 1993 allows the Government to modify the substance of a collective agreement in the public sector for financial reasons. It had requested the Government to provide a copy of the legislative provisions allowing the Government to modify the substance of collective agreements in the public service and information on their application in practice. ***Recalling that, in general, a legal provision which allows one party to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, the Committee once again requests the Government to provide, with its next report, a copy of the said legislative provisions, as well as information on their application in practice.***

## **Czech Republic**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1993)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010 and the Government's reply thereon. The Committee further notes the comments made by the Czech-Moravian Confederation of Trade Unions (CMKOS) concerning the application of the Convention. ***The Committee requests the Government to provide its observations thereon in its next report.***

*Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference.* The Committee's previous observation concerned measures taken to increase the efficiency of the system of protection against

anti-union discrimination and interference and to address the alleged slowness of the procedures. The Committee notes that the Government indicates in its report that there have been no changes in this regard, and that there are statutory safeguards against acts of trade union discrimination which include, inter alia, the possibility for alleged victims to refer the abuses to labour inspection bodies, courts, as well as to the Ministry of Interior. The Committee also notes that the ITUC indicates that while the 2009 anti-discrimination law provides for equal treatment with regard to trade union membership and activities, it does not sufficiently protect workers against anti-union discrimination. The Committee further notes the information provided by the Government according to which the labour inspection has not found proved anti-union discrimination acts. The Committee recalls that general legal provisions prohibiting acts of anti-union discrimination shall be accompanied by effective and rapid procedures to ensure their application in practice. Furthermore the Committee recalls that legislation should not only prohibit all acts of interference, but also make express provisions for rapid appeals procedures, coupled with effective and sufficiently dissuasive sanctions against such acts, in order to ensure the application in practice of *Article 2* (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 214, 223 and 232). ***The Committee therefore once again requests the Government to provide in its next report an overall assessment of the effectiveness of the system of protection against anti-union discrimination and interference, in consultation with the most representative employers' and workers' organizations, including data on the number of complaints brought to the labour inspection and the courts in the last years, as well as the duration of proceedings and their outcome.***

*Article 4. Collective bargaining.* The Committee takes due note of the decision of the Constitutional Court of 14 April 2008, repealing certain provisions of the Labour Code (Act No. 262/2006) concerning collective bargaining agreements. The Committee notes that the Government indicates in its report, that section 24(2) of the Labour Code stipulates that, in the case where a collective agreement has to be concluded within a single employer enterprise, when the enterprise involves more than one trade union, and when the trade unions concerned cannot act jointly and in mutual consent, the employer may enter into a collective agreement effective for all employees, with the one or more trade union organizations with the largest membership. The Committee notes that the Constitutional Court repealed this provision of the Labour Code, considering that it infringed the constitutional principle of equality of trade union organizations which prevents any preferential treatment of any trade union organization, within an enterprise or a sector. The Committee recalls that systems of collective bargaining with exclusive rights for the most representative trade union and those which enable the participation of all the trade unions concerned in the conclusion of a collective agreement or which allow for the existence of various collective agreements are all compatible with the principles of freedom of association.

The Committee notes that the constitutional court has rendered a sentence (No. 116/2008 Coll) which repealed certain provisions of the Labour Code. More particularly, the provisions that afforded the right of trade unions to supervise the compliance with the legislation and collective agreements have been repealed. ***The Committee requests the Government to indicate in its next report if the trade unions still have the right to denounce to the authorities cases of non-compliance with the legislation and collective agreements.***

Furthermore, the Committee notes the comments made by the ITUC concerning the little scope for negotiations on pay in the public sector and obstacles to collective bargaining in the healthcare service. The Committee also notes that according to the information provided by labour inspection bodies, in some cases employers, by their inactivity, complicate collective bargaining. ***Noting that the Government did not provide any information in this regard in its reply to the ITUC, the Committee requests the Government to provide in its next report its observations about these ITUC comments and to provide further information on the findings of the labour inspection bodies.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Democratic Republic of the Congo

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2001)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) on 24 August 2010 concerning the application of the Convention which mention the arrest of trade unionists, their torture and ill treatment during their detention and acts of interference in trade union activities. The Committee recalls that the arrest of trade unionists can create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities and emphasizes the importance of ensuring that trade unionists receive a fair trial in accordance with the principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. ***The Committee requests the Government to provide its observation in reply to the comments made by the ITUC without delay.***

*Articles 2 and 5 of the Convention.* In its previous comments, the Committee noted that section 1 of the Labour Code excludes from its scope magistrates, career officials in the State public services governed by the general conditions of service and career employees and officials of the State public services governed by specific conditions of service. The Committee requested the Government to provide further information on the trade union rights of these categories of State employees. The Committee also noted that, under section 56 of Act No. 81-003 of 17 July 1981 issuing the conditions of

service of career members of the State public services, public officials and employees were affiliated automatically to the then Union of Workers of Zaire (UNTZA). However, pending the amendment of these conditions of service, the Minister for the Public Service had issued Order No. CAB.MIN/F.P./105/94 of 13 January 1994 establishing provisional regulations concerning trade union activities within the public administration, amended by Order No. CAB.MIN/F.P./0174/96 of 13 September 1996. The Committee notes the Government's indication in its report that the reform of the public administration is still under way and that the draft revised conditions of service of career members of the State public services will shortly be submitted to Parliament. The Committee further notes that the report indicates that trade union pluralism is effective within the public administration and that the rights of public officials are defended within the joint committee composed of representatives of trade unions and the Government. Finally, the Committee notes that the report indicates that the freedom of association of the magistrates governed by specific conditions of service is recognized and that there are trade unions in this sector. **The Committee requests the Government to: (i) take the necessary measures to ensure that the reform of the public administration and the revision of the conditions of service of career members of the State public services allow, as soon as possible, all State employees to benefit from the guarantees provided under the Convention; (ii) indicate any developments in this regard in its next report, in particular the repeal of section 56 of Act No. 81-003; and (iii) provide information in its next report on the instruments governing the special status and trade union rights of magistrates.**

*Article 3.* In its previous comments, the Committee requested the Government to take the necessary measures to facilitate the organization of trade union elections in various branches of activity and to provide specific information on the results of these elections. The Committee notes the Government's indication in its report that, by means of Circular No. 1 of 20 May 2008, it organized trade union elections for "enterprises and establishments of any kind", which were held between October 2008 and July 2009. The Committee also notes that a tripartite committee is responsible for counting the votes and determining the most representative trade unions. The Committee recalls that the determination of the most representative trade union should always be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse and that verification of the representative character of a union should be carried out by an independent and impartial body. **Noting that more than one year has elapsed since the end of these elections, the Committee requests the Government to provide information in its next report on the results of this process.**

The Committee raises other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1969)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee noted the Government's reply to the questions raised by the Trade Union Confederation of the Congo (CSC) and the International Trade Union Confederation (ITUC) on the application of the Convention.

The Committee had noted with interest that the Government stated that it intends to give effect to the Committee's recommendation to conduct an independent investigation in order to clarify the questions raised by the ITUC and by the CSC concerning: (1) acts of discrimination and anti-union interference in private enterprises (including threats of dismissal against union members despite the fact that section 234 of the Labour Code prohibits acts of anti-union discrimination); (2) the existence of many unions established and financed by employers; and (3) the failure to comply with collective agreements. **The Committee again requests the Government to indicate the developments and conclusions of the independent investigation.**

*Article 2 of the Convention. Protection against acts of interference.* The Committee noted previously that, according to the Government, the National Labour Council has not yet adopted the draft Order prohibiting acts of interference. The Committee recalled that, although section 235 of the new Labour Code prohibits all acts of interference by organizations of employers and workers in each others' affairs, section 236 provides that acts of interference must be defined more precisely. The Committee noted the Government's reply to the effect that the National Labour Council has not yet taken a decision on the draft Order prohibiting acts of interference. To that end, the Committee noted that the Government undertakes to provide a copy of the Order once it has been adopted. **The Committee hopes that the Order concerned will be adopted as soon as possible and requests the Government to provide information on developments in this regard.**

*Article 6. Collective bargaining in the public sector.* The Committee noted previously that section 1 of the Labour Code explicitly excludes from the Code career members of the state public services who are governed by the general conditions of service (Act No. 81-003 of 17 July 1981 issuing the conditions of service of career members of state public services and explicitly providing for the establishment of institutions ensuring the representation of the personnel) and career employees and officials of state public services who are governed by specific conditions of service. The CSC had indicated the existence of measures allowing the establishment of mechanisms for the promotion of collective bargaining in the public sector. The Committee had noted the information provided by the Government concerning the right of public employees not engaged in the administration of the state to engage in collective bargaining, and particularly: (1) the agreement of 11 September 1999 on basic wages concluded by the Government and the unions of the public administration at a meeting of the joint committee; (2) the "social contract for innovation" of 12 February 2004 concluded by the Government and the unions of the public administration; and (3) the agreement concluded by the Government and the unions of the public administration following a strike by unions in the education sector in 2005. The Committee had concluded that, in practice, there were wage negotiations and agreements in the public sector.

The Committee observed that the Government has sent the text of Ministerial Order No. 12/CAB.MIN/TPS/ar/NK/054 of 12 October 2004, establishing the procedures for the representation and recourse to elections of workers in enterprises or establishments of all types. The Committee also noted the Government's indication that it intends to regulate the salaries of public servants set by negotiated agreements in the context of the imminent reform of the public administration. In this regard, the Committee also notes the comment by the ITUC that the staff of decentralized entities (towns, territories and sectors), who

comprise a subcategory of public servant, do not enjoy the right to bargain. *The Committee reiterates its previous request to the Government to take steps to ensure that the legislation guarantees the right of collective bargaining for public servants not engaged in the administration of the State, as established under Articles 4 and 6 of the Convention, and requests the Government to indicate the developments concerning the reform of the public administration.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

*The Committee notes the observations made by the ITUC and requests the Government to send its reply.*

## Djibouti

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1978)**

The Committee notes with *deep concern* the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010 concerning the application of the Convention, in particular, the allegations concerning the total prohibition imposed on the Labour Union of Djibouti (UDT) to develop its activities; according to the ITUC, the Government accuses trade unionists of being enemies of the State and they are therefore arrested, detained, transferred or dismissed. Moreover, according to the allegations, the Government continues to favour fake organizations, thereby preventing the UDT's representatives from participating in the International Labour Conference, and undertakes police controls at the entrance of the headquarters of the UDT. Given that the Government has not provided any observations on these comments and taking into account their seriousness and the fact that the authorities have prohibited the activities of the UDT – which is the most representative trade union organization – the Committee draws the attention of the Government to the fact that the exercise of trade union rights can only take place in a climate free from violence, pressure or threats of any kind and that the prohibition imposed on a trade union federation to develop its activities constitutes a direct violation of the Convention. *The Committee therefore requests the Government to provide, without delay, its observations on the comments made by the ITUC, not to proceed with the measures adopted against the UDT and its leaders and to ensure that the physical integrity of all threatened trade unionists is protected.*

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Legislative problems.* The Committee recalls that its previous comments concerned the provisions of Act No. 133/AN/05/5<sup>e</sup> L of 28 January 2006 issuing the Labour Code. The Act was denounced by the International Trade Union Confederation (ITUC) and also by the Labour Union of Djibouti (UDT) and the General Union of Djibouti Workers (UGTD) as challenging fundamental rights relating to freedom of association. The Committee noted that, according to the report of the direct contacts mission undertaken in January 2008, the Government reaffirmed that all the social partners were consulted in the process of preparation of the Labour Code. However, the Committee noted that the Government held working meetings with the mission to consider the points of divergence between the national legislation and the Conventions in order to rectify them and that it undertook to bring the recommended solutions to the attention of a tripartite National Council for Labour, Employment and Vocational Training (CNTEFP), which was due to be constituted. The Committee noted that, in its report of May 2008, the Government reiterated its commitment to reviewing certain provisions of the legislation in order to bring them into conformity with the Convention and bring them to the attention of the CNTEFP. In this respect, the Committee noted the warning contained in the report of the direct contacts mission regarding any excessive delay in constituting the CNTEFP and the impact thereof on the adoption of the necessary legislative amendments. It also noted the mission's recommendation that, in a context where the representativeness of workers' organizations has not yet been established in a clear and objective manner, no representation from the trade unions in Djibouti should be discarded from the work of the CNTEFP. *The Committee endorses the recommendations of the direct contacts mission on this point and requests the Government to indicate whether the CNTEFP has been constituted and state the composition thereof.*

The Committee wishes to remind the Government of its comments concerning the following points of divergence between the Labour Code and the Convention:

- *Sections 41 and 42 of the Labour Code.* These provisions concern the suspension of employment contracts. Section 41 provides that the employment contract shall be suspended, among other cases, for the duration of any regular, political or trade union office held by the worker which is not compatible with paid employment (paragraph 8). Section 42 provides in addition that the period during which the employment is suspended shall not be counted for the purpose of determining the worker's seniority within the undertaking. The Committee considers that the holding of trade union office is not incompatible with professional life and, consequently, any worker holding trade union office should be able to remain employed. The Committee therefore considers that sections 41 and 42 of the Labour Code, in providing for a more or less automatic suspension of the employment contract when a worker holds trade union office, are likely to be detrimental to the rights of all workers to establish and join the organization of their own choosing or to hold trade union office (*Articles 2 and 3 of the Convention*). *The Committee therefore requests the Government to amend sections 41 and 42 of the Labour Code by providing that the possibility of suspending the employment contract during a period in which a worker holds a trade union office that is incompatible with a professional activity is a matter for negotiation between the employer and the trade union, who must establish the relevant arrangements, and that in any case such suspension cannot be automatic.*
- *Section 214 of the Labour Code.* This section provides that any person convicted "by any court" may not hold office as a trade union leader. The Committee recalls that a law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association (*Article 3 of the Convention*), when the activity condemned is not prejudicial to the attitude and integrity required to exercise trade union office. In this case, the Committee considers that section 214 of the Code, in deeming any person who has been convicted to be unsuitable for trade union office, is formulated too broadly and would cover situations in which the nature of the conviction is not inherently such as



to rule out the holding of trade union office. *The Committee therefore requests the Government to amend section 214 of the Labour Code so as to ensure that only court convictions for offences which by their nature call into question the integrity of the individual are deemed to be incompatible with the holding of trade union office.*

- *Section 215 of the Labour Code.* This section concerns the formalities for registration and verification of the legality of a trade union. Under the terms of this section, the founders of any occupational trade union are required to deposit their regulations and the list of persons responsible for their administration and management; within a period of 30 days following their deposit, copies of the regulations and the list of persons responsible for the administration and management of the union are transmitted by the labour inspector to the Minister of Labour and the Chief Public Prosecutor; the documents are accompanied by a report prepared by the Labour Inspectorate; the Minister of Labour then has 15 days to issue a receipt granting legal recognition to the union; the Chief Public Prosecutor then has 30 days to verify the regulations and review the situation of each of the officials responsible for the administration and management of the union and to notify the Minister of the Interior, the Minister of Labour and the union leaders concerned of his/her conclusions; any modification to the regulations and any changes to the composition of the officials responsible for the management or administration of the trade union have to be brought to the knowledge of the same authorities and are subject to verification under the same conditions. The Committee firstly wishes to remind the Government that *Article 2* of the Convention guarantees the right of workers and employers to establish organizations without previous authorization by the public authorities. It therefore considers that national legislation which requires the deposit of the regulations of organizations is compatible with this provision if it is a mere formality intended to ensure that the regulations are available to the public. Nevertheless, problems of compatibility with the Convention may arise if the registration procedure is lengthy or complicated, or if the rules concerning registration are applied in such a way as to defeat its purpose and the registration authorities make excessive use of their discretionary power. The Committee notes that section 215 of the Labour Code, under which the decision of the Minister of Labour requires not only the deposit by the founders of the trade union of the relevant documents but also a detailed report by the labour inspector, would appear to grant the administration more or less discretionary power in deciding whether or not an organization meets the registration criteria. This situation could amount in practice to denying the right of workers and employers to establish organizations without previous authorization, in contravention of *Article 2* of the Convention. *The Committee therefore requests the Government to amend, in consultation with the social partners, section 215 of the Labour Code so as to guarantee the right to establish workers' and employers' organizations without previous authorization, remove the provisions which give de facto discriminatory powers to the administration and ensure that the registration procedure is merely a formality.*

Finally, the Committee recalls that its previous comments were also concerned with the need for the Government to repeal or amend the following provisions of the legislation:

- *Section 5 of the Act on associations.* This provision, which requires organizations to obtain authorization prior to their establishment as trade unions, is contrary to *Article 2* of the Convention.
- *Section 23 of Decree No. 83-099/PR/FP of 10 September 1983.* This provision, which confers upon the President of the Republic broad powers to requisition public servants who are indispensable to the life of the nation and the proper operation of essential public services, should be amended in order to restrict the power of requisition to public servants who exercise authority in the name of the State or in essential services in the strict sense of the term.

*Noting that the Government displayed a degree of openness during the direct contacts mission by indicating that it was planning a number of amendments and declaring its willingness to receive technical assistance and advice from the Office, the Committee trusts that the Government will take the necessary steps as soon as possible to revise and amend the legislative provisions, taking into account the comments reiterated above. It expresses the firm hope that the Government's next report will contain information on the progress made in this respect.*

The Committee takes note of the comments dated 26 August 2009 from the ITUC which reiterate matters already examined by the Committee, as well as denouncing persistent acts of anti-union harassment and discrimination and the brutal repression of strike actions. *The Committee urges the Government to provide its reply to the ITUC's comments.*

Finally, the Committee takes note of the conclusions of the Credentials Committee of the Conference concerning the examination of an objection, in June 2009, concerning the nomination of the Workers' delegation of Djibouti. The Credentials Committee concluded that the Government had not fulfilled its obligations as set out in article 3 of the ILO Constitution because it had not nominated Workers' delegates representing the workers of Djibouti in agreement with the most representative workers' organization. Furthermore, it regretted the absence of any progress, despite the expectations raised in the recommendations of the direct contacts mission of January 2008, as well as the hopes expressed last year, and called upon the Government to guarantee the implementation of a procedure based on objective and transparent criteria for the nomination of the Worker representatives at future sessions of the Conference. To this end, it expected that these criteria will be identified so that consultation with all parties concerned, and particularly with the genuine workers' organizations in Djibouti, which includes the UGDT whose current secretary-general is Mr Mohamed Abdou, could be carried out in an environment respecting the ability of the workers' organizations to act in total independence from the Government, in accordance with Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

In its previous comments, the Committee noted the comments contained in the communications from the Labour Union of Djibouti (UDT), the General Union of Djibouti Workers (UGTD) and the International Trade Union Confederation (ITUC), received between 2005 and 2007 denouncing dismissals and acts of discrimination and anti-union interference in the postal and other sectors. In this respect, the Committee requested the Government to order without delay an independent investigation into the alleged acts. The Committee notes that, in a report of May 2008, the Government indicates that the matter was the subject of

in-depth discussions with the direct contacts mission which visited Djibouti in 2008, which encouraged all the parties to bring an end to the disputes. The Government also indicated that it would provide information on developments in the situation. *The Committee, observing that the Government has not provided any information since then, requests it to indicate the cases referred to which have been resolved and to specify the cases in which the penalties established by the law were imposed when violations of the rights set out in the Convention were found to have been committed.*

The Committee notes the comments of the ITUC, dated 26 August 2009, indicating that the ILO mission to Djibouti in January 2008 had offered some hope of an opening, but that the commitments made on that occasion by the Government, including those relating to the reinstatement of workers and trade unionists who suffered abusive dismissal, have not been given effect. The ITUC also denounces the pressure exerted on the Postal Union. Following the dismissal of its Secretary-General and the defection of two members of its executive board, the union had to establish a new executive board headed by Abdourahman Ali Omar, who had been reinstated in his job following suspension. However, the management interrupted the check-off of workers' trade union dues, thereby preventing the union from defending the rights of postal workers. *The Committee notes with concern the deterioration in the situation in the postal sector and urges the Government to provide its observations in reply to the ITUC's comments.*

*The Committee also once again requests the Government to provide a copy of the Decree envisaged under section 282 of the Labour Code, establishing the structure and procedures of the National Joint Committee on Collective Agreements and Wages, and any relevant information on its work.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Egypt

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1957)**

In its previous comments, the Committee had noted that the ILO technical assistance mission of April 2009, which had been requested by the Conference Committee on the Application of Standards, had given rise to a Tripartite Memorandum of Understanding by which the social partners and the Government had agreed to participate in a tripartite symposium to be organized by the ILO to discuss the challenges faced by the country in the application of the Convention, to review the experiences of other member States and to formulate proposals on the measures necessary to give effect to the Committee's comments. The Committee welcomes the fact that a Tripartite Workshop on Social Dialogue, Freedom of Association and Development took place on 26 April 2010, with ILO participation, to address a number of divergences between the legislation, the practice and the Convention. *The Committee hopes that the holding of this seminar will constitute an important first step in addressing this long-standing matter.*

The Committee notes the discussion during the Conference Committee on the Application of Standards in June 2010 on the application of the Convention. The Committee notes in particular the Government's indications during that meeting that it planned to engage in a review of the legislation with the assistance of the ILO in order to ensure full conformity with the Convention. The Committee also notes that the Conference Committee expressed the firm expectation that the Government would elaborate a fast-track programme for ensuring that tangible steps would be taken in the very near future to amend the legislation in order to ensure that all workers may freely form and join the organization of their own choosing and that all forms of Government interference in the activities of workers' organizations, including through legislative reference to the authority of a single trade union in this regard, are eliminated. Finally, the Committee notes that the Conference Committee requested the Government to provide the necessary proposals for amendments, especially to the Trade Union Act, by the end of the year to the ILO for advice on their conformity with the Convention. The Committee *regrets* that the Government has not yet transmitted any draft amendments in this regard.

The Committee recalls that for several years it has been commenting upon the discrepancies between the Convention and the national legislation, namely Trade Union Act No. 35 of 1976, as amended by Act No. 12 of 1995, and Labour Code No. 12 of 2003, with regard to the following points:

- the institutionalization of a single trade union system under Act No. 35 of 1976 (as amended by Act No. 12 of 1995), and in particular sections 7, 13, 14, 17 and 52;
- the control granted by law to higher level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions, under the terms of sections 41, 42 and 43 of Act No. 35 (as amended by Act No. 12);
- the control exercised by the Confederation of Trade Unions over the financial management of trade unions, by virtue of sections 62 and 65 of Act No. 35 (as amended by Act No. 12);
- the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services (section 70(2)(b) of Act No. 35 of 1976);
- the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action, under section 14(i) of the same Act;
- restrictions on the right to strike and recourse to compulsory arbitration in services which are not essential in the strict sense of the term (sections 179, 187, 193 and 194 of the Labour Code); and
- penalties for breaches of section 194 of the Labour Code (section 69(9) of the Code).

The Committee notes that the Government indicates in its report that Order No. 69 of 2010 has been issued by the Minister of Manpower and Migration on the establishment of a preparatory technical committee composed of legal experts to review Labour Code No. 12 of 2003 and Trade Unions Act No. 35 of 1976, as amended to date, to ensure their conformity with international labour standards. The Committee further notes that pursuant to Order No. 69, the legal experts shall present a report by the end of the year, which will then be submitted for discussion to a tripartite meeting in order to agree on the final versions of the two bills. *The Committee requests the Government to take the necessary measures to ensure that during the review process, due account will be taken of the Committee's comments on the abovementioned issues and trusts that the proposed amendments will be provided to the ILO in the near future for advice on their conformity with the Convention.*

*The Committee requests the Government to provide information in its next report on the progress made on these long-outstanding matters.*

*Finally, and as specifically requested by the Conference Committee at its meeting in June 2010, the Committee regrets that the Government has still not provided its observations on the 2009 comments submitted by the ITUC concerning the violent repression in April 2008, by the police, of a workers' demonstration in the town of Mahalla, resulting in the death of six workers and the detention of 500 people, including three trade unionists and requests it to do so with its next report.*

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1954)

In its previous observation, the Committee had noted that the ILO technical assistance mission of April 2009, which had been requested by the Conference Committee on the Application of Standards, had given rise to a Tripartite Memorandum of Understanding by which the social partners and the Government had agreed to participate in a tripartite symposium to be organized by the ILO to discuss the challenges faced by the country in the application of the Convention, to review the experiences of other member States and to formulate proposals on the measures necessary to give effect to the Committee's comments. The Committee welcomes the fact that a Tripartite Workshop on Social Dialogue, Freedom of Association and Development took place on 26 April 2010, with ILO participation, to address a number of divergences between the legislation, the practice and the Convention. The Committee hopes that the holding of this seminar will constitute an important first step in addressing this long-standing matter.

In its previous observation, the Committee had noted the comments made by the International Trade Union Confederation (ITUC) on the application of the Convention, in particular the allegations that: (1) the provisions of the 2002 Special Economic Zones Law exempt investment companies newly established in the zones from the legal provisions concerning the organization of labour, and anti-union acts were reported, including pressure on members to leave unions; (2) most workers in the Tenth of Ramadan City Zone were forced to sign letters of resignation before beginning employment so that they could be fired at the employers' convenience; and (3) trade unionists were harassed by the authorities, including in connection with the promotion of union membership, and administrative penalties were imposed on a number of them. The Committee takes note of the Government's replies to the ITUC comments, stating in particular that: (1) pursuant to section 28 of the 2002 Special Economic Zones Act No. 83, the provisions of the Labour Code constitute a minimum limit to what may be agreed upon in individual and collective labour contracts and the Act does not contain any provisions exempting any enterprise subject to its provisions from the laws relating to the organization of labour, such as Labour Code No. 12 of 2003 or Trade Unions Act No. 35 of 1976; and the Ministry of Manpower and Migration investigates any complaint received from any worker concerning pressure to leave the trade union to which they belong and spares no effort to protect the workers' interests and safeguard their rights; (2) section 119 of the Labour Code makes the practice alleged by the ITUC impossible by providing that "the worker's resignation does not count unless it is submitted in writing; the worker who has resigned may withdraw his resignation within a week of the date on which the employer notifies the worker of his acceptance of the resignation in which case the resignation is deemed non-existent", moreover, the Government has engaged in awareness raising on these provisions among all workers covered by the Labour Code, especially in labour-intensive enterprises; and (3) the Labour Code and the Trade Unions Act guarantee the protection of trade union members or workers' representatives from any practices against them and refer the matter to the judicial authority.

*Article 4 of the Convention.* In its previous observation, the Committee had recalled that it has been making comments for a number of years on various provisions of the Labour Code, as follows:

- as regards section 154 of the Labour Code, under which any clause of a collective agreement contrary to the law on public order or general ethics shall be null and void, the Committee had asked the Government to provide information on the scope of this section and the impact the broad wording of this section might have on the application of the principle of voluntary negotiation, it had also requested the Government to indicate the specific cases in which use had been made in practice of section 154;
- as regards sections 148 and 153 of the Labour Code, the Committee had asked the Government to take the necessary steps to repeal these sections, as they enable higher level organizations to interfere in the negotiation process conducted by lower level organizations. The Committee had noted the Government's indications that the purpose of

the participation of higher level organizations in the negotiation process of a union is to support and strengthen the position of smaller unions, and that the application of the Convention is ensured by concluding agreements which apply to all workers belonging to a higher level organization. The Committee recalls that the interference by higher level organizations in the bargaining process undertaken by lower level organizations is incompatible with the autonomy which must be enjoyed by bargaining parties which, as such, must have the right to free and voluntary negotiation of collective agreements;

- as regards sections 179 and 187, in conjunction with sections 156 and 163 of the Labour Code, the Committee had asked the Government to take the necessary steps to amend the Labour Code so that the parties could have recourse to arbitration only by mutual agreement.

The Committee had accordingly requested the Government to take the necessary measures to repeal sections 148 and 153 of the Labour Code and to amend sections 179 and 187, in conjunction with sections 156 and 163 of the Labour Code, so that compulsory arbitration can only be possible for public servants engaged in the administration of the State or in essential services in the strict sense of the term.

Finally, the Committee notes that the Government indicates in its report, that Order No. 69 of 2010 has been issued by the Minister of Manpower and Migration on the establishment of a preparatory technical committee composed of legal experts to review Labour Code No. 12 of 2003 and Trade Unions Act No. 35 of 1976, as amended to date, to ensure their conformity with international labour standards. The Committee further notes that, pursuant to Order No. 69, the legal experts shall present a report by the end of the year, which will then be submitted for discussion to a tripartite meeting in order to agree on the final versions of the two bills. *The Committee requests the Government to take the necessary measures to ensure that during the review process, due account will be taken of the Committee's comments on the abovementioned issues. As requested by the Conference Committee, the Committee trusts that the proposed amendments will be provided to the ILO in the near future for advice on their conformity with the Convention.*

*The Committee requests the Government to provide information in its next report on the progress made on these long-standing matters.*

## Equatorial Guinea

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2001)**

The Committee notes with *regret* that the Government's report has not been received.

The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 24 August 2010, which refer to the application of the Convention and also to the administrative authority's persistent refusal to register the Trade Union of Workers of Equatorial Guinea (UST), the Independent Services Union (SIS), the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC). The Committee recalls that the discretionary power of the competent authority to grant or reject a registration request is tantamount to a requirement for previous authorization, which is not compatible with *Article 2 of the Convention* (see General Survey of 1994 on freedom of association and collective bargaining, para. 74). *The Committee therefore urges the Government once again to register without delay those trade unions which have fulfilled the legal requirements and provide information in this respect in its next report.*

The Committee again recalls that it has been asking the Government for a number of years to: (i) amend section 5 of Act No. 12/1992, which provides that employees' organizations may be occupational or sectoral – so that workers may, if they so desire, establish enterprise trade unions; (ii) amend section 10 of Act No. 12/1992, which provides that for an occupational association to obtain legal personality it must, inter alia, have a minimum of 50 employees – so as to reduce the number of workers required to a reasonable level; (iii) confirm that, as a result of a revision of the Fundamental Act in 1995 (Act No. 1 of 1995), the right to strike is recognized in public utilities and is exercised under the conditions laid down by law; (iv) provide information on the services deemed to be essential, and on how the minimum services to be ensured are determined, as provided for in section 37 of Act No. 12/1992; and (v) state whether public servants who do not exercise authority in the name of the State enjoy the right to strike (section 58 of the Fundamental Act).

*The Committee again urges the Government to take the necessary steps to amend the legislation in order to bring it into full conformity with the provisions of the Convention and to send information in its next report on any measures taken or contemplated in this respect. The Committee expresses the strong hope that the Government will take all possible steps without delay to resume a constructive dialogue with the ILO.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2001)**

The Committee notes with *regret* that the Government's report has not been received.

*Article 4 of the Convention. Collective bargaining.* The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 24 August 2010, which refer once again to the authority's refusal to recognize trade unions and, consequently, to the impossibility of exercising their right to collective bargaining. The Committee notes

with *concern* that no progress has been made despite the time that has passed and the repeated requests that it has made. It emphasizes once again that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention and for exercising the right to collective bargaining. ***The Committee therefore again urges the Government to take the necessary steps without delay for creating appropriate conditions for the establishment of trade unions which can engage in collective bargaining with a view to regulating conditions of employment.***

*Article 6. Right of public servants not engaged in the administration of the State to engage in collective bargaining.* The Committee notes that, according to the comments made by the ITUC, the right of workers in the public service to establish trade unions has still not been recognized by law, despite the fact that section 6 of Act No. 12/1992 on trade unions and collective labour relations provides that the right to organize of officials in the public administration shall be regulated by a special law. Consequently, the ITUC indicates that the legal framework for collective bargaining continues to be deficient and ambiguous. ***The Committee urges the Government to supply information on whether the special law has been adopted, whether this law guarantees public servants' right to organize and engage in collective bargaining, and to send detailed information on the application of the Convention with regard to public servants who are not engaged in the administration of the State. The Committee reminds the Government that it may avail itself of technical assistance from the ILO in this respect and expresses the strong hope that it will take all possible steps without delay to resume a constructive dialogue with the ILO.***

## Eritrea

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2000)**

*Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference.* In its previous comments, the Committee had taken note that section 28(3) of the Labour Proclamation provides for the reinstatement of trade union leaders in cases of unjustified dismissal, but did not contemplate neither the protection against other prejudicial acts nor the protection of anti-union discrimination acts against workers affiliated to a trade union. It has requested the Government to broaden the protection against anti-union discrimination to cover recruitment and all prejudicial acts during the course of employment, including dismissal, transfer, relocation, demotion, deprivation and restrictions of all kinds and requested the Government to provide information on the measures taken or envisaged in this regard. The Committee notes that the Government indicates that it has envisaged broadening the protection to protect workers against anti-union discrimination. ***Therefore, the Committee reiterates its previous conclusion and hopes that the Labour Proclamation will be amended accordingly in the near future.***

*Sanctions applicable in cases of anti-union discrimination or acts of interference.* In its previous comments, the Committee had recalled that a fine of 1,200 nafka (ERN), set out in section 156 of the Labour Proclamation, to punish those guilty of anti-union discrimination or acts of interference, did not constitute an adequate protection and had noted the Government's indication that section 692 of the Transitional Penal Code became applicable in cases where an offence was considered severe or repeated. The Committee had requested the Government to indicate the sanctions applicable and to provide copies of penal sentences regarding cases of anti-union discrimination and interference. The Government indicates that the labour courts had not come across sentences regarding cases of anti-union discrimination and interference. The Government also points out that section 691 sanctions "petty offenses" when, by an act or omission, a person infringes the mandatory or prohibitive provisions of a regulation, order or decree lawfully issued by a competent authority. The Committee notes however that this penal provision does not cover specifically the cases of anti-union discrimination acts and interference. ***Therefore, the Committee requests the Government to take the measures to amend section 156 of the Labour Proclamation in order to provide higher and more dissuasive sanctions to sanction those guilty of anti-union discrimination or acts of interference and requests the Government to indicate the measure taken or envisaged in this respect. The Committee also requests the Government to communicate copies of any penal sentences regarding anti-union discrimination or acts of interference as soon as rendered in the future.***

*Articles 1, 2, 4 and 6. Domestic workers.* Previously, the Committee had expressed the strong hope that the Ministry would issue a regulation in the near future that ensured that domestic employees were entitled to exercise their trade union rights, guaranteed under Conventions Nos 87 and 98. The Committee had noted the Government's statement that domestic employees like all other categories of workers, are entitled to the right to organize and collective bargaining since the promulgation of the Labour Proclamation and that one association of domestic workers has been established. The Committee notes that according to the Government, the Ministry of Labour and Human Welfare, under its power provided in section 40 of the Labour Proclamation, will not refrain from including the rights mentioned in the Convention in the upcoming regulation applicable to domestic employees. ***In this regard, the Committee once again expresses the firm hope that this regulation will be issued in the near future and will explicitly recognize to domestic workers the rights enshrined in the Convention.***

*Article 6. Right to collective bargaining in the public sector.* The Committee had previously requested the Government to provide specific information concerning the status of the draft Civil Service Proclamation. The Committee notes that according to the Government, the Civil Service Administration has been working on the draft Civil Service Proclamation through a process of participation and interaction and that relevant and salient comments of the participants

were integrated in the final draft. The Committee notes that the Government once again reiterates that the drafting of the legal text concerning public servants, which would guarantee the right to organize to civil servants, reached its final stage and would be communicated to the ILO once adopted. *In this regard, the Committee once again expresses the hope that the Government will take the necessary measures, in consultation with the social partners, to improve its legislation on public servants in respect of the rights enshrined in the Convention including the right to collective bargaining for public servants not engaged in the administration of the State and requests it to transmit copies of the relevant legislative acts upon their adoption.*

## Ethiopia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1963)**

The Committee notes the communication dated 24 August 2010 submitted by Education International (EI), as well as the Government's reply to the comments made by the International Trade Union Confederation (ITUC) in 2008. The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association of June 2010, as regards allegations of serious violations of trade union rights and interference in the internal organization of the Ethiopian Teachers' Association (Case No. 2516).

The Committee notes that the Government indicates, in its reply, that it categorically rejects the allegations of interference in the affairs of independent associations and states that, without the free and unfettered operation of independent associations, the democratization effort in the country will not succeed. The Government's report adds that it has repeatedly explained that the right to form associations was a constitutionally protected freedom that citizens freely exercise, that the 2006 Labour Proclamation upholds this fundamental constitutional right and guarantees to trade unions the right to engage in organized collective bargaining within the scope delineated by its provisions; that the numerous freely functioning trade union and professional associations attest to the fact that the national legislation is in compliance with the Convention; and that the labour law provides unions and associations with a "legal arsenal" to defend themselves against any form of undue intervention. The Committee also notes that the Government indicates that the allegation that the new Charities and Societies Proclamation No. 621/2009 limits the right to strike and collective bargaining is completely without legal or practical foundation; that the conditions for the exercise of the right to strike and collective bargaining are governed by the Labour Proclamation; that unions can pursue their objective through this available option; and that the law provides for a list of essential public services to be maintained during a strike and holds the guilty party accountable in the event that property damage occurs in the course of the exercise of such activities.

*Teachers' associations.* In its previous comments, the Committee, also referring to the conclusions of the Conference Committee in 2009, had urged the Government to take without delay the necessary measures to ensure the resolution of the registration of the National Association of Ethiopian Teachers (NTA). The Committee notes that the Government indicates in its report that the NTA can request registration from the newly formed Charities and Societies Agency (CSA), established on the basis of the newly published Charities and Societies Proclamation No. 621/2009, and that, if registration is refused by the CSA, the NTA can bring the issue before a court of law, which could establish that the organization was unfairly denied registration. The Committee also notes that the Government's report indicates that, at this stage, before the issues have found legal closure, it is not appropriate for the Government to get involved in this regard, but that, once the NTA is registered, the Government reiterates its assurance that, as required by law, the NTA will enjoy all the entitlements of recognition and services that all legal associations are entitled to receive.

The Committee notes that the EI indicates, in its communication, that, after an unsuccessful attempt by the NTA to be registered with the Ministry of Justice in December 2008, the second attempt to register, in February 2010, has consistently been discouraged verbally by officials of the newly created CSA. According to the EI, three officers of the CSA commented that some of the objectives of the NTA, specifically the task to promote quality education and implementing Education for All and HIV/AIDS prevention programmes, are the sole responsibility and duty of the Government and warned that a union had to stick to only defending the rights of its members. Moreover, the officers of the CSA allegedly instructed the NTA representatives to convince teachers to join the existing teachers' association. On 7 May 2010, the NTA representatives requested the Director-General of the CSA to take the following actions: (i) either order the concerned officers to register NTA and issue certificate without further delay, or inform the NTA in writing of the refusal to register, in accordance with article 3.3; and (ii) provide the NTA with the address of the Charities and Societies Board since no one at the CSA could tell NTA the address of the Board, in order for NTA to be able to appeal grievance. As of 20 August 2010, no official response was notified to NTA representatives. *Deeply regretting the time that has elapsed since the NTA first sought registration and recalling that the right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently, the Committee urges the Government to take all necessary measures to ensure that the NTA is registered without further delay so that teachers may fully exercise their right to form organizations for the furthering and defence of teachers' occupational interests, and to provide information on the progress made in this respect in its next report.*

As to the Charities and Societies Proclamation No. 621/2009, which was published on 13 February 2009, the Committee notes that the Government indicates in its report that the law was promulgated after extensive public discussions involving all stakeholders, and entered into force after the expiry of the period of time which was given to associations and various charities and societies to align themselves with its requirements. The Government's report adds: that the Charities and Societies Proclamation aims at enhancing the participation of civil society organizations in developmental efforts of the country; that it clearly defines and regulates charities and societies and provides the necessary safeguards and due process in the framework of democratization efforts; and that no trade union or related association raised complaints on being aggrieved or restrained by this new law. The Committee notes that, according to its preamble, the Charities and Societies Proclamation is based on the need to "enact a law in order to ensure the realization of citizens' right to association enshrined in the Constitution" and that the abovementioned CSA is the newly established state agency for the registration of associations. Nevertheless, the Committee notes with *concern* that the Charities and Societies Proclamation organizes an ongoing and close monitoring of the organizations established on its basis and gives governmental authorities great discretionary powers to interfere in the registration, internal administration and dissolution of the concerned organizations with respect to those falling within its scope, which appear to encompass civil servants, including teachers.

The Committee notes that a number of provisions of the Charities and Societies Proclamation raise issues of compatibility with the Convention:

- the Charities and Societies Proclamation establishes a distinction between the organizations which are required to register, on the basis of the nationality of their members and the amount of funds they receive from foreign sources (article 2(2) and (3)); and, pursuant to article 14(5), only "Ethiopian Charities and Societies" – that is organizations all of whose members are Ethiopians, generate income from Ethiopia, are wholly controlled by Ethiopians and receive not more than 10 per cent of their funds from foreign sources – can take part in activities linked with the advancement of human and democratic rights, the promotion of the rights of the disabled and children's rights, the promotion of conflict resolution or reconciliation and the promotion of the efficiency of the justice and law enforcement services. The Committee understands that workers' and employers' organizations the members of which "reside" in the country – who are not all nationals – that are receiving more than 10 per cent of their funds from foreign sources and whose purpose is to defend the social and economic rights and interests of their members would not be permissible under the Act and would not be able to carry out their activities in the defence of the interests of their members;
- the Charities and Societies Proclamation authorizes the CSA to interfere in a range of administrative, financial and accounting issues concerning the internal functioning of the organizations, either explicitly or by using general wording that leaves a great margin of appreciation to the supervisory body through, inter alia, the following provisions: (i) pursuant to article 84(1) and (2), the CSA may "from time to time" institute inquiries with regard to charities or societies, either generally or for particular purposes and for the purposes of any such inquiry, the CSA "may by order" require the organization to furnish accounts and statements in writing, with respect to any matter in question at the inquiry, to furnish copies of documents in his custody or under his control, or to attend at a specified time and place and give evidence or produce documents; (ii) pursuant to article 85(1)(a), the CSA may, by order, require any charity or society or an employee thereof to furnish orally or in writing any information in her/his possession which relates to any charity or society; (iii) pursuant to article 86, any society shall notify the CSA in writing of the time and place of any meeting of its General Assembly, not later than seven working days prior to such meeting; (iv) pursuant to article 88(1), any organization shall allocate not less than 70 per cent of the expenses in the budget year for the implementation of its purposes and an amount not exceeding 30 per cent for its administrative activities; (v) pursuant to article 90, where, "at any time", the CSA, upon an inquiry with respect to any organization, "is satisfied that there is or has been any misconduct or mismanagement" in the administration of the organization and that it is "necessary to act for the purpose of protecting the property" of the organization, the CSA may, inter alia, suspend the officer responsible for the misconduct or mismanagement; and (vi) an organization may not establish a branch, change its name, place of work or amend its rules without giving prior notice to the CSA (articles 72–73) and shall not use any symbol without having it previously registered by the CSA (article 74);

The Committee recalls that the right of workers and employers to establish organizations of their own choosing, without interference by the public authorities includes the right to freely decide on the structure and composition of the organization, as well as autonomy and financial independence; that legislative provisions regulating in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by public authorities; that such provisions should simply establish an overall framework in which the greatest possible autonomy is left to the organizations; that there is no infringement of these rights if, for example, the supervision is limited to the obligation of submitting periodic financial reports; that problems of compatibility with the Convention arise when the law requires that certain financial operations – such as the receipt of funds from abroad – be approved by the public authorities as well as when the administrative authority has the power to examine the books and other documents of an organization, conduct an investigation and demand information at any time; and that both the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording every guarantee of impartiality and

objectivity (General Survey of 1994 on freedom of association and collective bargaining, paragraphs 78, 107, 124–126 and 135).

- as regards the dissolution of organizations, pursuant to article 92(2)(e) of the Charities and Societies Proclamation, the licence of any organization shall be cancelled, inter alia, “where it commits a crime by violating the provisions of the criminal code or that of the Proclamation”; noting that, pursuant to article 93, an organization may be dissolved by the CSA when its licence has been cancelled, it would thus appear that any violation, by an organization, of any provision of the Proclamation, including minor administrative requirements, may lead to the cancellation of its licence and to its dissolution;
- no suspensive effect is provided to the appeal procedure, since, pursuant to article 104(4), any organization in an appeal process, “in relation to registration or cancellation, shall be deemed not registered or cancelled until the final decision is made by the concerned authority”.

The Committee recalls that the dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations, and should therefore be accompanied by all the necessary guarantees; that the organizations affected by such measures must have the right of appeal to an independent and impartial judicial body; and that the administrative decision should not take effect until a final decision is handed down (General Survey, op. cit., paragraphs 185 and 188).

- as regards the registration process, the Charities and Societies Proclamation makes the acquisition of legal personality a prerequisite for the existence of an organization (articles 56(1) and 64(2)); moreover, the obligation to register with the CSA also applies to organizations that had already been registered before the publication of the Proclamation (article 111); in addition, the licence of the organization has to be renewed every three years (article 76(1)); and the wording used by article 69(2) would appear to allow the CSA to refuse to register an organization on a discretionary basis, since, according to this provision, the CSA shall refuse to register a charity or society where the proposed organization “is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order”.

The Committee recalls that when legislation makes the acquisition of legal personality a prerequisite for the existence and functioning of an organization, the conditions for acquiring legal personality must not be such that they amount to a de facto requirement for previous authorization to establish an organization, which would be tantamount to calling into question the application of *Article 2* of the Convention (General Survey, op. cit., paragraph 76);

- as to the sanctions and penalties, noting that the Charities and Societies Proclamation requires the organizations to fulfil a large number of requirements – ranging from minor administrative demands to structural clauses and detailed accounting – the Committee understands that any failure to adhere to any of these provisions may constitute a criminal offence, since, pursuant to article 102(1), “any person who violates the provisions of the Proclamation shall be punishable in accordance with the provisions of the Criminal Code”; in addition to prison terms, heavy fines can also apply when any organization fails, inter alia, to keep its books of accounts, to record money received, its source and the amount expended, or fails to submit an annual statement of account, or fails to allocate not less than 70 per cent of its expenses for the implementation of its purposes and not exceeding 30 per cent for its administrative activities (article 102(2)); in addition, any employee who participates in the “criminal acts” established under article 102(2) shall, “without prejudice to the applicability of the relevant provisions of the Criminal Code prescribing a penalty of imprisonment”, be punishable with a fine (article 102(3)).

***In these circumstances, taking into account the broad discretionary powers provided by the Charities and Societies Proclamation No. 621/2009 to public authorities, in particular through the establishment of the CSA, to interfere in the right to organize of workers and employers, as well as the requirement in the Proclamation that the funds of an association received from foreign sources not exceed 10 per cent, contrary to the right of workers’ organizations to organize their administration, the Committee urges the Government to take the necessary measures, without delay, to ensure that the Charities and Societies Proclamation is not applicable to the workers’ and employer’s organizations covered by the Convention and that such organizations are ensured effective recognition through legislation which is in full conformity with the Convention. The Committee requests the Government to provide information on all the steps taken in this regard and reminds the Government that it may avail itself of the technical assistance of the ILO in this respect.***

*Civil servants.* Furthermore, in its previous observation, the Committee had recalled that it had requested the Government to take measures to amend the Civil Servant Proclamation, so as to ensure the right of civil servants, including teachers in public schools, to form and join trade unions. The Committee had noted that the Government indicated that this right is enshrined under article 42 of the Constitution and that government employees whose work compatibility allows for it and who are below a certain level of responsibility have the right to form associations to improve their conditions of employment and economic well-being. The Committee had also noted that the Government had expressed to all relevant bodies that it shall achieve full compliance gradually by preparing the necessary conditions and the capacity of the country to shoulder the full extent of this right.

The Committee notes that the Government indicates, in its report, that it is important to re-emphasize the fundamental fact that the Constitution explicitly provides that every person, including every civil servant, has the right to



form associations for any cause or purpose; that civil servants with grievances in respect of their conditions of work are entitled to resort to legal mechanisms of redress under the legislation governing the civil service and other legal recourses, including the Office of the Ombudsperson; that it reiterates its position that there was not, nor could there be, any difference on whether civil servants should be able to form associations; and that the only difference is the timing. The Government's report indicates that it is the Government's assessment that the country is not ready to fully cater for such a framework; that this is the only explanation why the civil service legislation did not yet provide a separate association in the civil service; that as part of the democratization process in the country, the Government is fully engaged in implementing the civil service reform programme designed to provide efficient and speedy service to citizens; that at the present juncture, the Government has not developed the capacity to engage in a fully fledged collective bargaining process with civil servants; and that this is a matter to be presented for consideration by the legislature once the reform programme is successfully implemented and the necessary national capacity is in place. The Committee recalls the importance of ensuring that public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests. ***The Committee requests the Government to take the necessary measures to ensure that the freedom of association rights of civil servants, including teachers in the public sector, are fully guaranteed, and to provide information on the progress made in this respect in its next report.***

Furthermore, in its previous comments, the Committee had urged the Government to conduct a full and independent inquiry without delay into the allegations made by the ITUC and EI, relating to arrests of trade unionists, their torture and mistreatment while in detention, and continuing intimidation and interference. The Committee had noted the Government's statement that all allegations that are presented with credible evidence will be fully investigated by constitutional bodies including the courts, the Ethiopian Human Rights Commission, the Office of the Ombudsperson, or by a mechanism approved by the House of Peoples' Representatives. The Committee notes that the Government further indicates in its report that, on 8 May 2009, the second Criminal Bench of the Federal High Court found Mr Meqcha Mengistu guilty and sentenced him to three years' imprisonment; that he was released after receiving a pardon and that Ms Wubit Ligamo, who the Government denies was mistreated while in prison, was also released. While welcoming these releases, the Committee ***deeply regrets*** that the Government has never provided any information on the investigations expected into the allegations of torture and maltreatment of the detained trade unionists.

*Labour Proclamation (2003).* Finally, the Committee recalls that for several years it has been expressing its concern over the Labour Proclamation (2003), which falls short of ensuring full application of the Convention. In particular, the Committee recalls that it had previously requested the Government:

- to ensure the right to organize of the following categories of workers who are excluded, by section 3, from the scope of application of the Labour Proclamation: workers whose employment relations arise out of a contract concluded for the purpose of upbringing, treatment, care, rehabilitation, education, training (other than apprenticeship); workers under contract of personal service for non-profit-making purposes; managerial employees, as well as employees of state administration; judges and prosecutors, who were governed by special laws;
- to delete air transport and urban bus services from the list of essential services in which strike action is prohibited (section 136(2));
- to amend its legislation so as to ensure that, except in situations concerning essential services in the strict sense of the term, acute national crisis and public servants exercising authority in the name of the State, recourse to compulsory arbitration is allowed only upon the request of both parties;
- to amend section 158(3), according to which the strike vote should be taken by the majority of the workers concerned in a meeting in which at least two-thirds of the members of the trade union were present, so as to lower the quorum required for a strike ballot; and
- to ensure that the provisions of the Labour Proclamation which, as noted above, restrict the right of workers to organize their activities, are not invoked to cancel an organization's registration pursuant to section 120(c) until they have been brought into conformity with the provisions of the Convention.

***The Committee requests the Government to take the necessary measures, without delay, to bring the legislation and practice into full conformity with the Convention, and to provide detailed information in its next report on the progress made thereon, as well as on the time frame for such action.***

## Greece

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1962)***

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy, on the application of the Convention.

The Committee will examine these comments, along with the Government's observations thereto, as well as its report due in 2011, at its next session. *In the meantime, the Committee requests the Government to monitor the impact of these measures on the full exercise of the rights under the Convention and to provide information in this respect with its next report.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1962)**

The Committee notes that in a communication dated 29 July 2010 the Greek General Confederation of Labour (GSEE) submitted urgent comments with regard to the legislative measures implemented or to be implemented by the end of 2010 by the Greek Government in the framework of the mechanism to support the Greek economy (the GSEE refers to this mechanism as the "loan mechanism"). The International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) expressed their support for these comments in communications dated 9 August and 22 September 2010, respectively. In a communication dated 25 November 2010, the Government indicates that its reply is being finalized and will be communicated to the Committee as soon as possible, the delay being due to the complexity of the issues and the consequent need for involvement and coordination of many co-competent agencies.

The Committee notes that on 5 May 2010, the Greek Parliament adopted Act No. 3845/2010 (FEK A'65/6-5-2010) on "Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the International Monetary Fund". The Act contains as Appendices III and IV, a "Memorandum of Economic and Financial Policies" and a "Memorandum of Understanding on Specific Economic Policy Conditionality" which contain time-bound commitments set up by the Ministry of Finance, with the participation of the European Commission, the European Central Bank and the International Monetary Fund and communicated in letters by the Ministry of Finance and the Governor of the Bank of Greece to the President of the Eurogroup, the European Commission and the European Central Bank and to the International Monetary Fund.

The Committee also notes the adoption on 8 July 2010, of Act No. 3863/2010 on the "New Social Security System and relevant provisions" (FEK A'115) in order to implement certain of the time-bound commitments made in the two Memoranda attached to Act No. 3845/2010 in the area of structural policies on strengthening labour markets. In addition, on 5 March 2010, prior to the creation of the mechanism to support the Greek economy, the Parliament had adopted Act No. 3833/2010 (FEK A'40/15-3-2010) on the "Protection of the national economy – Emergency measures to tackle the fiscal crisis".

The GSEE criticizes section 2(7) of Act No. 3845/2010, as a result of which the national general collective agreement will no longer function as a minimum wage setting mechanism since branch and enterprise level agreements will be able to deviate from the terms of the sectoral agreements and the national general collective agreement. The GSEE notes that this provision dismantled a solid machinery of collective bargaining which had been functioning smoothly and effectively for 20 years as a result of a "Social Pact" endorsed unanimously in 1990 by all political parties and empowered by the consensus of the most representative employers' and workers' organizations following intense social dialogue. According to the previous system introduced by Act No. 1876/1990, the national general collective agreement took precedence over all other collective agreements, applied to all private sector workers in the Greek territory regardless of affiliation to a trade union, and bound all employers throughout the country.

The GSEE also objects to the exceptions introduced in the application of the national general collective agreement to young workers (of 18–24 years) and children (of 15–18 years) and the authorization granted to the Minister of Labour (in section 2(9)(e) and (f) of Act No. 3845/2010) to regulate through Presidential Decrees their working conditions, thus excluding this vulnerable group of workers from the scope of the minimum standards of wages and working conditions, which had so far been set through the national general collective agreement. It notes in particular, that newly hired young workers up to 24 years of age and children of 15–18 years will be remunerated at, respectively, 80 and 70 per cent of the minimum basic wage, as this is established in the national general collective agreement, for a period of 12 months (sections 2(6) of Act No. 3845/2010 and 74(9) of Act No. 3863/2010).

Furthermore, the GSEE objects to the permanent (and not temporarily restricted) drastic reductions in wages introduced twice in 2010 in the wider public sector including for employees under private law contracts (employed in local self-government and public enterprises) despite the provisions of the relevant collective agreements in force (sections 1(2) and 1(5) of Act No. 3833 and sections 3(1), (4), (6) and (8) of Act No. 3845/2010). The GSEE claims that collective agreements have been prohibited in the wider public sector by sections 1(2), (5) and 3(5) of Act No. 3833 and 3(8) of Act No. 3845/2010, which provide that all provisions in collective agreements which are contrary to the Acts in question are cancelled and superseded.

The GSEE also draws attention to various time-bound commitments introduced in the two Memoranda without any consultations with the social partners which in its view, constitute in and of themselves a violation of the autonomy of the bargaining parties and designate a pretextual process of dialogue on foregone conclusions and binding commitments that are already part of national legislation.

Finally, the GSEE criticizes the absence of consultations on the adoption of the abovementioned legislative measures which, according to the GSEE, does not signal a political will and commitment to engage in social dialogue in good faith nor does it manifest a sincere intention to take into account the views of the GSEE on these significant matters.

The GSEE concludes that Acts Nos 3833/2010, 3845/2010 and 3863/2010 lead to workers' disempowerment in the face of the combined spill-over effect of lay-offs, wage freezes and the abolition of the minimum standards of wages, negate the State's fundamental obligation to provide and protect decent work, violate the very essence of individual and social rights and endanger social peace and cohesion. The GSEE emphasizes that the measures in question are permanent and irreversible, notwithstanding the specific time frame and limited duration of the loan mechanism; are disproportionate, socially unjust and discriminatory vis-à-vis workers, especially the most vulnerable; have been adopted without examining sufficiently other well-weighed and more appropriate alternatives; are not quantifiable and their scope has no perceivable causal relationship with the pursued aim of implementing the stability programme; are not accompanied by adequate and concrete safeguards to protect the living standard of workers and support vulnerable groups in addressing the combined effect of economic austerity measures and the economic crisis; have had a serious and direct impact in weakening the position of GSEE during the collective negotiations that began in January 2010 for the conclusion of the new national general collective agreement.

The Committee must emphasize the importance of holding full and frank consultations with the employers' and workers' organizations on the revision of collective bargaining machinery, in accordance with the principle of the autonomy of the parties to the collective bargaining process and in light of the long-ranging implications of such revision for the standard of living of workers. Furthermore, it must recall that as a general matter, if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. *The Committee will examine the comments by the GSEE, along with the Government's reply and the Government's regular report which is due in 2011 it at its next session; the latter should also address the comments previously made by the Committee (see observation 2009/80th Session).*

*The Committee finally notes that as indicated by the GSEE, the revision of the collective bargaining machinery may have a wider impact on the observance of a range of ILO Conventions ratified by Greece, including the Labour Inspection Convention, 1947 (No. 81), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), the Equal Remuneration Convention, 1951 (No. 100), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Employment Policy Convention, 1964 (No. 122), the Minimum Age Convention, 1973 (No. 138), the Labour Administration Convention, 1978 (No. 150), the Collective Bargaining Convention, 1981 (No. 154), and the Workers with Family Responsibilities Convention, 1981 (No. 156).*

*In light of the complexity and pervasiveness of the measures adopted in the framework of the support mechanism, which touch upon a number of ILO Conventions ratified by Greece, the Committee invites the Government to avail itself of the technical assistance of the Office and to accept a high-level mission to facilitate a comprehensive understanding of the issues, before the examination by the Committee of the impact of the measures in question on the application of this Convention, as well as other Conventions ratified by Greece.*

### **Collective Bargaining Convention, 1981 (No. 154) (ratification: 1996)**

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy, on the application of the Convention.

The Committee will examine these comments, along with the Government's observations thereto, as well as its report, at its next session. *In the meantime, the Committee requests the Government to monitor the impact of these measures on the full exercise of the rights under the Convention and to provide information in this respect with its next report.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## **Guatemala**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1952)**

The Committee notes the Government's report, the discussion that took place in the Conference Committee on the Application of Standards in 2010 and the 11 cases before the Committee on Freedom of Association (Cases Nos 2203, 2241, 2341, 2361, 2445, 2609, 2673, 2708, 2709, 2768 and 2811). In its previous observation, the Committee took note of the high-level mission which visited the country in April 2008 and of the tripartite agreement signed during the mission with a view to improving implementation of the Convention. It also noted the high-level mission undertaken from 16 to 20 February 2009 and the technical assistance missions of 3 January 2009 and a final mission to provide assistance to the Tripartite Commission in formulating the road map to address the measures requested by the Committee on the Application of Standards (this mission took place from 16 to 20 November 2009). The Committee noted that in the end

there was no consensus between the social partners and that the Government prepared the road map on its own. The Committee notes that the Government states in its report that in April 2010 a training course was held on international labour standards for staff of the Attorney-General's Office, judges, magistrates, and staff of the Human Rights Ombudsman's Office and of the Ministry of Labour, with ILO technical assistance. The Committee notes that the Government has agreed to the mission, requested in June 2010 by the Conference Committee on the Application of Standards, involving the visit of an important and recognized personality with high-level ILO support to examine outstanding issues and make recommendations. The Committee notes the Government's suggestion that the mission be held in early 2011.

### **Acts of violence against trade unionists**

For several years, in its observations the Committee has noted acts of violence against trade unionists that have gone unpunished, and has asked the Government to send information on developments in this regard.

The Committee notes that, at the proposal of a high-level mission in 2008, the Tripartite Commission approved an agreement to eradicate violence, under the terms of which there are to be evaluations of: "(1) institutional action, including the most recent activities, and in particular the special protection measures to prevent acts of violence against trade unionists who are under threat; and (2) of the measures that are being taken (increases in the budget and in the number of investigators) to guarantee that effective investigations are conducted with sufficient resources so as to be able to elucidate the crimes committed against trade unionists and to identify those responsible".

In its previous observation, the Committee noted that both the International Trade Union Confederation (ITUC) and the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) refer in their comments of 2009 to serious acts of violence against trade union leaders and members during the period 2008–09, and report a climate of fear and intimidation the aim of which is to undermine existing trade unions and prevent the establishment of new ones. Both organizations also emphasize the deficiencies in the labour inspection system and the crisis in the legal system. The Committee expressed the hope that, in the context of the tripartite agreement concluded during the high-level mission, all the matters raised, as well as the comments of the ITUC, the Trade Union Confederation of Guatemala (UNSI TRAGUA) and the MSICG will be examined and addressed in a tripartite context by the Government and the social partners in the framework of the Tripartite Commission on International Labour Affairs, and the mechanism for rapid intervention in cases. ***The Committee notes with regret that there is nothing in the Government's report to suggest that a tripartite review of these matters has been held, and once again strongly requests the Government to take all available measures to ensure that these issues are examined without delay by the abovementioned Tripartite Commission.***

The Committee notes the extensive comments of 30 August 2010 on the application of the Convention, submitted by the MSICG. It notes that according to the MSICG, in 2009 and 2010 there have been numerous acts of violence against trade union leaders and trade unionists, ranging from murders (47 since 2007, seven of them in 2010), death threats and acts of intimidation, to abductions, torture or armed assault (with guns or knives); there has also been unauthorized entry of homes of trade unionists and trade union premises. According to the MSICG, in some cases the State did not authorize the security measures requested by the persons threatened and the Office of the Public Prosecutor is not investigating all the cases since some complaints have not even been entered in its database. The MSICG also cites instances of obstacles or administrative hurdles to the establishment or running of trade unions, and of unions being destroyed while organizing. More than 20,000 public sector workers have no employment relationship but a civil contract for professional services and, hence, no trade union rights. Furthermore, trade union activity has been criminalized, with penal action being brought against trade unionists for holding peaceful demonstrations and attacks on trade unions in anti-union publications or through smear campaigns. According to the MSICG, there have also been numerous instances of trade unionists being transferred, dismissed or removed from office on anti-union grounds; there are also acts of interference by employers. Furthermore, to the detriment of existing unions, the authorities have promoted "parallel" workers' organizations that are under their control and it is the latter that send delegates to the Tripartite Commission though they have little claim to representativeness. As to legal action, the MSICG emphasizes that slow proceedings with long delays continue to be a problem and that the legal reforms requested by the ILO have not been adopted. Lastly, the MSICG points out that this anti-union climate is reflected in the membership rate (2.2 per cent of the economically active population, of which the public sector accounts for 87.5 per cent).

The Committee observes that many of the assertions in the MSICG's communication were submitted to the Committee on Freedom of Association in its meetings of November 2009 and 2010. In its conclusions, the Committee on Freedom of Association noted with grave concern that the allegations presented in this case are extremely serious and include numerous murders of union leaders and members (16), one disappearance, acts of violence (sometimes also against the relatives of union members), threats, physical harassment, intimidation, the rape of a unionist's family member, obstacles to granting legal status to unions, the dissolution of a union, criminal proceedings for carrying out trade union activities, major institutional failures with regard to labour inspection and the functioning of the judicial authorities that have created a situation of impunity in labour matters (for example, excessive delays, a lack of independence, failure to comply with reinstatement orders issued by the courts) and in criminal matters (see 355th Report, Case No. 2609, paragraphs 858 et seq.).

The Committee is bound to note that, in terms of violence against trade unionists, the failures in the functioning of the penal justice system and the impunity of offenders, the situation continues to grow worse. The high-level mission of February 2009 noted that in recent years, despite the increase in violence against trade unionists (according to information from government officials), there have been no effective trials or convictions. The high-level mission heard testimony of the general lack of independence of the judiciary and government bodies as regards criminal cases. The Government informed the high-level mission that the situation of violence was generalized and denied any state policy against the trade union movement.

The Committee had noted that the high-level mission of February 2009 reported that a significant increase was needed in the capacity and budget of the Office of the Prosecutor General of the Nation, allowing the number of prosecutors and investigators to be increased substantially; the mission suggested that additional resources be allocated to existing programmes for the protection of trade unionists (44 trade unionists currently benefit from protection measures) and witness protection programmes, and that these programmes be properly coordinated. The high-level mission was of the view that measures should be taken actively to discourage any stigmatization of trade unions and the trade union movement that associates trade union activities with criminal acts. The high-level mission reported a very low membership rate and few collective agreements. According to the MSICG's comments, this situation has not changed.

**The Committee requests the Government to reply in detail to the MSICG's comments of 2010.** The Committee notes the statements made by the Government to the Committee on the Application of Standards to the effect that 30 new inspectors have been recruited to add to the strength of the labour inspectorate, that 70 unions and 45 collective labour accords were registered in 2009 and that most of the murders reported were unrelated to trade union activities.

The Committee wishes to refer to the conclusions drawn by the Committee on the Application of Standards in June 2010, which read as follows:

The Committee noted that the Committee of Experts continued to raise with concern the following issues: numerous serious acts of violence, including murders and threats against trade union members; the stigmatization of trade unions; and legislative provisions and practices that were not in conformity with the rights set out in the Convention. The Committee of Experts had also noted the ineffectiveness of criminal procedures in relation to acts of violence, excessive delays in the judicial procedures and the lack of independence of the judicial authorities which was giving rise to a serious situation of impunity.

The Committee noted the indication by the Government representative that the situation of violence and impunity was generalized and did not exclusively affect the trade union movement. The Government had requested the support of the United Nations to combat impunity and the International Commission against Impunity in Guatemala (CICIG) had been established for that purpose. The Government had requested reports to determine whether or not the murders of trade unionists referred to were due to reasons related to trade union activities. The Government had on many occasions requested ILO technical assistance in relation to all of the problems raised, including violence, impunity and the legislative changes requested, as well as the drawing up of the roadmap. The Government representative stated that tripartite social dialogue had been taking place in the National Tripartite Commission and that four tripartite dialogue round tables had been created at the regional level. He indicated that, following the latest ILO high-level mission, inter-institutional coordination mechanisms had been strengthened. In addition, action had been undertaken for the reinstatement of workers in export processing zones. Training activities had been carried out and the decision had been taken to establish two labour training schools. He stated that, although measures had been taken to reinforce the labour inspection services and the unit in the ministry responsible for relations with the ILO, further technical assistance from the ILO was needed.

The Committee noted that this was an important case that had been discussed for many years and that the Government had received numerous technical assistance missions with a view to bringing the law and practice into conformity with the Convention.

The Committee noted with deep concern that the situation of violence and impunity appeared to have worsened and recalled the importance of guaranteeing on an urgent basis that workers were able to carry out their trade union activities in a climate free from fear, threats and violence. It noted further with concern that the Commissioner of the CICIG resigned on 7 June 2010. The Committee urged the Government to take the necessary measures to ensure the effective operation of schemes for the protection of trade unionists and defenders of freedom of association and other human rights.

The Committee noted with concern that the Government had not shown sufficient political will to take action to combat violence against trade union leaders and members and to combat impunity. The Committee emphasized the need to make substantial progress in sentencing in relation to acts of violence against trade unionists and in ensuring that, not only the direct authors of the crime, but also the instigators were punished. The Committee requested the Government to intensify its efforts to bring an end to impunity, including by considerably increasing the budgetary resources allocated to the judiciary, the prosecutors, the police and the labour inspectorate.

Also observing with concern the generalized climate of violence, the Committee recalled that freedom of association could not be exercised in a climate where personal safety and basic civil liberties were not guaranteed. The Committee urged the Government to ensure simple and prompt recourse or any other effective recourse to competent courts or tribunals for protection against acts that were in violation of fundamental rights.

The Committee points out that in the road map it prepared at the request of the Committee on the Application of Standards in 2009, the Government referred to the need to pay greater attention to following up, investigating and concluding cases of violence against trade unionists and that affirmative action was accordingly needed in the interests both of effective and periodical reporting to the Committee on Freedom of Association and of inter-institutional coordination allowing relevant information to be exchanged and brought to the attention of the ILO supervisory bodies. The Government stated its intention of strengthening the Ombuds Unit (*unidad de procuración*) of the Directorate of International Affairs by appointing qualified staff to deal exclusively with these issues, endowed with the necessary resources to perform their duties and respond immediately to the particular circumstances of each and every case under

investigation. In addition, the Government wished to draw up an annual schedule of meetings between the Ministry of Labour (Ombuds Unit of International Labour Affairs) and the Office of the Attorney-General in order to have a framework for ongoing work between the two institutions. Furthermore, the Directorate of International Labour Affairs will draw up an inventory of cases already concluded so as to bring them to the attention of the Committee on Freedom of Association. Furthermore, on the matter of the inter-institutional coordination, the Government stated that the Multi-Institutional Labour Committee for Industrial Relations in Guatemala is being reactivated and will draw up a list of entities that have not yet been included but that are closely involved with these issues.

The Committee notes that in its report the Government states that it is ready and willing to give effect to the content of the Convention. It indicates in this connection that:

- the Ombuds Unit of the Directorate of International Affairs has been reinforced for the purpose of strengthening the ILO supervisory bodies and meeting their requirements thanks to the appointment as from April 2010 of an attorney-adviser and an ombudswoman, which has eased the flow of information on cases reported. Specifically, since then, 127 written requests were sent between April and August 2010, seeking information from various prosecution services of the Office of the Attorney-General, and from magistrates courts, courts of first instance and appeals chambers of labour courts, the Office of the Ombudsman, the General Inspectorate of Labour and the technical and legal advisory departments of the Ministry of Labour and Social Insurance, concerning complaints lodged by workers and trade union organizations. On the basis of this information, the Government sent the Committee on Freedom of Association 37 reports allowing action to be taken on specific objections raised in the cases;
- assistance from magistrates of the Supreme Court of Justice was obtained at the 99th Session of the International Labour Conference, held in Geneva from 2 to 18 June 2010, the aim being to enable a judicial body to become acquainted at first hand with the application of Convention No. 87 and complaints to the Government of Guatemala on violations of that Convention; and
- a request was made to the Attorney-General and the Council of the Attorney-General's Office in November 2009, and reiterated in January 2010, to hold a special meeting with the Tripartite Commission on International Labour Affairs in order to address the topic "Ensuring effective investigation and trial of those responsible for acts of violence and threats against trade unionists" and to secure "progress in the establishment and strengthening of the public prosecution service for crimes against trade unionists", which has not as yet been held because selection of a new Public Prosecutor is still pending.

The Committee once again draws the Government's attention to the principle that a genuinely free trade union movement cannot develop in a climate of violence and intimidation; freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed; the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. The Committee also points out that excessive delays in proceedings and the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights.

In view of the foregoing, although it has been informed that the Government has sent replies to the Committee on Freedom of Association regarding the cases that depend on the proper working of the Multi-Institutional Committee and on Parliament's willingness – according to the Government – to increase budgets in the legal system, the Committee concludes with *regret* that the Government has not demonstrated sufficient political will to combat violence against trade union leaders and trade unionists and to combat impunity. The Committee observes that, according to the Government's report, the meeting that the Attorney General was requested to hold with the national Tripartite Commission has not taken place. The Committee expresses *deep concern* at the lack of significant progress, particularly in view of the repeated ILO missions and the very clear and specific recommendations made by the ILO's supervisory bodies. It is particularly concerned that the Government has provided no comprehensive information and up-to-date statistics on acts of violence against trade unionists, the stages reached in criminal trials and the identification and conviction of offenders; nor has it provided information on any increase in budgets for the state bodies responsible for combating violence and impunity.

*The Committee once again firmly requests the Government: (i) to ensure the protection of trade unionists under threat of death; (ii) convey to the Public Prosecutor and the Supreme Court of Justice its deep concern at the slowness and inefficiency of the justice system and its recommendations concerning the need to elucidate murders and crimes committed against trade unionists so as to punish the perpetrators; (iii) to ensure the allocation of sufficient resources to these objectives with the consequent increase in human and material resources, to ensure coordination between the various state bodies who may be called upon to intervene in the judicial system, and to ensure training for investigators; and (iv) to give priority to these matters in government policy. The Committee invites the Government to have recourse to ILO technical assistance to resolve the serious problem of impunity for crimes against trade unionists.*

Lastly, the Committee again expresses its *deep concern* at the acts of violence against trade union leaders and members and reminds the Government that trade union rights can be exercised only in a climate that is free of violence. *The Committee expresses the firm hope that the Government will take all necessary measures to guarantee full respect for the human rights of trade unionists and will continue to apply the protection machinery to all trade unionists who*

*so request. It also requests the Government to take the necessary steps without delay to conduct the necessary investigations to identify those responsible for acts of violence against trade union leaders and members so that they are prosecuted and punished in accordance with the law. The Committee requests the Government to report on all developments in this regard. The Committee expresses its concern that the information provided by the Government refers only exceptionally to cases in which those responsible have been identified and punished, and emphasizes the need for considerable reinforcement of the criminal justice system.*

### Legislative problems

The Committee has for several years been commenting on the following provisions, which raise problems of consistency with the Convention:

- restrictions on the establishment of organizations in full freedom (the need to have 50 per cent + 1 of those working in the occupation to establish industry trade unions, under section 215(c) of the Labour Code) and delays in the registration of trade unions or the refusal to register them;
- restrictions on the right to elect trade union leaders in full freedom (they need to be of Guatemalan origin and to be a worker in the enterprise or economic activity in order to be elected as a trade union leader, under sections 220 and 223 of the Labour Code);
- restrictions on the right of workers' organizations to organize their activities freely (under section 241 of the Labour Code, strikes are declared not by the majority of those casting votes, but by a majority of the workers); the possibility of imposing compulsory arbitration in the event of a dispute in the public transport sector and in services related to fuel, and the need to determine whether strikes for the purpose of inter-union solidarity are still prohibited (section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996); labour, civil and penal sanctions applicable to strikes involving public officials or workers in specific enterprises (sections 390(2) and 430 of the Penal Code and Decree No. 71-86);
- the Civil Service Bill; in its previous observation, the Committee noted a Civil Service Bill which, according to UNSITRAGUA and the National Federation of State Workers' Unions (FENASTEG), requires a percentage that is too high to establish unions and restricts the right to strike. The Committee notes the Government's indication that the Bill was withdrawn and that in July 2008 an inter-sectoral consultation committee was established to prepare a Bill that is consistent with the needs of the sectors involved; and
- the situation of many workers in the public sector who do not benefit from trade union rights. These workers, who are under contract under item 029 and others of the budget, should have been recruited for specific or temporary tasks, but are engaged in ordinary and permanent functions and often do not benefit from trade union rights or other employment benefits, other than wages, and are not covered by social security or by collective bargaining, where it exists. The Committee notes that the members of the Supreme Court of Justice indicated to the high-level mission that, in accordance with case law, these workers enjoy the right to organize. Nevertheless, this principle in case law has not been given effect in national practice, according to technical assistance reports, and the comments of the MSICG.

With regard to these matters, the Committee notes that, at the proposal of the 2008 high-level mission, the Tripartite Commission approved an agreement to modernize the legislation and give better effect to Conventions Nos 87 and 98. This agreement provides for "an examination of the dysfunctions of the current system of industrial relations" (excessive delays and breach of due process, failure to enforce the law and sentences, etc.), and particularly of the machinery for the protection of the right to collective bargaining and the rights of workers' and employers' organizations and their members, as laid down in Conventions Nos 87 and 98, in the light of technical considerations and the comments of a substantive and procedural nature of the ILO Committee of Experts. The Committee observes that the high-level mission undertook to provide appropriate technical assistance in relation to these matters and notes that this assistance has already started.

The Committee observed that the road map set deadlines for the submission of bills pertaining to the legislative amendments requested by the Committee of Experts (the deadline was set for 28 February 2010). It reminds the Government in this connection that a series of proposals to address the legislative problems was drawn up by the national Tripartite Commission in the first quarter of 2009 with the ILO technical assistance missions.

The Committee observes that, according to the road map drawn up by the Government in December 2008:

We have appointed a Lawyers' Commission in the Ministry of Labour with a view to analysing the feasibility of the recommendations for legislative reforms proposed by the CEACR. The opinion of that Commission was already notified to the previous ILO technical assistance mission.

We have in our possession a list of legislative initiatives proposing the adoption of amendments to Decree No. 1441 of the Congress of the Republic, the Labour Code, which are currently being examined by the Congress of the Republic. This shows the political will of the State of Guatemala gradually to resolve the problems arising from the application of Guatemalan labour law.

In addition to the above, an analysis has also been undertaken of the manner in which the right to strike of workers is penalized by the Labour Code and, taking into account the CEACR's recommendations, a study has already been prepared for submission to the state bodies for a decision.

We have also planned the strategy that we will apply to achieve the objectives set.

The Committee observes that nothing in the Government's report allows it to note progress in legislative matters. The MSICG likewise indicates that there has been no progress.

*The Committee notes that, in the Committee on the Application of Standards, the Government merely referred to certain measures relating to the Civil Service Bill. The Committee notes with regret that there has been no significant progress with the legal reforms requested. The Committee is of the view that greater efforts are called for, and hopes to note progress in the near future. It expresses the firm hope that, with technical assistance from the ILO, the Government will be in a position to provide information in its next report on positive developments in the various issues raised.*

#### Other matters

*The maquila sector.* For years, the Committee has been noting comments submitted by trade union organizations on serious problems in applying the Convention that relate to trade union rights in the export processing sector.

The Committee noted the comments of 2009 by the ITUC asserting that it is impossible to exercise the right to organize in export processing zones owing to the determined opposition of the employers. Only three unions have been established in the 200 export processing zones that exist and the labour authorities are incapable of exercising control over breaches of the law or failure to apply it in this sector. According to the MSICG, the fact that it is impossible to establish organizations in export processing zones is a result of anti-union practices.

The Committee noted that, in its conclusions, the high-level mission of 2008 indicated that "according to the Ministry of Labour and Social Insurance, there are seven collective accords in the export processing sector, but only two of them date from 2007. The remainder date from 2003 or even before. With regard to trade union membership, according to the administrative authorities there are six unions and a membership of 562 in the export processing sector, which employs around 200,000 workers. In the view of the executive committee of the trade union movement, there are only two unions in this sector. Whatever the correct figure, there is clearly only a minimum level of trade union activity and collective bargaining in export processing zones and hence a problem in applying Conventions Nos 87 and 98". In its report, the Government states that there are seven active trade unions in *maquila* and textile enterprises and one approved collective accord for the period 2008–10.

According to the Government, in 2008 the General Inspectorate of Labour dealt with 33 complaints relating to freedom of association and protection of the right to organize. Some cases were settled by conciliation, others are still pending. In 2009, the General Inspectorate of Labour dealt with 30 complaints relating to freedom of association, most of which are still being processed. In 2010, the General Inspectorate of Labour has dealt with seven complaints on freedom of association, all of which are still being processed. Lastly, the Government appends a document, dated 15 January 2010, addressed to the Public Prosecutor and the Attorney-General.

*The Committee requests the Government to provide information on the exercise of trade union rights in practice in export processing zones (number of trade unions, size of their membership, number of collective agreements and their coverage, complaints of violations of trade union rights and decisions taken by the authorities, and the number of inspections). The Committee expresses the hope that the Government will continue benefiting from technical assistance from the Office so that the Convention is given full effect in the export processing sector, and requests the Government to provide information on this matter. It requests the Government to refer problems relating to the exercise of trade union rights in the maquila sector to the national Tripartite Commission, and to supply information in this regard.*

*National Tripartite Commission.* The Committee notes that in this Commission there are problems with the recognition by all concerned of the workers' representatives, due to a division in UNSITRAGUA. The Committee notes that the Government has requested ILO technical assistance in this matter. *The Committee hopes that the Government will receive the requested technical assistance.*

*[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]*

## Guinea

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1959)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that in its previous comments the Committee raised a number of points about the national legislation as follows:

- the need for measures to set up an independent body that has the trust of the parties and is able to rule promptly on difficulties encountered in defining the minimum service where the parties are unable to agree as to the minimum service in transport and communications (which are not deemed essential in the strict sense of the term); and
- the need for measures to ensure that compulsory arbitration (established in sections 342, 350 and 351 of the Labour Code) is restricted to cases where the two parties agree to request it, in essential services in the strict sense of the term, or in the event of acute national crisis.



*The Committee trusts that the Government will take the measures requested very shortly, in consultation with the representative organizations of employers and workers concerned, and asks it to provide information on any developments in the situation.*

The Committee reminds the Government that it may seek technical assistance from the Office.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 26 August 2009. The Committee recalls that the 2008 ITUC comments reported assaults, by the security forces, on demonstrators and strikers, as a result of which around 40 people died and nearly 300 others were injured, arrests of trade unionists and the destruction of the headquarters of the National Confederation of Workers of Guinea (CNTG). The Committee recalls that a climate of violence in which murders and disappearances of trade union leaders go unpunished, constitutes a serious obstacle to the exercise of trade union rights and that such acts require severe measures to be taken by the authorities. When disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such acts (see 1994 General Survey on freedom of association and collective bargaining, paragraph 29). *The Committee requests the Government to provide its observations on all the comments made by the ITUC.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

Finally, the Committee notes the comments made by the ITUC, dated 24 August 2010, on the application of the Convention, in particular, the allegations concerning the search of the home of the General Secretary of the CNTG by military forces. The Committee recalls that any search of unionists' homes without a court order constitutes an extremely serious infringement of freedom of association. *The Committee requests the Government to provide its observations in this respect.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1959)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention.* Need to include in the national legislation specific provisions: (a) to protect all workers, and not only trade union delegates as provided in the Labour Code, against acts of anti-union discrimination at the time of recruitment and during employment; (b) to provide expressly for appeal procedures and sufficiently dissuasive sanctions against acts of anti-union discrimination and interference; (c) to provide for rapid appeal procedures and sufficiently dissuasive sanctions for violations of section 3 of the draft new Labour Code, which provides that no employer may take into consideration membership of a trade union and trade union activities of workers in making decisions about recruitment, performance and distribution of work, termination of the employment contract, etc.

*Article 2.* Need to include in the draft Labour Code specific provisions on protection against acts of interference in the internal affairs of workers' and employers' organizations, accompanied by efficient and expeditious procedures and sufficiently dissuasive sanctions.

*The Committee trusts that the Government will take the necessary steps to ensure that the provisions of the new Labour Code, which have been under preparation for many years, are fully consistent with Articles 1 and 2 of the Convention. The Committee requests the Government to indicate all progress towards this end in its next report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

*Finally, the Committee notes the comments made by the International Trade Union Confederation (ITUC) and requests the Government to provide its reply.*

## **Guinea-Bissau**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that for several years it has been referring to the following matters.

*Articles 4 and 6 of the Convention.* The Committee previously noted the Government's indication that it intended to pursue the process of revision of the General Labour Act, Title XI of which contains provisions on collective bargaining, and to take steps so that this text would guarantee agricultural workers and dockworkers the rights envisaged in the Convention. The Committee notes that it previously noted the Government's indication that the draft Labour Code provided for the adaptation of the application of its provisions to the specific characteristics of the work performed by agricultural workers and dockworkers. *The Committee requests the Government to indicate any developments relating to this draft legislation and hopes that this draft will guarantee agricultural workers and dockworkers the rights provided for by the Convention.*

The Committee previously asked the Government to send information on the measures taken to adopt the special legislation which, under section 2(2) of Act No. 08/41 on freedom of association, was to regulate the right to collective bargaining of public servants who are not engaged in the administration of the State. *The Committee once again requests the Government to keep it informed of any developments in this regard.*

Finally, the Committee previously asked the Government to keep it informed of any developments with regard to the promotion of collective bargaining in the public and private sectors (training and information activities, seminars with the social

partners, etc.), and to send statistics on the collective agreements concluded (by sector) and the number of workers they cover. The Committee notes that the comments made by the International Trade Union Confederation (ITUC) show that the situation with regard to collective bargaining is unsatisfactory. It reminds the Government once again that *Article 4* of the Convention provides that “measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements”. ***The Committee requests the Government to take concrete measures to promote greater use in practice of collective bargaining in the private and public sectors, and to indicate any developments concerning this situation, including the number of new agreements signed and the number of workers covered by such agreements. The Committee hopes that a detailed report will be provided for examination next year in the context of the regular report examination cycle and that it will contain full information on the points raised as well as on the comments made by the ITUC.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

Finally, the Committee notes the comments made by the ITUC dated 24 August 2010 on the application of the Convention. ***The Committee requests the Government to provide its observations thereon.***

## Guyana

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1967)***

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

- The Committee recalls that its previous observation referred to the following questions:
- the need to amend the Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01) in respect to: (1) conferring on the Minister broad powers to refer a dispute in the services listed in the schedule to a tribunal for compulsory arbitration and the sanction (fine or imprisonment) imposed on workers who take part in an illegal strike (section 19); (2) the schedule listing the essential services (which may be revised at the discretion of the Minister) that contains some services that go beyond those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (dockage, wharfage, discharging, loading or unloading of vessels, the services provided by the Transport and Harbours Department and the National Drainage and Irrigation Board cannot be considered essential services in the strict sense of the term). The Committee recalled that the authorities may establish, with the participation of workers’ and employers’ organizations, a system of minimum service in those services considered to be of public utility; and
  - section 19 of the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Bill 2006 that sets higher fines than those provided for in the previous Act and maintains the imprisonment for those workers who take part in an illegal strike.

The Committee had noted the Government’s statement to the effect that there is no restriction on the right to strike and that workers who choose to strike are protected by the law. The Committee once again reminds the Government that, by conferring on the Minister broad powers to refer to compulsory arbitration disputes in services, not all of which are essential, and by providing for sanctions (fine or imprisonment) in the event of an illegal strike, the Public Utility Undertakings and Public Health Services Arbitration Act and the Bill introduced to amend it compromise the workers’ right to strike which the Committee considers to be one of the essential means available to them to protect their interests.

***The Committee expresses the hope that necessary measures will be taken to amend the legislation so as to bring it in conformity with the Convention. The Committee requests the Government to indicate in its next report any progress made in this respect.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1966)***

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

In its previous observation, the Committee referred to the recognition of only those unions claiming 40 per cent support of the workers, as set out in the Trade Union Recognition Act. The Committee takes note of the Government’s statement that, at the request of the Trades Union Congress, the Trade Union Recognition Act provided for the recognition of unions that were recognized prior to the Act without having to prove that they had majority support (section 32). All unions benefited from this provision which the Government says is no longer applicable as all certificates applicable under this section have been issued. Given that the representativeness of unions might change, the Committee recalls once again that, if no union covers more than 40 per cent of the workers in the bargaining unit, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). ***The Committee hopes that significant progress respecting this issue will be made in the near future and requests the Government to provide information on the results of the consultative process.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Hungary

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1957)**

*Article 2 of the Convention. Acts of interference.* In previous comments, the Committee had requested the Government to indicate the measures taken or contemplated so as to adopt specific legislative provisions prohibiting acts of anti-union discrimination and interference. The Committee notes that the Government once again indicates in its report that it considers that the legislation in force, namely the Labour Code and Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities, set out sufficiently detailed provisions on the prohibition of all acts of interference. In this respect, the Committee notes that section 32 of the Labour Code affords a protection for certain acts of interference, stipulating that only a trade union or an employers' organization that is independent from the other is entitled to conclude a collective agreement. The Committee recalls that legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application in practice of *Article 2* of the Convention. Moreover, to ensure that these measures receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down these substantive provisions, as well as appeals and sanctions in order to guarantee their application (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 232). ***In order to give effect to Article 2 of the Convention, the Committee recalls the need to adopt specific legislative provisions prohibiting acts of interference (in particular, those designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means), and establishing rapid appeal procedures, coupled with effective and dissuasive sanctions against such acts.***

The Committee further notes the Government's indication that no particular legislative amendment is planned concerning protection against interference, although an expert examination was initiated in 2009 as to opportunities in finding alternative solutions for the settlement of disputes, which may, depending on the outcome of the tripartite consultations, result in a legislative act that could notably afford a better protection against acts of interference. ***In these circumstances, the Committee, recalling its abovementioned comments, also requests the Government to keep it informed of any development concerning the abovementioned expert examination and to provide a copy of any legislation adopted in this respect.***

*Article 4. Representativeness for the conclusion of collective agreements.* The Committee had previously requested information on the system of bargaining agent certification at the sectoral and national levels. The Committee notes that the International Trade Union Confederation (ITUC), in its comments submitted on 24 August 2009, and the Workers side of the National ILO Council (including the National Federation of Autonomous Trade Unions, the Trade Union Group of Intellectuals, the Democratic League of Independent Trade Unions, the National Confederation of Hungarian Trade Unions, the National Federation of Workers' Councils and the Co-operation Forum of Trade Unions) in its comments sent along with the Government's report on 24 November 2009, both indicate that trade unions need to represent 65 per cent of the workforce (for a single union), a threshold which can hardly be achieved under a plural trade union structure, in order to be able to engage in collective bargaining (section 33(5) of the Labour Code), amend or renegotiate the collective agreement (section 37(1) and (2) of the Labour Code). The Committee further notes the Government's indication that: (i) the provisions cited above require a relatively high rate of employees for the conclusion of the collective bargaining agreement, as several representative trade unions are unable to enter into one jointly in a given case; (ii) in such a case, the lack of consensus among the trade unions necessitates the observation of the rules according to which the trade union with the highest rate support will be entitled to enter into the collective bargaining agreement, reaching about two-thirds (65 per cent) share mentioned above; and (iii) as amendments have been made recently to the Act on the legal status of public servants (subsection 4 of section 12/A of Act No. XXXIII of 1992 on the legal status of public servants), according to which a trade union having at least a 50 per cent support may conclude the collective bargaining agreement in a similar case, the Government would be ready to discuss an amendment to section 33(5) of the Labour Code. The Committee recalls that high percentage requirements for the recognition of a collective bargaining agent may impair the promotion and development of free and voluntary collective bargaining. In addition, the Committee recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all unions in this unit, at least on behalf of their own members (see General Survey, op. cit., paragraph 241). ***The Committee therefore requests the Government to indicate in its next report any measures taken or contemplated so as to lower the 65 per cent requirement in section 33(5) of the Labour Code, as well as any measure taken or envisaged in order to ensure that where no union represents 65 per cent of the employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members.***

Finally, the Committee had also requested information on developments concerning a draft Bill pertaining to certain aspects of social dialogue. The Committee notes that, according to the Government's report, Act No. LXXIII of 2009, on the National Council for the Reconciliation of Interests ("NCRI Act"), and Act No. LXXIV of 2009, on the Sectoral Dialogue Committees and certain issues of the medium-level social dialogue ("SDC Act"), entered into force on

20 August 2009. The Committee will provide its observations on these two Acts in its next report, once translated by the Office.

## Kazakhstan

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* The Committee had previously requested the Government to amend its legislation so as to ensure the right to organize of judges (article 23(2) of the Constitution and section 11(4) of the Law on Social Associations). The Committee had noted the Government's explanation that judges have a special legal status within the State system and the particular nature of their function justifies the constitutional limitation of their rights. **The Committee recalls that the only exceptions authorized by Convention No. 87 are members of the police and the armed forces and therefore once again requests the Government to take the necessary measures to ensure that judges can establish organization for defence and furtherance of their interests. It requests the Government to indicate the measures taken or envisaged in this respect.**

The Committee recalls that it had previously requested the Government to specify the categories of workers covered by the term "law enforcement bodies" whose right to organize is restricted under the same provisions. The Committee had noted from the Government's report, as well as from the definition provided for in section 256(2) of the Labour Code (2007), that firefighting and prison services are included in the definition of the "law enforcement bodies" and therefore, its personnel is excluded from the right to organize. The Committee considers that while exclusion from the right to organize of the armed forces and the police, as stated above, is not contrary to the provisions of Convention No. 87, the same cannot be said for fire service personnel and prison staff. The Committee is of the opinion that the functions exercised by these two categories of public servants should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56). **The Committee therefore requests the Government to ensure that fire service personnel and prison staff enjoy the right to organize. It requests the Government to indicate the measures taken or envisaged in this respect.**

*Right to establish organizations without previous authorization.* The Committee had noted that in its report, the Government makes reference to section 10(1) of the Law on Social Associations, applicable to employers' organizations and providing for a minimum requirement of ten people to form an association. The Committee recalls that a requirement of a membership of at least ten employers to create an employers' organization is too high and likely to be an obstacle to the free creation of employers' organizations. **It therefore requests the Government to take the necessary measures in order to amend its legislation so as to lower this requirement. It requests the Government to indicate the measures taken or envisaged in this respect.**

The Committee recalls that it had previously requested the Government to provide its observations on the comments of the International Trade Union Confederation (ITUC), referring to violations of *Article 2* of the Convention in practice, in particular high registration cost, which makes registration of trade unions almost impossible. **In view of the fact that no information has been provided by the Government in this respect, the Committee once again requests the Government to provide its observations on the comments of the ITUC.**

*Article 3. Right of organizations to organize their activities and to formulate their programmes.* The Committee had noted Chapter 32 of the Labour Code (2007) regulating collective labour disputes. The Committee understands that the process of settlement of collective labour disputes begins with the procedure provided for by section 289, which requires that claims of workers should be formulated at the meeting (conference) of employees gathering not less than half of the total workforce and adopted by the majority of those present. The Committee considers that trade unions should be free to regulate the procedure of submitting claims to the employer and that the legislation should not impede the functioning of a trade union by obliging a trade union to call a general meeting every time there is a claim to be made to an employer. **The Committee therefore requests the Government to take the necessary measures in order to amend section 289 of the Labour Code so as to ensure the right of trade unions to submit claims to the employers without their prior approval by a general meeting of workers. It requests the Government to indicate the measures taken or envisaged in this respect.**

The Committee had noted that the right to strike is prohibited in the civil service (section 10(6) of the Law on Civil Service). Furthermore, according to section 231(2) of the Labour Code, public service employees cannot participate in any action impeding normal functioning of the service and their official duties. The Committee therefore understands that the right to strike of public servants is restricted or even prohibited. The Committee considers that the prohibition of the right to strike should be limited to public (or civil, as the case may be) servants exercising authority in the name of the State. The Committee notes that pursuant to section 230 of the Code, the list of services considered public was adopted by the Government on 27 September 2007 and concerns categories of workers who cannot be considered as exercising authority in the name of the State. **With regard to the "civil service", while noting from the Government's report that teachers, doctors and bank employees are not civil servants, the Committee requests the Government to provide a full list of the services falling into this category. Therefore, the Committee requests the Government to take the necessary measures, including through amendment of the relevant legislative provisions, in order to ensure that the prohibition of the right to strike is limited only to public (or civil, as the case may be) servants exercising authority in the name of the State. It requests the Government to indicate the measures taken or envisaged in this respect.**

The Committee had noted that pursuant to section 303(1) of the Labour Code, strikes are illegal in organizations carrying out dangerous industrial activities (subsection (1)) and in other cases provided for by the national legislation (subsection (5)). **The Committee requests the Government to clarify which organizations fall into the category of organizations carrying out dangerous industrial activities and the categories of workers whose right to strike is so restricted. The Committee further requests the Government to indicate all other categories of workers whose right to strike is restricted by other legislative texts and to provide copies thereof.**

The Committee further noted that according to section 303(2), in the rail and public transports, civil aviation and communications, a strike may be held if the necessary range of services, as determined on the basis of a prior agreement with the local executive authorities, is maintained. The Committee recalls that in situations in which a total prohibition of strikes would not appear to be justified (as in services mentioned above) and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption, the minimum service as a possible alternative to a total prohibition would be appropriate. However, in the view of the Committee, such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey, op. cit., paragraphs 161 and 162). **The Committee therefore requests the Government to amend section 303(2) of the Labour Code so as to ensure the application of these principles. It requests the Government to indicate the measures taken or envisaged in this respect.**

The Committee had noted that according to section 298(2) of the Labour Code, the decision to call a strike is taken by a meeting (conference) of workers (their representatives) gathering not less than half the total workforce and the decision is adopted if not less than two-thirds of those present at the meeting (conference) have voted for it. The Committee considers that while a requirement of a strike ballot does not, in principle, raise problems of compatibility with the Convention, the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice; if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at reasonable level (see General Survey, op. cit., paragraph 170). In these circumstances, the Committee considers that while the quorum provided for by section 298(2) seems to be compatible with the freedom of association principles, the requirement that a decision to strike should be taken by two-thirds of those present at the meeting is excessive and limits the right to strike. **The Committee therefore requests the Government to amend section 298(2) of the Labour Code so as to lower this requirement and so as to ensure that account is taken only of the votes cast in determining the outcome of a strike ballot. The Committee requests the Government to indicate the measures taken or envisaged in this respect.**

The Committee had noted that section 299(2)(2) of the Labour Code imposes the obligation to indicate, in the strike notice, its possible duration. **The Committee requests the Government to indicate whether workers or their organizations can declare a strike for an indefinite period of time.**

*Article 5. Right of organizations to establish federations and confederations and to affiliate with international organizations.* For several years, the Committee had been requesting the Government to amend section 106 of the Civil Code and article 5(4) of the Constitution so as to lift the ban on financial assistance to national trade unions by an international organization. The Committee had noted that the Government reiterates that other than monetary, the financial assistance also includes such forms of support as property, equipment, motorized transport, communications and printing equipment. The Committee considers that legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers and that all national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, whether they are affiliated or not to the latter. **The Committee therefore once again requests the Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift this prohibition and to indicate the measures taken or envisaged in this respect.**

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**

## **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2001)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that in its previous comments it had requested the Government to institute an independent investigation into the comments concerning interference by the employer in trade unions' internal affairs and activities and refusals to bargain collectively submitted by the International Confederation of Free Trade Unions (ICFTU) (now the International Trade Union Confederation (ITUC)). The Committee regrets that no information has been provided by the Government in this respect. **The Committee reiterates its request and trusts that the Government will be more cooperative in the future.**

*Articles 1, 2 and 4 of the Convention.* The Committee had previously requested the Government to specify the categories of worker covered by the term "law enforcement bodies" whose right to organize is restricted under article 23(2) of the Constitution and section 11(4) of the Law on Social Associations. The Committee had noted from the Government's report, as well as from the definition provided for in section 256(2) of the Labour Code (2007), that firefighting and prison services are included in the definition of the "law enforcement bodies" and therefore excluded from the right to organize and to bargain collectively. The Committee considers that while the armed forces and the police can be excluded from the application of the Convention, the same cannot be said for fire service personnel and prison staff. **The Committee therefore requests the Government to take the necessary measures to ensure that these categories of worker enjoy the rights afforded by the Convention.**

*Article 2.* The Committee had previously noted that sections 4(4) and 18(2) of the Law on Trade Unions prohibited acts of interference in the affairs of workers' organizations and requested the Government to provide details on the procedures available to trade unions in cases of infringement, as well as the specific sanctions provided by the legislation. The Committee had noted

sections 150 and 150-1 of the Criminal Code concerning interference in the activities of social organizations and interference in the legitimate activities of workers' representatives, respectively, and providing for a penalty equivalent to up to five times the monthly wage or imprisonment to be imposed on an "official" found guilty of committing the offence using his or her position. **The Committee requests the Government to clarify whether this provision applies in both the public and the private sectors.**

*Article 4.* The Committee had noted that according to section 282(2) of the Labour Code, workers who are not members of any trade union may either authorize an existing trade union or choose another representative for the purposes of collective bargaining. If several workers' representatives exist at the enterprise, they can establish a joint representative body to negotiate a collective agreement. The Committee considers that when a representative trade union exists and functions at the enterprise, allowing other workers' representatives to bargain collectively could not only undermine the position of the trade union concerned, but also infringe upon the rights guaranteed under *Article 4* of the Convention. **The Committee therefore requests the Government to amend its legislation so as to ensure that where there exist in the same undertaking both a trade union representative and an elected representative, the existence of the latter is not used to undermine the position of the union in the collective bargaining process. It requests the Government to indicate the measures taken or envisaged in this respect.**

The Committee had noted that the obligation imposed on the employer to conclude a collective agreement was repealed (once the Law on Collective Agreements was repealed) and that section 281 of the Labour Code enshrines the principle of free and voluntary negotiations. The Committee notes, however, that under section 91 of the Code on Administrative Breaches (2001), an unfounded refusal to conclude a collective agreement is punished by a fine. The Committee recalls that the legislation, which imposes an obligation to achieve a result, particularly when sanctions are used in order to ensure that an agreement is concluded, is contrary to the principle of free and voluntary negotiations. **The Committee therefore requests the Government to provide information on the application of section 91 of the Code in practice.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Kenya

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1964)**

The Committee notes with *satisfaction* that the Constitution was formally adopted on 27 August 2010 and that it specifically recognizes to everyone the right to form, join or participate in the activities and programmes of trade unions or employers organizations, and for trade unions, employers and employers' organization to engage in collective bargaining (section 41).

*Articles 1, 2 and 3 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, the Committee had noted that under section 10 of the Labour Relations Act (LRA) 2007, claims of infringement of employees' rights, including claims of anti-union discrimination, must first be referred in writing to the minister to appoint a conciliator and, should conciliation fail to resolve the claim within 30 days (or a longer period, should both parties agree) from the appointment of the conciliator, section 73(1) provides that the claim may then be referred to the Industrial Court. The Committee had requested the Government to indicate the average time period for the adjudication of anti-union discrimination cases by the Industrial Court. The Committee notes that the Government indicates in its report that the Industrial Court is an independent arm of Government that sets its own activities and programmes and that adjudication of disputes may depend on various dynamics including response of the parties, the number of cases filed and the complexity of the files. The Committee recalls that the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 214). **The Committee recalls the importance to ensure a short average time period for the adjudication of anti-union discrimination cases by the courts or through administrative proceedings and requests the Government to indicate the average time period of the proceedings in these cases.**

*Protection against acts of interference.* In its previous comments, the Committee had noted that the LRA makes no specific provision for protection against acts of interference, either directly or indirectly. The Committee recalls that *Article 2* of the Convention provides that workers' and employers' organizations shall enjoy adequate protection against act of interference by each other or each other's agents or members in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article. The Committee notes that according to the Government, Part 11 "Miscellaneous provisions" of the LRA confers protection against interference. **Nonetheless, noting that the LRA does not contain either express provisions against acts of interference nor provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, the Committee requests the Government to take legislative measures to ensure the application in practice of Article 2 of the Convention.**

*Article 4. Trade union recognition for purpose of collective bargaining.* In its previous comments, the Committee had noted that section 54(1) of the LRA requires an employer to recognize a trade union if the said trade union represents "a simple majority of unionizable employees". Similarly, section 54(2) provides that employers' federations shall recognize a trade union for the purposes of collective bargaining "if the trade union represents a simple majority of unionizable employees employed by the group of employers or the employers who are members of the employers' organization within a sector". The Committee had recalled, in this respect, that problems may arise when the law

stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a representative union which fails to secure this absolute majority is thus denied the possibility of bargaining (see General Survey, op. cit., paragraph 241). The Committee had therefore requested the Government to ensure that section 54(1) and (2) of the LRA are applied in such a manner that, where no union covers more than 50 per cent of the workers, collective bargaining may still be possible for the unions failing to acquire this percentage. In this regard, the Committee notes with *satisfaction* that section 41(5) of the Constitution provides that “every trade union, employers’ organization and employer has the right to engage in collective bargaining”.

*Article 6. Collective bargaining in the public sector.* In its previous comments, the Committee had noted that section 61(1) of the LRA provides that the minister may, after consultations with the National Labour Board, make regulations establishing machinery for determining terms and conditions of employment for any category of employee in the public sector. The Committee had also noted that under section 61(3) of the LRA, the Minister may determine different terms and conditions for different categories of public employees. The Committee had recalled that all public servants, with the sole possible exception of those directly engaged in the administration of the State, should enjoy the right of collective bargaining. In these circumstances, the Committee had requested the Government to: (1) take legislative measures to ensure that employees of the Prison Department and the National Youth Service enjoy the right of collective bargaining; (2) indicate the categories of public employee, if any, for whom the minister has determined terms and conditions of employment under section 61(3) of the LRA; and (3) provide full information on the practical application of section 61(1), which provides for the establishment of collective bargaining machinery in the public sector.

The Committee notes with *satisfaction* that, as stated by the Government, the Constitution now explicitly recognizes the right to collective bargaining to everyone and therefore employees of the Prison Department and the National Youth Service may organize and collectively bargain accordingly. The Committee further notes that according to the Government, section 248(2)(h) of the Constitution provides for the establishment of the Salaries and Remuneration Commission in order to facilitate the harmonization of the terms and conditions of the employees in the public sector. However, no information was provided by the Government with regards to the application of section 61(3) of the LRA (which provides that the Minister may determine different terms and conditions for different categories of public employees). *Considering the foregoing, the Committee requests the Government to : (1) indicate the categories of public employee, if any, for whom the minister has determined terms and conditions of employment under section 61(3) of the LRA; and (2) provide full information on the practical application of section 61(1) of the LRA, which provides for the establishment of collective bargaining machinery in the public sector and to inform of the appointment of the Salaries and Remuneration Commission as well as details about its composition and functioning, and to provide a copy of its Rules of procedures once adopted.*

*ITUC comments.* The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, indicating that interference in trade union activities and intimidation by employers are frequent, and that trade unionists often have difficulties obtaining meeting with their employers. *The Committee requests the Government to provide its observations thereon.*

## Kiribati

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2000)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee noted with interest that the Kiribati Tripartite Committee drafted, with the assistance of the ILO, several amendments to national labour laws in order to give effect to the Committee’s previous comments. The Committee noted, in particular that, upon adoption of the Trade Unions and Employers’ Organizations Amendment Bill, section 21 of the Trade Union and Employers’ Organizations Act, will be amended by introducing a comprehensive guarantee of the right to organize for all workers and employers. Moreover, upon adoption of the Industrial Relations Code Amendment Bill, section 39 of the Industrial Relations Code will be amended so that a strike decision can be adopted upon approval by a majority of employees who voted in the ballot. These amendments have been recently approved in the first reading by Parliament. *The Committee requests the Government to keep it informed of progress made in the adoption of these amendments to section 21 of the Trade Union and Employers’ Organizations Act and section 39 of the Industrial Relations Code.*

The Committee also noted, however, that certain issues have not been addressed yet or are still under consideration.

*Article 2 of the Convention. Minimum membership requirement.* The Committee had previously requested the Government to amend section 7 of the Trade Unions and Employers’ Organizations Act so as to lower the minimum membership requirement for the registration of an employers’ organization which is set at seven members. The Committee noted, from the Government’s report, that due note has been taken of this comment, which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress; the Government will inform the Committee on the outcome and measures taken as a result of these discussions. *The Committee requests the Government to keep it informed of the outcome of consultations and to indicate in its next report any measures taken or contemplated with a view to amending section 7 of the Trade Unions and Employers’ Organizations Act so as to lower the minimum membership requirement for the registration of an employers’ organization.*

*Right of public employees to establish and join organizations of their own choosing.* The Committee had previously noted that section L.1 of the National Conditions of Service provides that all employees are free to join a “recognized” staff association

or union and had requested the Government to amend this section, given that there is no provision in the law relating to the recognition of trade unions. The Committee noted the Government's indication that due note has been taken of this comment which is currently under review with the social partners and the Committee will be kept informed of the outcome and measures taken as a result of these discussions. ***The Committee requests the Government to keep it informed of the outcome of consultations and to indicate in its next report any measures taken or contemplated with a view to amending section L.1 of the National Conditions of Service so as to remove the reference to "recognized" staff associations or unions.***

***Article 3. Right of employers' and workers' organizations to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programmes. Right to elect representatives freely.*** In its previous comments, the Committee had noted that there is no provision in the law regarding the right of workers and employers to elect their representatives. The Committee noted the Government's indication that the current practice in which workers and employers elect their representatives, on the basis of their freely drawn constitution, is in line with the Convention. The Government added that it has taken due note of the Committee's comment which is currently under review by the social partners and the Committee will be kept informed of the outcome and measures taken as a result of these discussions. The Committee took due note of this information.

***Compulsory arbitration.*** In a previous direct request, the Committee had requested the Government to amend sections 8(1)(d), 12, 27 and 28 of the Industrial Relations Code so as to limit the possibility of prohibiting strikes and imposing compulsory arbitration only to those cases which would be in conformity with the Convention. The Committee noted from the Government's report that section 12 will be amended upon adoption of the draft Industrial Relations Amendment Bill through addition of a new section 12(A)(1) according to which the registrar may only refer a trade dispute to an arbitration tribunal if: (a) all the parties to the dispute request such referral; (b) the dispute is in the public services involving public servants exercising authority in the name of the State; (c) industrial action has been protracted or is tending to endanger or has endangered the personal health, safety or welfare of the community or part of it; (d) conciliation has failed and the parties are unlikely to resolve the dispute.

In this regard, the Committee once again recalls that compulsory arbitration is acceptable under the Convention only at the request of both parties to the dispute, in essential services in the strict sense of the term, and for public servants exercising authority in the name of the State. The existence of protracted disputes (subsection(c)) and the failure of conciliation (subsection (d)) are not per se elements which justify the introduction of compulsory arbitration. Furthermore, the word "welfare" introduced in relation to essential services (subsection (c)) may include issues which go beyond the health and safety of the population in a strict sense and, in that case, would be contrary to the Convention. ***The Committee requests the Government to amend the Draft Industrial Relations Amendment Bill so as to remove subsection (d) from draft section 12(A)(1)(d), as well as the reference to protracted industrial action and the "welfare of the community" from draft section 12(A)(1)(c) with a view to ensuring that compulsory arbitration is possible only where this is in conformity with the Convention.***

Furthermore, concerning the conciliation and mediation machinery, the Committee considers that it should have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness (see General Survey on freedom of association and collective bargaining, 1994, paragraph 171). The Committee observes in this regard that there are no specific time limits in the Industrial Relations Code for the exhaustion of conciliation proceedings and that sections 8(1)(a), (b), (c) and 9(1)(a) give the Registrar and the Minister the power to prolong the negotiation, conciliation and settlement procedure at their discretion, without any fixed time limits, while according to section 27(1), a strike which takes place before the exhaustion of procedures prescribed for the settlement of trade disputes, shall be unlawful. ***The Committee requests the Government to indicate the measures taken or contemplated to ensure that specific time limits are introduced in the Industrial Relations Code so that the mediation and conciliation procedure is not so complex or slow that a lawful strike becomes impossible in practice.***

***Sanctions for strike action/essential services.*** In its previous comments, the Committee had requested the Government to lift the provision in section 37 of the Industrial Relations Code which has the effect of prohibiting industrial action and imposing heavy penalties including imprisonment in cases where a strike might "expose valuable property to the risk of destruction". The Committee notes with interest that the draft Industrial Relations Amendment Bill will amend section 37 of the Industrial Relations Code so as to lift this provision. ***The Committee requests the Government to keep it informed of progress made in the adoption of the Draft Industrial Relations Amendment Bill with a view to removing the provision of section 37 of the Industrial Relations Code which imposes heavy penalties including imprisonment for strikes in case they "expose valuable property to the risk of destruction".***

The Committee also recalls that in its previous comments, it had requested the Government to amend section 37 of the Industrial Relations Code which imposes penalties of imprisonment and heavy fines for strikes in essential services. The Committee noted from the Government's report that the draft Industrial Relations Amendment Bill will amend section 37 of the Industrial Relations Code so as to increase the relevant fines from \$100 to \$1,000 for strikes in essential services and from \$500 to \$2,000 for inciting others to participate in a strike in essential services; at the same time, the prison sentences of one year and 18 months, respectively, for strikes in essential services and incitement to participate, therein, have apparently not been amended.

The Committee further recalls that it had previously requested the Government to amend section 30 of the Industrial Relations Code, which imposes sanctions of imprisonment and heavy fines against unlawful strikes in general. The Committee notes from the Government's report that the prison sentences have been lifted in the draft Industrial Relations Amendment Bill but that the applicable fines have been increased to \$1,000 from \$100 in case of participation in an unlawful strike and have remained at \$2,000 in case of incitement to participate in an unlawful strike.

In this respect, the Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore, measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***The Committee requests the Government to review the draft Industrial Relations Amendment Bill so as to amend sections 30 and 37 of the Industrial Relations Code in the manner indicated above.***

***Articles 5 and 6. Right to establish and join federations and confederations and to affiliate with international organizations of workers and employers.*** In its previous comments, the Committee requested information on the provisions which guarantee the right of workers' and employers' organizations to join federations and confederations of their own choice and to affiliate with international organizations of workers and employers. The Committee noted from the Government's report



that the draft Trade Unions and Employers' Organizations Amendment Bill will amend section 21(2) of the Trade Unions and Employers' Organizations Act, 1998, so as to provide that workers' and employers' organizations shall have the right to join a federation of trade unions or a federation of employers' organizations and to affiliate with and participate in the affairs of any international workers' organization and to contribute to or receive financial assistance from those organizations. The Committee considers that the term "international workers' and employers' organizations" would be more appropriate than "international workers' organizations" given that the right to affiliate with international organizations should be guaranteed not only to workers' but also to employers' organizations. ***It, therefore, requests the Government to amend the draft Trade Unions and Employers' Organizations Amendment Bill and to keep it informed of progress made in the adoption of the Bill with a view to introducing provisions guaranteeing the right of employers' and workers' organizations to establish federations and to affiliate with international organizations of their own choosing.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee noted with interest from the Government's report that the Kiribati tripartite committee drafted, with the assistance of the ILO, several amendments to national labour laws in order to give effect to the Committee's previous comments. The Committee also noted, however, that certain issues had not yet been addressed in the draft or are still under consideration.

***Application of the Convention.*** In its previous comments, the Committee noted that section 3 of the Industrial Relations Code excludes prison officers from the application of the provision concerning collective labour disputes and reminded the Government that prison officers should enjoy the rights and guarantees enshrined in the Convention. The Committee noted from the Government's report that due note had been taken of this comment which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress. The Government will inform the Committee on the outcome and measures taken as a result of these discussions. ***The Committee hopes that the discussions will lead to the amendment of section 3 of the Industrial Relations Code so that prison officers are not excluded from the rights and guarantees enshrined in the Convention.***

***Articles 1 and 3 of the Convention.*** In its previous comments, the Committee had noted that protection against acts of anti-union discrimination existed only at the time of hiring, and requested the Government to take measures to amend the legislation so as to ensure comprehensive protection against such acts during the employment relationship and at the time of dismissal. The Committee had also requested the Government to take measures so that the legislation includes express provisions for appeals and establishes sufficiently dissuasive sanctions against acts of anti-union discrimination for membership or participation in the activities of a trade union.

The Committee noted from the text of the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, that section 21 of the Trade Unions and Employer Organisations Act is to be amended by adding a subsection (3) according to which "nothing contained in any law shall prohibit any worker from being or becoming a member of any trade union, or cause a worker to be dismissed or otherwise prejudiced by reason of that worker's membership or participation in the activities of a trade union". Furthermore, according to subsection (4) no employer shall make it a condition of employment of any worker to neither be nor become a member of a trade union and any such condition in any contract of employment shall be void. The Committee also noted that according to subsection (5), "[a]ny employer who contravenes subsection (4) ... shall be liable to a fine not exceeding US\$1,000 and to a term of imprisonment not exceeding six months". The Committee noted that, whereas sufficiently dissuasive sanctions were provided for in relation to subsection (4), no sanctions were established in relation to a violation of subsection (3). ***The Committee therefore requests the Government to indicate in its next report the measures taken in order to modify the provisions of the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, so that sufficiently dissuasive sanctions are imposed where a worker is dismissed or otherwise prejudiced because of his or her trade union membership or participation in the activities of a trade union.***

***Articles 2 and 3.*** In its previous comments, the Committee noted that, in the national legislation, no specific legal provisions dealt with the issue of mutual interference between employers' and workers' organizations and that there were no rapid procedures and sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations. The Committee noted from the Government's report that due note had been taken of this comment which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress. The Government will inform the Committee on the outcome and measures taken as a result of these discussions. ***The Committee hopes that the review currently under way will lead to measures to modify the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, so as to introduce provisions which ensure adequate protection against acts of interference in the establishment and functioning of trade unions as well as rapid procedures and dissuasive sanctions in this respect, in accordance with Articles 2 and 3 of the Convention.***

***Article 4.*** The Committee noted with interest, that upon adoption of the Trade Unions and Employer Organisations Amendment Bill, section 41 of the Industrial Relations Code would be amended by introducing a comprehensive guarantee of the right to engage in collective bargaining over wages, terms and conditions of employment, the relations between the parties and other matters of mutual interest; this guarantee will apply to every trade union or group of trade unions and also cover public servants under the national conditions of service. Moreover, the amendment provides that regulations may be made generally for the effective exercise of the right to collective bargaining, recognition of most representative organizations and the regulation of collective agreements. ***The Committee requests the Government to indicate in its next report the progress made in the adoption of the draft amendment to section 41 of the Industrial Relations Code. It further requests the Government to specify the provisions which guarantee this right to federations and confederations and to indicate in the future any regulations adopted to promote the effective exercise of the right to collective bargaining.***

Furthermore, the Committee's previous comments concerned sections 7, 8, 9, 10, 12, 14 and 19 of the Industrial Relations Code, which allow referral of any trade dispute to compulsory arbitration at the request of one party or by decision of the authorities. The Committee is addressing this issue under Convention No. 87.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Kuwait

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010 as well as the Government's reply thereon.

The Committee notes that the Labour Law governing the private sector was promulgated in February 2010 (Law 6/2010) and that the fifth Book of the Law regulates workers' and employers' organizations as well as trade union rights. The Committee notes in particular that section 98 of the Law provides for the right of workers and employers to establish organizations in both the public and private sectors. The Committee notes with *satisfaction* that the new Labour Law resolves a number of discrepancies between the legislation and the Convention and in particular, that it eliminates the following provisions of the former Law: the requirement of at least 100 workers to establish a trade union (section 71) and ten employers to form an association (section 86); the prohibition on joining a trade union for individuals under 18 years of age (section 72); the requirement for a certificate from the Minister of the Interior approving the founding members of a trade union (section 74); the prohibition on establishing more than one trade union per establishment, enterprise or activity (section 71); the reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution (section 77); and the restriction imposed on trade unions to join federations only where the activities are identical, or where industries are producing the same goods or supplying similar services (section 79).

The Committee also takes note of the report of the ILO's technical assistance mission to Kuwait held on 6-11 February 2010.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. Domestic workers.* In its previous observation, the Committee had requested the Government to amend the draft Labour Law, which excluded domestic workers from the Law's provisions, or otherwise indicate the manner in which the right of domestic workers to establish and join organizations of their own choosing is ensured. It also requested the Government to provide a copy of the model contract it had promulgated for domestic workers and their employers by virtue of Order No. 568 of 2005. The Committee notes that the Government indicated the difficulty in extending the Labour Law's provisions to domestic workers since, as domestic workers are considered members of the family, it is hard for the labour inspection department to enter private households to verify the application of the Law. The Committee notes that section 5(2) of the new Labour Law provides that the situation of domestic workers will be governed by a decision to be taken by the competent minister, which will set up the rules governing the relationship between domestic workers and their employers. The Government adds, in its report, that the labour contract further regulates the process of receiving and employing domestic workers. The Committee also notes that the report of the ILO's technical assistance mission indicates in this regard that examples were provided during the mission of how certain countries monitor the national legislation, taking into account the difficulty of labour inspectors to enter private households. The Committee recalls that *Article 2* of the Convention applies to all workers without distinction, including domestic workers, who should therefore be covered by the guarantees it affords and should have the right to establish and join occupational organizations (see 1994 General Survey on freedom of association and collective bargaining, paragraph 59). ***The Committee hopes that the order regulating labour relations of domestic workers will be adopted in the near future and that it will guarantee the rights of domestic workers in accordance with the abovementioned principle. The Committee requests the Government to provide information on any development in this respect in its next report.***

*Other categories of workers.* In its previous observation, the Committee had asked the Government to clarify the types of workers governed by other laws referred to in the exclusions set forth in the draft Labour Law. The Government stated in this regard that the workers covered by other laws were government employees, seafarers and employees in the oil sector. The Committee notes that the new Labour Law applies to the private sector, including employees of the oil sector and maritime workers, except where specific provisions – of the Maritime Act or of the Oil Sector Labour Law – apply to them (sections 2–5 of the Law). It also notes that section 98 of the Law provides that the right of workers and employers to form organizations applies to both the public and private sectors. ***The Committee requests the Government, to indicate in its next report: (i) the manner in which the right to establish and join organizations of their own choosing is ensured to civil servants, and to provide a copy of the relevant legislation; and (ii) whether the Maritime Act and the law governing the oil sector include provisions on trade union rights.***

As regards migrant workers, the Committee had noted that the draft new Labour Law appeared to have eliminated the restrictions on trade union membership for non-national workers, including restrictions on the right to vote and to be elected to trade union office (former section 72). The Committee notes that section 99 limits to Kuwaiti workers the right to establish a trade union organization. The Committee also notes that the Government indicates in its report that the new Labour Law has repealed the minimum requirement of five years for a migrant worker to join a trade union, and adds that the admission of non-Kuwaiti workers as trade union members needs to be prescribed by specific rules and conditions; that this has been left to an Order to be issued by the competent minister, in view of the large number of new migrant workers, the speed at which they move about and their lack of stability; and that the admission of new migrant workers as members of trade unions will be based on the verification that they are stable in their living conditions in the country. ***Welcoming the change made by the new Labour Law as to the right of migrant workers to join trade unions and***

*recalling that all workers, including migrant workers, shall have the right to establish and join organizations of their own choosing, without distinction whatsoever, in accordance with the Convention, the Committee requests the Government to take the necessary measures to ensure full conformity of the legislation with the Convention and to provide, in its next report a copy of the Order to be issued by the minister on the admission of non-Kuwaiti workers as trade union members.*

*Article 3. Financial administration of organizations.* The Committee had previously requested the Government to revise section 100 of the draft Labour Law so as to ensure the right of workers' and employers' organizations to organize their administration, including their finances, without interference by the public authorities. The Committee had noted with interest the Government's indication that this provision had been annulled. While noting that the Government indicates in its report that government supervision is not limited to advice and follow-up as regards the manner in which trade unions keep their administrative and financial records, as well as guidance in order to correct any defects in the data and entries contained therein (section 104 of the Labour Law), the Committee notes that under section 104(2) of the new Labour Law, trade unions are explicitly prohibited from using their funds in financial speculation, real estate or other forms of speculation. The Committee recalls that legislative provisions that give authorities the right to restrict the freedom of trade unions to invest, administer and utilize their funds as they wish for normal and lawful trade union purposes are incompatible with the principles of freedom of association and that the control exercised by public authorities over trade union finances should not go beyond the requirement for the organizations to submit periodic reports. ***The Committee requests the Government to take the necessary measures to amend section 104(2) of the Labour Law in accordance with the abovementioned principle.***

*Overall prohibition on trade union political activities.* In its previous observation, the Committee had requested the Government to consider revising the draft Labour Law so as to eliminate the total ban on the political activities of workers' and employers' organizations. The Committee notes that section 104(1) of the new Labour Law maintains the prohibition for trade unions to be involved in any political matters. The Committee notes that the Government adds in its report that the prohibition of engaging in political activities is maintained since the main objective of founding a trade union is to defend workers' interests and not to engage in matters which are not to be included in the Labour Law. In these circumstances, the Committee once again recalls that legislation which prohibits all political activities for trade unions gives rise to serious difficulties with regard to the application of the Convention. Some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interest of organizations in expressing their point of view on matters of economic and social policy affecting their members and workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other (see General Survey, op. cit., paragraph 133). ***The Committee requests the Government to take the necessary measures to revise section 104(1) of the Labour Code, so as to eliminate the total ban on political activities in keeping with the abovementioned principle, and to indicate any progress made in this regard in its next report.***

*Compulsory arbitration.* The Committee notes that under section 131 of the new Labour Law, the ministry may intervene in a collective dispute without being asked to do so by any of the disputing parties to settle the dispute amicably and may also refer the dispute to the Reconciliation Committee or the Arbitration Board, as it deems appropriate. The Committee further notes that section 132 prohibits the parties to the dispute to stop the work, totally or partially while direct negotiations are ongoing or if the ministry has referred the dispute to the Reconciliation Committee or the Arbitration Board. The Committee understands accordingly that the intervention by the Ministry in a labour dispute may lead to an arbitration procedure being mandatory and to work stoppages being prohibited, i.e. strikes. The Committee recalls that in as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to freely organize their activities. Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. ***In these circumstances, the Committee requests the Government to take the necessary measures to amend sections 131–132 of the Labour Law, so as to ensure their full conformity with the abovementioned principles, and to provide information on any developments in this respect in its next report.***

*Article 5. Right of workers' and employers' organizations to establish federations and confederations. Restriction to a single federation.* In its previous observation, the Committee requested the Government to amend the draft Labour Code, which limited trade unions to the establishment of a single general federation. In view of section 106 of the new Labour Law, the Committee understands that this provision has not been removed. The Committee further notes that the Government indicates in its report that if trade union pluralism is required and applied at the grass-roots, occupational and sectoral levels, trade union unity needs to be applied at the level of the federation and that it is neither in the national interest, nor in the workers' interest to give up this important achievement. The Committee recalls that although the Convention clearly does not aim to make trade union pluralism compulsory, pluralism must be possible in every case, even if trade union unity was once adopted by the trade union movement (see General Survey, op. cit., paragraphs 96 and 107). ***The Committee therefore once again requests the Government to take the appropriate measures to amend section 106 of the Labour Law, so as to ensure the right of workers to establish the organization of their own choosing***

*at all levels, including the possibility of forming more than one confederation, and to provide information on any developments in this respect in its next report.*

*The Committee is raising other points in a request addressed directly to the Government.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2007)**

The Committee notes with *satisfaction* that the new Private Sector Labour Law No. 6 of 2010 was promulgated in February 2010, as indicated in the Government's report, and that the fifth Book of the Law regulates workers' and employers' organizations as well as trade union rights. The Committee notes, in particular, that section 98 of the Law provides for the right of workers and employers to establish organizations in both the public and private sectors, and that sections 111–132 of the Law regulate collective labour agreements and collective labour disputes. It also notes that section 46 of the Law prohibits the dismissal of a worker for legitimate trade union activities.

The Committee is raising other points in a request addressed directly to the Government.

## **Latvia**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, which primarily concern the matters already raised by the Committee and also refer to the reluctance of multinational companies to conclude collective agreements in their subsidiaries, as well as to the misuse of the Law on Remuneration of Officials and Employees of State and Local Government Authorities by undertakings to avoid the implementation of collective agreements. *The Committee requests the Government to provide its observations thereon.*

*Articles 4 and 6 of the Convention. Right of public servants not engaged in the administration of the State to bargain collectively.* The Committee takes due note of the information provided by the Government on a number of legislative changes and other measures aimed at promoting collective bargaining. The Committee notes that the Law of 1 December 2009 on Amendments of Labour Law provides that the Labour Law is not applicable to those employees of State and government institutions, for which remuneration and the other issues related thereto, are regulated by the Law on Remuneration of Officials and Employees of State and Local Government Authorities.

The Committee notes that, according to ITUC, the Latvian Free Trade Union Federation (LBAS) and the Latvian Employers' Confederation (LDDK), the Law on Remuneration of Officials and Employees of State and Local Government Authorities imposes excessive restrictions on the right to collective bargaining. The Committee also notes that the Government's indication that, pursuant to the social partners' request to expand the scope of collective bargaining, the Government is currently working, in cooperation with the social partners, on the proposals to amend the Law.

The Committee recalls that while *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages. The Committee also recalls that a distinction should be drawn between, on the one hand, public servants who by their functions are directly engaged in the administration of the State (for example, civil servants employed in government ministries and other comparable bodies, as well as ancillary staff), who may be excluded from the scope of the Convention and, on the other, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 200 and 262). The Committee recalls in this connection that the only exceptions that may be allowed to the guarantees laid down in the Convention concern the armed forces, the police and public servants engaged in the administration of the State (*Articles 5 and 6*). *The Committee requests the Government to provide information in its next report on the results of negotiation with the social partners mentioned above, in particular as regards the introduction of legislative measures to ensure better application of the right to collective bargaining of the public servants not engaged in the administration of the State. The Committee hopes that the ongoing tripartite work will serve to find solutions in full conformity with Article 6 of the Convention.*

## **Lesotho**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1966)**

*Article 3 of the Convention.* In its previous comments, the Committee referred to section 198F of the Labour Code which expressly grants specific advantages (access to premises to meet representatives of the employer, to recruit members, to hold a meeting of members and to perform any trade union functions in terms of a collective agreement) only to an authorized officer or official of a trade union that represents more than 35 per cent of the employees, as well as to

section 198G(1) of the Labour Code that specifies that only the members of a registered trade union, which represented more than 35 per cent of the employees, of an employer that employed ten or more employees, were entitled to elect workplace union representatives. The Committee had recalled that the workers' freedom of choice may be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in granting privileges such as to influence unduly the choice of organization by workers (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 98). The Committee had requested the Government to indicate the manner in which sections 198F and 198G(1) influence the workers' choice of their trade union organization, as well as their right to elect their representatives. The Committee notes that the Government indicates in its report that these issues will once again be brought to the attention of the National Advisory Committee on Labour which is currently closely examining the revised Labour Code. ***In these circumstances, the Committee requests the Government to indicate, in its next report, the progress made with respect to the abovementioned issue.***

*Labour Code (essential services).* In its previous observation, the Committee requested the Government to transmit a copy of the legislation setting out the essential services. In this respect, the Committee notes that the Government has transmitted the Schedule of the Labour Code (Essential Services) Regulations 1997 which provides that the following services should be regarded as essential for the purposes of the Labour Code: health services, hospital services, electricity services, water supply services, sanitary services, telecommunications services, air traffic control services, fire prevention and extinguishing services, transport services necessary to the operation of any of the services abovementioned. Furthermore, the Committee takes due note that the Government indicates that the law provides for alternative compensatory machinery in the form of arbitration meant for speedy resolution of disputes in the essential services.

*Public Services Act. Restrictions on the exercise of activities.* In its previous comments, the Committee had requested the Government to amend section 19 of the Public Services Act (2005) so as to ensure that the prohibition of the right to strike in the public service is limited to public servants exercising authority in the name of the State. The Committee notes that the Government indicates that the Ministry of Public Service has been engaged in some discussions regarding the comments made by the Committee, and while no amendments have been put in place yet, the Ministry of Public Service is of the opinion that there is need for more discussion and training within the public service for employees and employers to understand the content and consequences of the right to strike. ***The Committee therefore requests the Government to indicate, in its next report, the progress made with respect to the abovementioned issue and it hopes that the Government will make every effort to take the necessary action in the very near future.***

*Compensatory guarantees.* With respect to the public servants who may be deprived of the right to strike under the Public Services Act, taking into account the comments mentioned in the preceding paragraph, the Committee had also requested the Government to establish compensatory guarantees, such as arbitration machinery for those workers who may be deprived of the right to strike. The Committee notes that the Government indicates in its report that in terms of compensatory guarantees section 18 of the Public Services Act provides for arbitration to resolve disputes, while the arbitration is only binding in cases where the dispute arises from an essential service. The Government has indicated that in other disputes parties have to agree to their dispute being referred to arbitration. Section 17 of the Public Services Act provides for conciliation of disputes of interest but the decision shall not be binding on the parties; however, under the Code of Good Practice 2008, an unresolved dispute of interest shall be referred to arbitration or tribunal for final determination. The Government realizes that these sections contain limitations and therefore the Ministry of Public Services is looking into it for possible amendments to the law. ***The Committee therefore requests the Government to provide information on any development in this regard.***

*The right to form federations and confederations.* Finally, the Committee had requested the Government to ensure that public officers' associations established under the Public Services Act are guaranteed the right to establish federations and confederations and affiliate with international organizations. The Committee takes note of the Government's indication that according to the Ministry of Labour, due to the nature of the service provided by the state public officers, their associations cannot affiliate with trade union federations and confederations. The Committee recalls that a provision of national law prohibiting organizations of public officials from adhering to federations or confederations is difficult to reconcile with Article 5 of the Convention. ***The Committee therefore requests the Government to take the necessary measures to ensure the respect of the abovementioned principle and to provide information in its next report on the measures adopted in this regard.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1966)**

*Article 4 of the Convention. Representativeness requirements for certification of a union as the exclusive bargaining agent.* The Committee had previously noted that section 198B(2) of the Labour Code, as amended by the 2006 Amendment Act, provides that the arbitrator may conduct a ballot "if appropriate" in the determination of disputes concerning trade union representativity. It had subsequently requested the Government to amend the Labour Code by introducing a formal requirement for ballots to be held in determination of trade union representativity, thereby removing the arbitrator's discretion as to whether a ballot is "appropriate" in the circumstances. In this respect, the Committee had noted the Government's statement that leaving the decision to conduct a ballot to the arbitrator's discretion is justified, as not all disputes concerning trade union representativity – such as those concerning whether particular employees fall

inside the relevant bargaining unit or not – may be resolved by resorting to a ballot. The Government had further indicated that the decisions of the arbitrator are subject to review by the Labour Court. The Committee indicated that it trusted that under section 198B(2) of the Labour Code, as amended, disputes which require the holding of elections to determine which trade union is most representative are disposed of by means of a ballot. The Committee notes the Government's indication that its abovementioned comments will be considered by the National Advisory Committee on Labour. ***The Committee requests the Government to provide information on the work of this Committee and hopes that the necessary measures to amend the Labour Code will be taken so as to ensure that new organizations, or organizations failing to secure a sufficiently large number of votes, may ask for a new election after a certain period has elapsed since the previous election.***

***Recognition of the most representative union.*** The Committee had previously noted that section 198A(1)(b) of the Labour Code defines a representative trade union as “a registered trade union that represents the majority of the employees in the employ of an employer”, and that section 198A(1)(c) specifies that “a majority of employees in the employ of an employer means over 50 per cent of those employees”. It had subsequently requested the Government to take the necessary legislative measures so as to ensure that when no union covers more than 50 per cent of the workers, collective bargaining rights are granted to all the unions in the unit, at least on behalf of their own members. The Committee recalled that problems may arise when the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent; a representative union which fails to secure this absolute majority is thus denied the possibility of bargaining and that under such a system, if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). The Committee notes the Government's indication that its abovementioned comments will be considered by the National Advisory Committee on Labour. ***The Committee requests the Government to provide information on the work of this Committee and hopes that the necessary measures to amend the Labour Code will be taken so as to ensure the respect for the abovementioned principle. The Committee also requests the Government to indicate whether, in practice, minority unions enjoy collective bargaining rights in cases where there is no union representing 50 per cent of the workers concerned. If this is the case, the Committee requests the Government to provide relevant examples and statistics.***

***Collective bargaining in the education sector.*** In its previous comments the Committee had requested the Government to take all necessary measures so as to promote a prompt and negotiated solution to the long-standing disputes concerning teachers in the public sector and guarantee to them the rights enshrined in the Convention. The Committee takes note from the Government's report that the Education Act of 2010 was promulgated. According to the Government, this Act may provide a solution to the long-standing disputes concerning teachers in the public sector. According to the Government's report, this Act stipulates that teachers are employed by the Teaching Service Commission and disputes arising out of the teaching services are referred to the Teaching Service Tribunal, whose decisions are final and binding. However, “courts of law” have the jurisdiction to hear reviews from the Tribunal. The Committee further notes the Government's indication that following the promulgation of the Labour Code (Amendment) Act No. 1 of 2010, all labour disputes whether from the public or private sector can now be heard by the Court of Appeal on questions of law. Therefore, according to the Government, the teachers' dispute can now be referred to the Court of Appeal. ***Noting, however, that the Education Act of 2010 and the Labour Code (Amendment) Act No. 1 of 2010 have not been attached, the Committee requests the Government to transmit a copy of these legislative texts with its next report.***

The Committee further notes that the Government indicates in its report that it takes upon itself to call a meeting of all stakeholders wherein the long standing issue of the teachers in the public sector shall be discussed to its finality. ***The Committee requests the Government to provide information on any developments in this regard and recalls that, in conformity with the Convention, teachers of the private and the public sectors should enjoy collective bargaining rights.***

## Liberia

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1962)***

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in communications dated 29 August 2008 and 24 August 2010 concerning the application of the Convention and, more particularly, allegations of serious violence against strikers and the closure of a trade union radio station. Noting that in previous comments, the ITUC had already referred to threats, arrest and prosecution of strikers, the Committee recalls that all appropriate measures should be taken by the Government to guarantee that trade union rights can be exercised in safe and secure conditions and in a climate free of violence, pressure, fear and threats of any kind. ***The Committee requests the Government to provide its observations in reply to all the abovementioned allegations of the ITUC in its next report.***

In its previous observation, the Committee had recalled that, for many years, it had been asking the Government to take the necessary steps to amend or repeal the following provisions, which were inconsistent with *Articles 2, 3, 5 and 10 of the Convention*:

- Section 4601-A of the Labour Practices Law prohibiting agricultural workers from joining industrial workers' organizations;
- Section 4102, subsections 10 and 11, of the Labour Practices Law providing for the supervision of trade union elections by the Labour Practices Review Board; and
- Section 4506 of the Labour Practices Law prohibiting workers in state enterprises and the public service from establishing trade unions.

The Committee had also noted that Decree No. 12 of 30 June 1980 prohibiting strikes had been repealed. The Committee notes that the Government indicates in its report that a new Labour Code – titled Decent Work Bill (2009) – has been drafted but still needs to be finalized and that a copy of it will be attached to the next report. More particularly, the Committee notes that the Government indicates that: (i) Chapter 9, Part Two of the Decent Work Bill attempts to fully address the issues surrounding strikes and lockouts; and (ii) issues arising under sections 4506 and 4601-A of the Labour Practices Law are addressed in Chapter 2 (section 6(a)) of the Decent Work Bill which provides that “all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing without prior authorization, and subject only to the rules of the organization concerned”. ***The Committee requests the Government to take the necessary measures to ensure that the Decent Work Bill will be enacted in the very near future and will repeal all the provisions of the legislation that had previously been identified as in violation of ILO Conventions, including section 4102 of the Labour Practices Law.***

***The Committee requests the Government to provide in its next report information on any development in this respect, as well as a copy of the Decent Work Bill once adopted and of the law which repealed Decree No. 12 of 30 June 1980 prohibiting strikes.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1962)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC), in a communication dated 24 August 2010, on the application of the Convention, in particular as regards the failure to implement a collective agreement on the living and working conditions of workers in rubber plantations and other issues previously raised by the Committee. ***The Committee requests the Government to provide its observations thereon in its next report.***

In its previous observation, the Committee, noting that a new Labour Code – entitled the Decent Work Bill – was being finalized, had expressed the hope that this reform process would take into full consideration the matters it had been commenting upon for many years, which concern the need for:

- legislation guaranteeing to workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions;
- legislation guaranteeing to workers' organizations adequate protection against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and
- legislation guaranteeing the right to collective bargaining to employees in state-owned enterprises and public servants who are not public officials engaged in the administration of the State.

In its previous observation, the Committee had noted that, according to the Government, the Decent Work Bill will fully protect the workers and their organizations against anti-union discrimination both at the time of recruitment and during the employment relationship, as well as against acts of interference by the employers and their organizations, and will also ensure the right to collective bargaining of state-owned enterprise employees. ***The Committee once again expresses the firm hope that the Decent Work Bill will give full effect to the Convention in line with its comments abovementioned, including that concerning the right to collective bargaining of public servants not engaged in the administration of the State, and requests the Government to provide a copy of the Decent Work Bill once adopted.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## **Libyan Arab Jamahiriya**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1962)**

The Committee takes note of the Government's indication of the promulgation of a new Labour Relations Act (No. 12 of 2010) which contains provisions addressing issues raised by the Committee for many years on the implementation of the Convention. ***The Committee requests the Government to provide a copy of Act No. 12 of 2010 on***

*labour relations, as well as any regulation issued under it. The Committee will proceed to the examination of any progress made in relation to questions it recalls below once the text is received.*

The Committee takes note of the comments submitted by the International Trade Union Confederation (ITUC) on 24 August 2010 in relation to issues already under examination by the Committee, and in particular according to which the Government sets salaries unilaterally. The Committee notes the Government's reply according to which the wages of state employees are issued by virtue of an Act, which is publicly debated in the people's basic congresses, which are responsible for their approval. The Committee recalls that public servants not engaged in the administration of the State should enjoy the rights enshrined by the Convention, including the right to collective bargaining which covers wages.

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, the Committee requested the Government to ensure that the legislation protects explicitly, and through sufficiently dissuasive sanctions, all workers (including public servants not engaged in the administration of the State, agricultural workers and seafarers) against all acts of anti-union discrimination at the time of recruitment and during the employment relationship. The Committee notes the Government's indication that section 3 of Act No. 12 of 2010 specifies that favouritism or discrimination on the grounds of trade union membership, among others, shall be prohibited, and that section 77 of the Act provides that a worker's contract may not be terminated for a reason linked to his/her trade union membership, or because of his/her participation in a trade union activity outside or during working hours, with the approval of the employer. ***The Committee takes note of this information and requests the Government to specify the sanctions provided in the new law against acts of anti-union discrimination.***

*Article 4. Collective bargaining.* In its previous comments, the Committee referred to sections 63, 64, 65 and 67 of the Labour Code, which require the clauses of collective agreements to be in conformity with the national economic interest, thus violating the principle of the voluntary negotiation of collective agreements and the autonomy of the bargaining parties. The Committee also took note of the Government's indication that a new Act on labour relations would repeal the abovementioned provisions so as to give collective bargaining full scope taking into account the Committee's previous observation. The Committee notes from the report of the Government that sections 63, 64, 65 and 67 of the Labour Code Act were repealed by virtue of Act No. 12 of 2010.

The Committee also referred previously to the absence of collective agreements covering public servants not engaged in the administration of the State, agricultural workers and seafarers, and expressed the hope that any new legislation will expressly grant to these categories of workers the right to bargain collectively. The Committee notes the Government's indication that exceptions mentioned in the previous Labour Code (domestic workers and agricultural workers) was addressed by Act No. 12 of 2010, which now includes all categories of workers except workers regulated by other laws or special regulations and family workers. ***The Committee takes note of this information and requests the Government to confirm that seafarers are not excluded from the application of the new legislative provisions and to specify the legislative text applicable to public servants not engaged in the administration of the State with regard to their collective bargaining rights. The Committee also requests the Government to indicate whether the workers that are regulated by other laws or special regulations are granted the rights and guarantees set out in the Convention.***

***Furthermore, the Committee invites the Government to provide any statistics available on the number of collective agreements presently in force by sector, and the number of workers they cover.***

## Lithuania

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1994)***

The Committee notes the comments on the application of the Convention submitted by the International Trade Union Confederation (ITUC) on 24 August 2010, and the comments submitted by the Lithuanian Trade Union Confederation (LPSK) on 31 August 2010 on the application of the Convention and in particular on certain restrictions of the right to strike already referred to by the Committee. Furthermore, the Committee notes the comments submitted by the LPSK on 9 September 2010 and the Lithuanian Trade Union "Sandrauga" on 13 October 2010. ***The Committee requests the Government to provide its observations thereon.***

The Committee notes that the Government indicates in its report that the Ministry of Social Security and Labour will analyse the amendments to the Labour Code as suggested by the Committee in its last observation. ***In these circumstances, the Committee recalls its previous comments and trusts that they will be taken into account in the process of revision of the Labour Code.***

***Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes***

(a) *Unilateral determination of minimum service.* The Committee had previously requested the Government to amend section 80(2) of the Labour Code so as to ensure that, in the event of disagreement among the parties to the collective labour dispute on the minimum service, the definition of the service to be ensured may be determined by an independent and impartial body. The Committee had noted that according to the new amendment to subsection 2, the minimum services shall be determined by the parties to the collective dispute within three days from the day of



submission of warning about the strike to the employer. The Committee had noted, however, that, according to subsection 3, if no agreement is reached by the parties to the dispute, the decision shall be made by the Government or a municipal executive body upon consultation with the parties to the dispute. The Committee had underlined that it would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161). As regards the legal requirement that any disagreement on the minimum services shall be settled by the authorities, the Committee had recalled that the legislation should provide for any such disagreement to be settled by an independent body, and not by the Government or a municipal executive body. ***The Committee requests the Government to take the necessary measures to amend section 80(3) of the Labour Code accordingly and to indicate any progress made in this respect.***

(b) *Compensatory guarantees.* In its previous comments, the Committee had requested the Government to provide information on the manner in which claims of workers in essential services are settled and on the relevant body responsible for taking the final decision in this respect. The Committee had noted that, by virtue of the recent amendments, strikes are prohibited in first aid medical services and the demands put forward by the workers concerned are settled by the Government upon consultation with the parties to the collective labour dispute (section 78). The Committee had recalled in this respect that if the right to strike is subject to restrictions or a prohibition, workers who are thus deprived of an essential means of defending their socio-economic and occupational interests should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be reliable by the parties concerned. It is essential that the latter be able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity (see General Survey, op. cit., paragraph 164). ***The Committee requests the Government to take the necessary measures to amend section 78(1) accordingly and to indicate any progress made in this respect.***

The Committee is also raising other matters in a request addressed directly to the Government.

## Madagascar

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)***

In its previous comments, the Committee requested the Government to provide its observation in reply to the comments made by the International Trade Union Confederation (ITUC) in August 2008 concerning restrictions on the exercise of freedom of association under a Decree of 2000 requiring trade unions to provide the list of their members, interference by the authorities in the appointment of worker representatives to tripartite bodies and violations of trade union rights in the maritime sector. The Committee notes that, according to the Government's report, solutions were found to these matters and that a draft decree on trade union organization and representativeness currently being drafted should allow all problems to be resolved. Furthermore, the Committee notes the ITUC's comments dated 24 August 2010 concerning the legislative matters already raised by the Committee, as well as restrictions on the right to strike imposed on state employees. ***The Committee requests the Government to provide in its next report: (i) its observations in reply to the ITUC's new comments; (ii) information on the adoption of the decree on trade union organization and representativeness and, if applicable, a copy of the text adopted; and (iii) the findings of the independent investigation that the Government indicates is under way concerning the anti-union acts in the maritime sector, and any action taken on these findings.***

*Legislative matters.* In its previous comments, the Committee noted that Act No. 2003-044 of 28 July 2004 issuing the Labour Code did not take into account the Committee's comments on several issues of non-conformity with the Convention. The Committee notes the Government's indication in its report that the Committee's comments will be transmitted to the National Labour Council so that it can carry out an analysis of the Labour Code and take the appropriate measures. The Committee hopes that amendments will soon be made to the Labour Code and that they will take due account of the comments that it has been making for several years. The Committee recalls that its comments concern the following points.

*Article 2 of the Convention. Workers governed by the Maritime Code.* The Committee previously noted that the Labour Code maintains the exclusion from its scope of workers governed by the Maritime Code, and that the Maritime Code does not contain sufficiently clear and precise provisions ensuring the right of the workers to whom it applies to establish and join trade unions, as well as the related rights. Furthermore, the Committee noted that the Maritime Code of 2000 was being revised and that a draft new Code including new provisions guaranteeing seafarers the right to establish and join trade unions, as well as all the related rights, had been presented in August 2008. ***The Committee requests the Government to take the necessary measures to ensure that this right is recognized in the legislation.***

*Article 3. Representativeness of workers' and employers' organizations.* The Committee previously noted that section 137 of the Labour Code provides that the representativeness of employers' and workers' organizations participating in social dialogue at the national level "shall be established with the elements provided by the organizations concerned and the labour administration". ***The Committee requests the Government to avoid any interference by the public authorities in the decision concerning the representativeness of occupational organizations and to take***

**measures to ensure that this decision is made by an independent body having the confidence of the parties according to a procedure that offers full guarantees of impartiality.**

*Compulsory arbitration.* The Committee previously noted that, under sections 220 and 225 of the Labour Code, in the event of the failure of mediation, the collective dispute shall be submitted by the ministry responsible for labour and social legislation either to a contractual arbitration procedure, in accordance with the collective agreement between the parties, or to the arbitration procedure of the competent labour court. The arbitration award is final and without appeal and brings an end to the dispute, including any strike that has been called in the meantime. In this regard, the Committee recalls that recourse to arbitration to end a collective dispute is acceptable only if it is at the request of both parties involved in the dispute and/or in the case of a strike in essential services in the strict sense of the term. **The Committee requests the Government to take all necessary measures to amend the provisions of the Labour Code concerning arbitration based on the above principle.**

*Requisitioning.* The Committee previously noted that section 228 of the Labour Code provides that the right to strike “may be limited by requisitioning only in case of the disruption of public order or where the strike would endanger the life, safety or health of the whole or part of the population”. The Committee recalls that the reference to cases of “acute national crisis”, rather than to the notion of the disruption of public order, would better reflect the position of the ILO supervisory bodies and could moreover lead to the repeal of section 21 of Act No. 69-15 of 15 December 1969, which provides for the possibility of requisitioning workers in the event of the proclamation of a state of national necessity. **The Committee requests the Government to take necessary measures to that end.**

*Sanctions in the event of strike action.* The Committee previously noted that, under section 258 of the Labour Code, the “instigators and leaders of illegal strikes” shall be punished by a fine and/or imprisonment. The Committee recalls that no penal sanctions should be imposed on a worker for having carried out a peaceful strike and that therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed on strikers. **The Committee requests the Government to take all necessary measures to ensure that this principle is observed.**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)**

The Committee notes the Government’s report and the replies provided to the comments made by the International Trade Union Confederation (ITUC) in 2008. With regard to the comments concerning the absence of social dialogue in the mining sector and in export processing zones, the Committee notes the Government’s indication that collective bargaining is being developed in the mining sector at the initiative of mining companies and that enterprises in export processing zones participate in the discussions held within the National Labour Council alongside the most representative organizations of employers and workers. The Committee notes the new comments made by the ITUC dated 24 August 2010 that a 2009 survey of the trade union movement revealed that collective agreements were signed mainly in public enterprises and that the privatization process has resulted in most of the collective agreements concluded in sectors such as the rail, telecommunications and energy sectors being obsolete. Furthermore, according to the ITUC, most known cases of anti-union discrimination concern employers in export processing zones where trade union organizations are not well established. Other cases of discrimination are also possible in so far as trade unions are obliged to provide lists of all their members, which, according to the ITUC, paves the way for anti-union practices. **The Committee requests the Government to provide its comments in reply to the ITUC’s new observations.**

*Article 4 of the Convention. Criteria of representativeness.* In its previous observation, referring to section 183 of the Labour Code which establishes a number of criteria for determining the representativeness of organizations of employers and workers, the Committee noted the Government’s indication that a draft decree on trade union organization and representativeness could not be adopted by the National Labour Council due to a lack of unanimous support, but that discussions were still being held on the matter. In its latest report, the Government indicates that the draft decree was approved by the National Labour Council in December 2008 and is awaiting adoption by the Council of Ministers. **The Committee requests the Government to indicate in its next report any developments relating to the adoption of the decree on trade union organization and representativeness and, if applicable, to provide a copy of the text. It hopes that the text adopted will take into account the principle that trade union representativeness should always be determined according to objective and pre-established criteria, so as to avoid any possibility of bias or abuse.**

*Promotion of collective bargaining.* Referring to the provisions of the Labour Code concerning collective bargaining, the Committee previously requested the Government to provide information on the measures adopted to promote collective bargaining in enterprises employing fewer than 50 workers as well as on the collective agreements concluded in these enterprises. The Committee notes that, according to the Government’s report, the National Institute of Labour promotes collective bargaining through awareness raising and the training of staff representatives, trade union delegates and other workers on collective bargaining, particularly on negotiation techniques. The Institute also organizes annual workshops which are well attended by enterprises with fewer than 50 employees (25–30 on average). **The Committee notes this information. It requests the Government to provide information on the number of collective**

*agreements concluded in enterprises employing fewer than 50 workers and to indicate the number of workers and sectors covered.*

*Article 6. Collective bargaining for seafarers.* In its previous comments, the Committee noted that the Labour Code excludes maritime workers from its scope and requested the Government to take the necessary steps to ensure the adoption of specific provisions on the collective bargaining rights of seafarers governed by the Maritime Code. The Committee notes that the Government indicates in its report that the Ministry of Labour participated in drawing up the draft new Maritime Code and that the fundamental rights of seafarers have been respected. However, as a result of the political and social crisis, the adoption of the draft Maritime Code by the Council of Ministers has been suspended. ***The Committee trusts that the draft new Maritime Code will provide that the rights guaranteed by the Convention are extended to maritime workers and hopes that the Government will be able to report its adoption in its next report.***

*Collective bargaining for public servants not engaged in the administration of the State.* In its previous comments, the Committee requested the Government to adopt formal provisions clearly recognizing the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti-union discrimination and interference and their right to bargain collectively on their conditions of employment. In its report, the Government indicates that the Public Service Higher Council (CSFOP) serves as a platform for negotiation and dialogue for public servants not engaged in the administration of the State. All legislative and regulatory texts concerning the public service must be referred for an opinion to the CSFOP, which is composed of an equal number of representatives of the relevant ministerial departments and the most representative trade union confederations. The Government adds that, despite the lack of a specific text, certain decrees implementing Act No. 2003-011 of 3 September 2003 on the general conditions of service of public servants, particularly those laying down the conditions governing travel and remuneration, are applicable to contractual public employees governed by Act No. 94-025 of 17 November 1994. The Committee notes this information, but considers that the situation still creates uncertainty to the legal framework applicable to the collective bargaining of public servants, which could hinder the development of collective bargaining and goes against the requirements of the Convention. It also notes that no measures have been taken to ensure protection against acts of anti-union discrimination and interference in the public sector. ***The Committee once again requests the Government to adopt formal provisions clearly recognizing the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti-union discrimination and interference and their right to bargain collectively on their conditions of employment. The Committee trusts that the Government will take the necessary steps to that end and will give an account of the progress made in its next report. Furthermore, the Committee requests the Government to provide a copy of any collective agreement concluded in the public sector.***

## Malawi

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1999)***

The Committee notes the Government replies to the comments submitted by the International Trade Union Confederation (ITUC) dated 26 August 2009. The Committee also notes the comments submitted by ITUC dated 24 August 2010 that mainly refer to matters previously raised by the Committee.

In its previous comments, the Committee, noting that sections 45(3) and 47(2) of the Labour Relations Act empower the parties concerned to apply to the Industrial Relations Court for a determination as to whether a particular strike involves an essential service, had requested the Government to provide information on any strike declared illegal and the reasons therefor, as well as on any decisions rendered by the Industrial Relations Court under these sections of the Labour Relations Act. The Committee notes that the Government indicates in its report that: (i) no strikes have been declared illegal on the basis of essential services; (ii) no request for determination of an essential service has been made before the Industrial Relations Court; and (iii) the social partners considered that a clear list of what should be considered an essential service under the Labour Relations Act should be established; in this regard, a provision had been included in the Labour Relations (Amendment) Bill for the establishment of a subcommittee of the Tripartite Labour Advisory Council whose purpose is to determine a list of what should be considered an essential service under the Labour Relations Act. ***In these circumstances, the Committee requests the Government to provide information in its next report of any development concerning the establishment of the subcommittee and the advancement of its work.***

A request concerning other points is being addressed directly to the Government.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)***

The Committee notes that the Government's report has not been received. It notes the International Trade Union Confederation's (ITUC) communication dated 24 August 2010, which refers to obstacles to the exercise of collective bargaining rights and in particular the requirement in practice of very high representation thresholds. The Committee further notes that the ITUC also refers to difficulties in the export processing zones (EPZs) and, finally, restrictions to trade union rights in certain enterprises or institutions. ***The Committee requests the Government to provide its observations thereon.***

## Malaysia

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1961)**

The Committee notes that the Government indicates in its report and response to the comments made by the International Trade Unions Confederation (ITUC) on 24 August 2010 that the amendments to the Trade Union Act, 1959, and the Industrial Relations Act (IRA), 1967, have been approved by Parliament and came into effect on 28 February 2008, and that the Industrial Relations Regulations 2009 were subsequently enacted on 8 October 2009. According to the Government, the amendments to the IRA provide, inter alia, for a fast and efficient procedure for recognition for collective bargaining purposes. The Committee also notes the conclusions reached by the Committee on Freedom of Association in Case No. 2301 (353rd Report of the Committee on Freedom of Association, paragraphs 133–140, and the 356th Report, March 2010). ***The Committee therefore requests the Government to transmit a copy as soon as possible of the final version of the abovementioned legislation.***

***Articles 1 and 4 of the Convention. Trade union recognition for purposes of collective bargaining. Duration of proceedings for the recognition of a trade union.*** In its previous comments, the Committee had noted the comments by the ITUC reiterating issues previously raised by the Committee regarding long delays in the treatment of union claims to obtain recognition for collective bargaining purposes. The Committee had requested the Government to submit more precise information on the ITUC's comments in the light of the provisions of the IRA and to indicate the average duration of proceedings for the recognition of a union, as well as the requirements for obtaining recognition. The Committee notes the Government's indication that, under the new legislations, the average duration of proceedings for the recognition of a union is nine (9) months, provided that the parties involved do not challenge the process through judicial review in the court or raise issues that could cause delays. ***The Committee considers that this average duration of proceedings is excessively long and requests the Government to take measures to modify the legislation in order to reduce the length of proceedings for the recognition of trade unions.***

***Procedure of recognition.*** The Committee further notes that the Government indicates that, in order to be accorded recognition, the relevant union has to undergo a competency check (conducted by the Industrial Relations Department) to ascertain whether the majority of the class of workers of the enterprise had become members of the union seeking recognition. However, the Committee notes that the Government makes no reference to the applicable legislation. ***The Committee therefore requests the Government to indicate in its next report what the requirements in order to fulfil the competency check are and to indicate the relevant legislative provisions applicable.***

In addition, the Committee notes that the Government indicates in its report that, in claims for recognition, once the trade union concerned has served Form A on the company, the employer shall have 21 days to either accord the recognition or to reject the claim. Should the company reject the claim for recognition, either at the end of the 21 days or anytime before that, then the union has to inform the Director General of Industrial Relations (DGIR) within 14 days after receiving such notification by the company. The DGIR will then take appropriate action. The Committee further notes that section 9(5) of the IRA states that the Minister has the final say on whether recognition is to be accorded by the employers to the unions. However, an aggrieved party may apply for a judicial review at the High Court against the decision. ***While recalling again the excessive length of these proceedings, the Committee requests the Government to indicate the criteria applicable to the decisions of the DGIR and/or the Minister.***

***Sanctions applicable for refusal to apply orders of recognition and of reinstatement.*** In its previous comments, the Committee had noted the Government's statement about the comments previously made by the ITUC with regard to the inefficiency of labour courts concerning the application of the provisions of the Convention. On this matter, the Committee had noted the ITUC's comments that the Government failed to apply any sanctions against employers who opposed the directives of the authorities granting trade union recognition or who have refused to comply with Industrial Court orders to reinstate unlawfully dismissed workers. The Committee had requested the Government to submit its observations on these matters.

The Committee notes the Government's indication that: (i) the Industrial Court has jurisdiction for trade disputes under section 26 of the IRA and in cases of dismissals under section 20 of the IRA; (ii) under section 56(1), (3) and (4) and section 60 of the IRA, there are procedures and sanctions applicable against employers who opposed the directives of the authorities granting trade union or who have refused to comply with Industrial Court orders to reinstate unlawfully dismissed workers; and (iii) the Industrial Relations Department has set up a Legal Division to initiate legal proceedings against any errant party that contravenes the law. ***In these circumstances, the Committee requests the Government to provide details about the composition and functioning of the Legal Division of the Industrial Relations Department, and to provide a copy of its Rules of Procedures. The Committee also requests the Government to provide information and statistics on any sanctions against employers who opposed the directives of the authorities granting trade union recognition or who have refused to comply with Industrial Court orders to reinstate unlawfully dismissed workers in the last two years.***

***Migrant workers.*** In its previous comments, the Committee had noted that, although foreign and local workers enjoy equal rights; migrant workers can join a union but cannot be elected as trade union officers under the Trade Union

Act. In this respect, the Committee had recalled that workers, including migrant workers, should enjoy the right to elect their representatives freely and it had requested the Government to communicate its observations on the exercise of trade union rights by migrant workers in law and in practice. The Committee notes the Government's indication that: (i) to form and to be elected as trade union representatives, the foreign workers require permission from the Minister of Human Resources; (ii) there are currently trade unions who have foreign workers as members; and (iii) foreign workers have been appointed as representatives of certain trade unions. The Committee considers that the requirement for foreign workers to obtain the permission from the Minister of Human Resources in order to be elected as trade union representatives hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes. ***The Committee requests the Government to take measures in order to modify the legislation.***

*Scope of collective bargaining.* The Committee had previously urged the Government to amend the legislation so as to bring section 13(3) of the IRA, which contains restrictions on collective bargaining with regard to transfer, dismissal and reinstatement (some of the matters known as "internal management prerogatives"), into full conformity with *Article 4* of the Convention. The Committee notes with regret that the Government indicates in its report that there is no need to amend the said provision and reiterates that: (i) section 13(3) of the IRA is not intended to limit collective bargaining, but rather to provide for the right of employers to run their business in the most efficient way and to protect from abuse of the collective bargaining process; and (ii) these requirements are not absolute and matters relating to them may be brought to the Industrial Relations Department and, if no settlement is reached, the matter may be referred to the Industrial Court for adjudication (section 13(8) of the IRA). The Committee further notes the case law *Sarawak Commercial Banks Association v. Sarawak Bank Employees' Union*, submitted by the Government. Nevertheless, the Committee considers that section 13 of the IRA restricts the scope of negotiable matters. The Committee recalls that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method to resolve these difficulties (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 250). ***The Committee therefore once again requests the Government to amend section 13(3) of the IRA so as to remove these restrictions on collective bargaining matters and to initiate tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining.***

*Compulsory arbitration.* In its previous comments, the Committee had noted that section 26(2) of the IRA allows compulsory arbitration, by the Minister of Labour of his own motion even in case of failure of collective bargaining. The Committee had requested the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services, in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis. The Committee notes that the Government reiterates that, although the provision accords discretionary powers to the Minister to refer a trade dispute to the Industrial Court for arbitration, practically, the Minister has never exercised such power in an arbitrary manner and only makes a decision upon receipt of a notification from the Industrial Relations Department that the conciliation has failed to resolve the dispute amicably. The Committee once again recalls that the imposition of compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement raises problems in relation to the application of the Convention. ***Therefore, the Committee once again reiterates its previous comments and urges the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services, in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis.***

*Restrictions on collective bargaining in the public sector.* The Committee has for many years requested the Government to take the necessary measures to ensure for public servants not engaged in the administration of the State the right to bargain collectively over wages and remuneration and other employment conditions. The Committee notes with **regret** that the Government, invoking the peculiarities of the public service, once again reiterates that it will maintain the policy of not engaging in that kind of collective bargaining with the employees of the public sector. The Government once again points out that trade unions can express their views on matters concerning conditions of work through the National Joint Council and the Departmental Joint Council. Nevertheless, the Committee, while recognizing the singularity of the public service which allows special modalities, considers that simple consultation with unions of public servants not engaged in the administration of the State do not meet the requirements of *Article 4* of the Convention. ***Therefore, the Committee urges the Government to take the necessary measures to ensure for public servants not engaged in the administration of the State the right to bargain collectively over wages and remuneration and other employment conditions, in conformity with Article 4 of the Convention.***

***The Committee reminds the Government that it may avail itself of the ILO's technical assistance so as to bring its law and practice into full conformity with the Convention if it so wishes.***

## Mali

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 24 August 2010, concerning the application of the Convention and in particular the impossibility for senior managers of the Central

Bank of West African States (BCEAO) to organize. The Committee notes the Government's reply indicating that the legislative texts referred to by the ITUC, namely the Labour Code, do not deny senior managers of the BCEAO the right to organize and that the labour inspectorate has received no complaints in this regard.

*Article 3 of the Convention. Right of workers' organizations to formulate their programmes without interference from the public authorities.* For several years, the Committee has been stressing the need to amend section L.229 of the 1992 Labour Code in order to limit the power of the Ministry of Labour to resort to arbitration to end strikes liable to cause an acute national crisis. This section allows the Minister of Labour to refer certain disputes to compulsory arbitration, not only where they involve essential services the interruption of which is likely to endanger the life, personal safety or health of the population, but also where the dispute is likely to "jeopardize the normal operation of the national economy or involves a vital industrial sector". The Committee notes that the Government's report mentions the validation in July 2010 of a study on the conformity of the labour legislation with the fundamental labour conventions and the preparation of a draft amendment text which includes the revision of section L.229 of the Labour Code. ***The Committee hopes that the Government will indicate in its next report that tangible progress has been made in amending section L.229 of the Labour Code to bring it into conformity with the requirements of the Convention. The Committee requests the Government to provide a copy of any text adopted in this regard.***

Furthermore, the Committee previously noted that a draft revision of Decree No. 90-562 P-RM of 22 December 1990 establishing the list of services, positions and categories of workers strictly indispensable to the maintenance of a minimum service in the event of a strike in the public services was the subject of consultations under way with the social partners. The Committee notes that the Government indicates in its report that the draft decree was adopted by the Government during the Council of Ministers on 11 June 2010. ***The Committee requests the Government to provide a copy of the draft Decree revising Decree No. 90-562 P-RM of 22 December 1990.***

## Malta

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1965)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes.* In its previous comments, the Committee had requested the Government to clarify whether, under the terms of sections 74 of the Employment and Industrial Relations Act 2002 (EIRA), compulsory arbitration before the Industrial Tribunal could still be imposed over disputes of interest. The Committee had also requested information on the number of strikes and the incidents of recourse to the Minister's power to refer disputes to the Industrial Tribunal at the request of only one party. The Committee had noted the Government's explanation to the effect that, where a trade dispute exists or is apprehended, the parties to the dispute may agree to refer the dispute to the Director of Industrial and Employment Relations or to a conciliator chosen by the parties themselves or by the Director; thus the mechanism is purely voluntary. It is only where the parties choose to resort to conciliation, and the conciliator reports a deadlock, that the Director refers the matter to the Minister for eventual referral to the Industrial Tribunal. Furthermore, the Government had indicated that in 2007, five strikes were resolved through mediation and not through recourse to the Industrial Tribunal.

While noting this information, the Committee observes, nevertheless, that under section 74(1) and (3) of the Employment and Industrial Relations Act, where conciliation fails, any of the parties to the dispute may notify the Minister who in turn may refer the dispute to the Tribunal for settlement.

***Further noting the information given by the Government that the Employment and Industrial Relations Act 2002 will be under review for possible amendment, the Committee requests the Government to ensure that due consideration is given, within this exercise, to amending section 74(1) and (3) of that law so that arbitration may not be imposed unless both parties agree. The Committee requests the Government to indicate any developments in this regard.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention.* The Committee recalls that it had previously requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals by public officers, port workers and public transport workers given that those categories are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act 2002 (EIRA). The Committee had noted from the Government's report that public officers have the right to appeal to the Public Service Commission, an independent body (the members are appointed by the President of Malta acting on the advice of the Prime Minister given after a consultation with the Leader of the Opposition and they cannot be removed except for inability or misbehaviour causes) established under section 109 of the Constitution of Malta. The Committee also notes from the Government's report that the Public Service Commission's primary role is to ensure that disciplinary action taken against public officers is fair, prompt and effective. ***The Committee requests the Government to indicate, with regard to cases of anti-union dismissal, whether the Public Service Commission is empowered to grant such compensatory relief – including reinstatement and back pay awards – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee also once again requests the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals of port workers and public transport workers.***

*Articles 2 and 3. Protection against acts of interference.* The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts given that the EIRA does not expressly protect employers' and workers' organizations from acts of interference by one another, in each other's affairs. **The Committee once again requests the Government to indicate in its next report, the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts.**

*Article 4. Collective bargaining.* The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act, so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday on the basis of a collective agreement (see 342nd Report of the Committee on Freedom of Association, Case No. 2447, paragraph 752). **The Committee once again requests the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act.**

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**

## Mauritania

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)**

*Comments of the ITUC.* The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 24 August 2010, concerning legislative matters already raised by the Committee, as well as violations of freedom of association in 2009. **The Committee requests the Government to provide its observations in reply to the ITUC's comments.**

*Legislative amendments.* For several years, the Committee has been requesting the Government to take the necessary measures to amend its legislation to bring it into full conformity with the Convention. The Committee notes the Government's indication in its report that, in the context of the revision of the texts implementing the Labour Code, a technical committee composed of labour inspectors will take the necessary measures to amend the legislation to bring it into full conformity with the Convention and that particular attention will be paid to all sections which have been the subject of comments by the Committee. **The Committee notes this information and expresses the firm hope that the Government's next report will indicate concrete progress in the revision of the Labour Code to bring it into full conformity with the Convention. The Committee further hopes that the Government will take due account of all points recalled below. In this regard, the Committee notes that the Government expresses its wish to continue benefiting from technical assistance from the Office.**

*Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing without prior authorization. Minors who are of the minimum legal age for admission to employment.* For several years, the Committee has been requesting the Government to amend section 269 of the Labour Code to remove any obstacles that prevent minors who have access to the labour market from exercising the right to organize. The Committee recalls that, under *Article 2* of the Convention, the minimum age for joining a trade union in full freedom must be the same as that established for admission to employment, without the permission of the parents or guardian being necessary. **The Committee trusts that the Government will take the necessary measures to amend section 269 of the Labour Code so as to guarantee the right to organize of minors who are of the minimum legal age for admission to employment (14 years according to section 153 of the Labour Code), whether as workers or as apprentices, without the permission of their parents or guardians being necessary.**

*Magistrates.* For several years, the Committee has been commenting on the need to ensure that magistrates enjoy freedom of association. The Committee notes the Government's indication in its report that magistrates have preferred to form neutral associations for the defence of their interests and that they have not expressed the wish to establish unions. The Committee is bound to recall once again that magistrates are not covered by the exceptions allowed by *Article 9* of the Convention and that they ought to enjoy, like all other categories of workers, the right to establish and join organizations of their own choosing, in accordance with *Article 2* of the Convention. **The Committee trusts that the Government will take the necessary measures to ensure that magistrates enjoy the right to establish and join occupational organizations of their own choosing.**

*Article 3. Right of workers' organizations to elect their representatives in full freedom and to organize their administration and activities without interference from the public authorities.* In its previous comments, the Committee noted that section 278 of the Labour Code extends the procedure for the establishment of trade unions to any changes in their administration or management, and therefore has the effect of subjecting such changes to the approval, either of the Prosecutor-General or of the courts. The Committee therefore indicated that this provision gives rise to serious risks of interference by the public authorities in the organization and activities of trade unions and their federations. It recalled that the establishment or amendment of the statutes of an organization of workers is the responsibility of the organization itself and should not be subject to the prior consent of the public authorities in order to take effect. **The Committee trusts that the Government will take the necessary measures to amend section 278 of the Labour Code so as to provide that any**

*change in the administration or management of a union may take effect as soon as the competent authorities have been notified and without the requirement of their approval.*

*Compulsory arbitration.* For many years, the Committee has been noting that sections 350 and 362 of the Labour Code allow compulsory arbitration in instances which go beyond essential services in the strict sense and in situations which cannot be deemed to constitute an acute national crisis. The Committee recalls that the prohibition or restriction of the right to strike by means of compulsory arbitration can be justified only in the cases of: (1) essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (2) an acute national crisis and then only for a limited period and to the extent necessary to meet the requirements of the situation. ***The Committee trusts that the Government will amend the relevant sections of the Labour Code so as to limit the prohibition on strikes by means of compulsory arbitration only to essential services in the strict sense of the term and to situations of acute national crisis.***

*Duration of mediation.* In its previous comments concerning the prohibition on strikes for the duration of the mediation procedure established under section 362 of the Labour Code, the Committee recalled that it was possible to require the exhaustion of conciliation and mediation procedures before a strike may be called, on condition that the procedures are not so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness. However, the Committee considered that the maximum period of 120 days for mediation provided for in section 346 of the Labour Code was too long. ***The Committee expects that the Government will amend section 346 of the Labour Code to reduce the maximum duration of mediation before a strike may be called.***

The Committee is raising other points in a request addressed directly to the Government.

## Mauritius

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2005)***

The Committee notes the comments submitted by the Mauritius Employers' Federation dated 11 May 2010, by the Confederation of Private Sector Workers (CTSP) dated 7 June 2010 on the application of the Convention and by the International Trade Union Confederation (ITUC) dated 24 August 2010. The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2685 (355th Report).

The Committee notes with *satisfaction* that the Government indicates in its report that the Employment Relations Act 2008 (ERA) was proclaimed and took effect from 2 February 2009, addressing the following issues previously raised by the Committee: (i) section 5(1)(f) of the ERA establishes that the minimum membership requirement for the establishment of an employers' organization is five employers; (ii) section 28 of the ERA provides that the registrar may investigate into any complaint against a trade union only if it is made by not less than 5 per cent of the members; (iii) section 45(c) of the ERA provides that the deduction of trade union fees from a workers' wage shall cease to have effect in the manner provided for in the rules of the trade union; (iv) section 83(2) of the ERA provides that a worker shall not be entitled to any remuneration while on strike unless otherwise agreed by the parties; (v) sections 85(2), 87(2) and 90(5) of the ERA concerning the composition of the Employment Relations Tribunal, the Commission for Conciliation and Mediation and the National Remuneration Board, provide that the members of these bodies shall be appointed by the minister after consultation with the most representative organizations of workers and employers; and (vi) section 97 of the ERA lists the matters which "may" (instead of "shall") be taken into account by the Tribunal, Commission or Board in the framework of their activities.

Nevertheless the Committee notes that certain discrepancies remain between certain provisions of the ERA and the Convention, especially in relation to the mechanism for the resolution of industrial disputes. The Committee examines these issues in a request directly addressed to the Government.

*Article 2 of the Convention. Right to organize.* In its previous observation, the Committee requested the Government to indicate the measures taken to guarantee migrant workers their trade union rights both in law and in practice and to take the necessary measures for the collection of data on the unionization levels of migrant workers in the export processing zones and offshore companies. The Committee notes that the Government indicates in its report that: (i) section 13 of the ERA provides that every employee, citizen or not, holding a work permit, shall be entitled to be a member of a trade union and that sections 29 and 32 of the ERA provide for the rights, respectively, of workers and employers, to freedom of association; (ii) section 29 also applies to migrant workers; (iii) sensitization campaigns are being held by officers of the Special Migrant Workers Unit (set up at the Labour Division of the Ministry of Labour, Industrial Relations and Employment) to apprise migrant workers of the provisions of the ERA, inter alia, basic workers' rights to freedom of association; (iv) the workforce in large establishments of the Export Oriented Enterprises sector was of 66,138 as at March 2007 (61 per cent women and 24 per cent migrants), of 66,782 as at March 2008 (59 per cent women and 27 per cent migrants) and of 57,107 as at March 2009 (58 per cent women and 29 per cent migrants); and that (v) steps are being taken by officers of the Special Migrant Workers' Unit to collect information on the rate of unionization of migrant workers during the inspection visits that are carried out. ***The Committee requests the Government***



to provide further information in its next report on the activities undertaken by the Special Migrant Workers' Unit, the number of trade unions and the rate of unionization in EPZs, including vis-à-vis migrant workers.

Finally the Committee notes that the Government has requested ILO technical assistance in relation with the application of Conventions Nos 87 and 98 and hopes that this assistance will be provided in the near future.

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1969)**

The Committee notes the comments submitted by the Mauritius Employers' Federation dated 11 May 2010, by the Confederation of Private Sector Workers (CTSP) dated 7 June 2010, and by the International Trade Union Confederation (ITUC) dated 24 August 2010, as well as the Government's reply thereon. The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2685 regarding alleged anti-union dismissals and the refusal to recognize a trade union (355th Report).

*Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference.* In its previous observation, the Committee noted the comments made by trade unions regarding the prevalence of anti-union discrimination in the textile sector, especially vis-à-vis migrant workers, as well as the obstacles faced by unions in meeting workers inside or even outside work premises. The Committee requested the Government to provide its observations thereon and recalled the importance not only of prohibiting acts of interference, but also of making provision for rapid appeals procedures coupled with sufficiently effective and dissuasive sanctions. The Committee notes from the Government's report that the Employment Relations Act 2008 (ERA), which replaces the Industrial Relations Act 1973 (IRA), was proclaimed and took effect from 2 February 2009. The Committee notes with *satisfaction* that sections 30, 31 and 33 of the ERA clearly prohibit all acts of anti-union discrimination and interference – which were not sufficiently addressed by the IRA – and that sections 103 and 104 reinforce the sanctions applicable. It also notes that the Government indicates that these provisions apply to the textile sector, to export processing zones (EPZs), as well as vis-à-vis migrant workers.

*Article 4. Promotion of collective bargaining.* The Committee notes with *satisfaction* that the ERA includes a number of provisions which promote collective bargaining through different means (including the prohibition of unfair practices and the guarantee of the right to access the necessary information) and that it applies to all sectors, including EPZs.

*Collective bargaining in the public sector.* Furthermore, in its previous observations, the Committee had requested the Government to transmit its observation on the right to negotiate salaries in the public sector. The Committee takes note of the information provided by the Government in its report regarding negotiations over salaries in the public sector in 2007–08. The Committee notes, in particular, that the Pay Research Bureau constitutes the permanent and independent body in charge of keeping under review the pay and grading structures in the public sector. It further notes that the Bureau adopts a consultative approach when undertaking the general pay review every five years. The Government's report adds that in 2007–08, although there were no negotiations over salaries in the public sector, extensive consultations took place in the context of the overall pay review (i.e. 1,275 consultative meetings and 2,600 written representations). The Committee also notes that the Government indicates that in its 2010–15 Programme, it announced that the National Pay Council will be phased out and that a tripartite mechanism will be instituted as a permanent forum for discussion among social partners, with a view to better understanding and responding to the challenges facing the country, and that appropriate consultations with stakeholders will be initiated to that effect. The Committee welcomes these consultations and recalls that bipartite collective bargaining is a fundamental element of the Convention. Finally, the Committee notes that, according to the CTSP, the number of collective agreements signed in 2009 has been reduced by 70 per cent. *The Committee requests the Government to comment on this assertion.*

*The Committee requests the Government to provide in its next report statistical information on collective agreements in the country (number of agreements in the public and private sectors, subjects dealt with and number of workers covered) and to indicate any concrete measure undertaken to promote collective bargaining in the specific sector of EPZs as well as in the textile sector and vis-à-vis migrant workers. The Committee also requests the Government to provide information in its next report on any development regarding the institution of the abovementioned tripartite mechanism as a permanent forum.*

## **Mexico**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1950)**

The Committee notes the Government's reply to the comments of the International Trade Union Confederation (ITUC) of 2008. The Committee also notes the ITUC's comments dated 24 August 2010 which refer to the application of the Convention, as well as the murder of two trade union leaders and the illegal imprisonment of a trade union member. The Committee recalls that the right to life is a fundamental prerequisite for the exercise of the rights concerned in

Convention No. 87 and emphasizes that when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible, remedying the damages and preventing the repetition of such actions. Judicial inquiries of this kind should be conducted as promptly and speedily as possible, since otherwise there is a risk of de facto impunity which reinforces the climate of violence and insecurity and which is therefore highly detrimental to the exercise of trade union activities (see the General Survey of 1994 on freedom of association and collective bargaining, paragraph 29). **The Committee requests the Government to provide its observations in this respect.**

*Article 2 of the Convention. Trade union monopoly in state agencies imposed by the Federal Act on State Employees and by an Act issuing regulations under the Constitution.* The Committee recalls that for many years it has been commenting on the following provisions:

- (i) the prohibition of the coexistence of two or more unions in the same state agency (sections 68, 71, 72 and 73 of the Federal Act on State Employees);
- (ii) the ban on trade unionists leaving the union of which they have become members (an exclusion clause under which trade unionists who leave the union lose their jobs) (section 69 of the Federal Act on State Employees);
- (iii) the ban of unions of public servants joining trade union organizations of workers or rural workers (section 79 of the Federal Act on State Employees);
- (iv) the extension of the restrictions applying to trade unions in general to the Single Federation of Unions of State Employees (section 84 of the Federal Act on State Employees); and
- (v) the imposition by law of the trade union monopoly of the National Federation of Banking Unions (section 23 of the Act to regulate article 123(XIIIbis)(B) of the Constitution).

In this regard, the Committee notes the Government's indication in its report that: (i) the right of state employees to organize freely is guaranteed by article 123(X)(B) of the Constitution, which lays down the right of workers to associate in order to defend their common interests and exercise the right to strike when the rights laid down in this provision are violated generally and systematically; (ii) the implications of the ruling of the Supreme Court of Justice in the case for the protection of constitutional rights (*amparo*) on appeal No. 1475/98, and of rulings Nos P/J 43/1999, CXXVII/2000, 2<sup>a</sup> LVII/2005, and other similar rulings, determining the freedom of state employees to join freely the unions which accept them, and establishing that there may be more than one union in agencies, and that trade union leaders in the sector may be re-elected, have been applied strictly by the Federal Conciliation and Arbitration Tribunal (TFCA); (iii) in this respect, three federations of state employees are registered with the TFCA, namely the Federation of Unions of Workers in the Service of the State (FSTSE), the Democratic Federation of Public Servants Unions (FDSSP) and the Federation of Banking Unions (FSB); and (iv) on 1 July 2009, an initiative was launched with a draft decree to amend various provisions of the Federal Act on State Employees issued under article 123(B) of the Constitution with the objective of promoting the freedom of state workers to organize by eliminating the ban on establishing more than one union in each agency of the public authority and repealing article 123(B)(XIIbis). The Committee notes this initiative with *interest* and hopes that the decree will be adopted in the near future. **The Committee requests the Government to provide information in its next report on any developments in this respect.**

*Article 3. Ban on re-election in trade unions (section 75 of the Federal Act on State Employees).* In its previous comment, the Committee requested the Government to amend section 75 of the Federal Act on State Employees to align it with the case law of the Supreme Court of Justice and bring it into conformity with the Convention and current ILO practice. The Committee notes the Government's indication that, even though the provision has not been amended, the Federal Conciliation and Arbitration Tribunal applies the case law referred to, with the result that in practice effect is given to the provisions of the Convention, as the case law of the Supreme Court of Justice of the Nation is binding on all jurisdictional bodies in the country. **Under these conditions, taking into account the planned reform of the Federal Act on State Employees, the Committee requests the Government to examine the possibility of amending section 75 to align it with the case law of the Supreme Court of Justice with a view to bringing it into conformity with the Convention and current ILO practice.**

*Ban on foreign nationals being members of trade union executive bodies (section 372(II) of the Federal Labour Act).* The Committee notes that the Government does not refer to this matter in its report. The Committee emphasizes that foreign workers should be allowed to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey, op. cit., paragraph 118). **The Committee requests the Government to take this principle into account in the context of a future amendment of the Federal Labour Act and to provide information on this matter in its next report.**

*Limited right to strike of public officials who do not exercise authority in the name of the State and requisitioning.* The Committee recalls that for many years it has been making comments and requesting the Government to amend the legislation in relation to the following issues:

- (i) State employees – including workers in the banking sector – have the right to strike only if there is a general and systematic violation of their rights (section 94, Title four, of the Federal Act on State Employees, and section 5 of the Act to regulate article 123(XIIIbis)(B) of the Constitution). The Committee considers that state employees –

including employees in the banking sector – who do not exercise authority in the name of the State should be able to exercise the right to strike irrespective of whether there is a general and systematic violation of rights.

- (ii) On the other hand, section 121 of the Credit Institutions Act provides that the “National Banking Commission shall ensure that during the strike as many offices as are indispensable shall remain open and as many workers as are strictly necessary to perform the functions shall continue to work”. In this respect, the Committee observed that the National Banking Commission is not tripartite. The Committee recalls that workers’ organizations should be able to take part, should they so wish, in determining the minimum service to be maintained in the event of a strike, along with employers and the public authorities (see General Survey, op. cit., paragraph 161).
- (iii) Section 99(II) of the Federal Act on State Employees lays down the requirement that to call a strike two-thirds of the workers in the public body concerned must be in favour. The Committee recalls in this respect that, with regard to workers who do not exercise authority in the name of the State, the ballot method, the quorum and the majority required should not be such that exercise of the right to strike becomes very difficult, or even impossible in practice (see General Survey, op. cit., paragraph 170).
- (iv) Several laws on the public service (the Act to regulate railways, the Act respecting national vehicle registration, the Act on general channels of communication and the Rules governing the Ministry of Communications and Transport) contain provisions for the requisitioning of staff where the national economy could be affected. The Committee recalls that the forced mobilization of workers on strike would be justified only for the purpose of ensuring the operation of essential services in the strict sense of the term (see the General Survey, op. cit., paragraph 163) and that provisions which do not relate to essential services in the strict sense of the term (such as the Act to regulate the railways, the Act on general channels of communication and the Rules governing the Ministry of Communications and Transport) should be amended.

The Committee notes the Government’s indication in relation to these matters that legislative action lies within the competence of the National Legislative Authority and that no initiatives have been submitted during the present period in relation to the amendments that are sought. *In this regard, taking into account the planned reform of the Federal Act on State Employees, the Committee requests the Government to examine, together with the social partners, the possibility of making amendments as indicated above. The Committee recalls that in this process it is possible to have recourse to the technical assistance of the Office, if so desired.*

*Modernization of the overall labour legislation.* The Committee notes the Government’s indication that: (i) with a view to modernizing labour legislation, since 2006 the Secretariat of Labour and Social Welfare (STPS) has been promoting the modernization of the legislation in this sector, since the current Federal Labour Act dates from 1970; (ii) in this regard, the STPS reviewed various initiatives to reform the Federal Labour Act that were submitted by different parliamentary groups to the Chambers of Congress of the Union and supplemented the background paper; (iii) the background paper served as a basis for the initiative to reform, supplement and repeal various provisions of the Federal Labour Act submitted to the Chamber of Deputies on 18 March 2010; (iv) the initiative proposes the modernization of 419 of the 1,010 sections of the current version of the Federal Labour Act, including the fundamental rights of workers, both individual and collective; and (v) the objectives of the initiative of labour reform are to: (a) promote the creation of high quality jobs in the formal economy; (b) develop a culture of productivity in industrial relations; (c) facilitate conducive conditions and offer legal certainty to investors; (d) promote decent work; (e) develop transparency with a view to strengthening democracy and trade union freedoms in full compliance with the autonomy of trade unions; (f) modernize and make more flexible the delivery of labour justice; and (g) integrate new mechanisms to promote compliance with labour legislation. The Government adds that the measures related to transparency and trade union democracy include the proposal to remove the so-called “exclusion on the ground of separation” clause.

*Noting that the Office has made comments on the draft reform of the Federal Labour Act, the Committee expresses the firm hope that they will be fully taken into account. The Committee suggests that the Government should continue to have recourse to the technical assistance of the Office with a view to ensuring that the text that is adopted is in full compliance with the provisions of the Convention. The Committee requests the Government to indicate any developments in this respect in its next report.*

## Republic of Moldova

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 which refer to the matters raised by the Committee below and by the Committee on Freedom of Association in Case No. 2317.

*Article 2 of the Convention. Right of employers and workers to establish and join organizations of their own choosing.* The Committee recalls that it had previously requested the Government to amend section 6 of the Law on Employers’ Organizations, which required at least ten employers to create an employers’ organization. The Committee notes with *interest* the Government’s indication that Law No. 121-XVIII of 23 December 2009 amended the Law on

Employers' Organizations as to provide that an employers' association can be created at the initiative of three employers. ***The Committee requests the Government to provide a copy of the relevant legislative text with its next report.***

The Committee had previously requested the Government to amend section 10(5) of the Law on Trade Unions, according to which primary trade union organizations may acquire the status of legal entity only if they are members of a national branch or national inter-sectoral trade union, so as to guarantee the right of workers to establish and join organizations of their own choosing, including those outside of the existing national trade union structure. The Committee notes the Government's statement that the National Confederation of Trade Unions has indicated that it could support some reasonable proposals for the improvement of the rule contained in section 10(5) of the Law and that the process to amend this provision will begin in the near future. ***The Committee requests the Government to provide information in its next report on any developments in this regard.***

*Article 3. Right of workers' organizations to organize their activities.* The Committee had previously requested the Government to consider, in consultation with the social partners, the adoption of legislative provisions expressly providing for the participation of the relevant trade unions and employers' organizations in determining the minimum services to be ensured in the event of a strike. The Committee notes the Government's indication that this issue requires further additional examination in consultation with the social partners. ***The Committee expresses the hope that the necessary legislative provisions will be soon adopted and requests the Government to indicate concrete steps taken or envisaged in this regard. The Committee further once again requests the Government to transmit with its next report Decision No. 656 of 11 June 2004 providing for the list of categories of workers who are prohibited from striking pursuant to section 369 of the Labour Code.***

In its previous comments, the Committee had requested the Government to amend sections 357(1) and 358(1) of the Criminal Code providing for disproportionate penal sanctions (including imprisonment for up to three years) for organizing or conducting an illegal strike. The Committee notes the Government's indication that section 357(1) of the Code has been amended by Law No. 277-XVI of 18 December 2008 (in force since 24 May 2009) as to provide that "organizing or conducting an illegal strike, as well as preventing/hindering of an organization's, institution's or enterprise's activity, under the state of emergency, siege or war is punishable by a fine of up to the amount of 500 conventional units, or by unpaid community service for the period from 100 to 240 hours". The Committee also notes with *satisfaction* that section 358 of the Code was repealed by the same legislative Act.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)***

The Committee notes the comments submitted by the Confederation of Trade Unions of the Republic of Moldova (CRSM) in a communication dated 4 September 2009 and the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 6 September 2010 concerning the issues raised by the Committee below. The Committee also notes the Government's reply to the 2008 ITUC comments.

*Articles 1 and 2 of the Convention. Sanctions against acts of anti-union discrimination and of interference.* In its previous observation, the Committee had noted that section 61 of the new Code on Contraventions adopted in 2008 provided for the application of fines in the amount of 40 to 50 conventional units (one unit equals 20 MDL) for the obstruction of the right of workers to establish and join trade unions. The Committee had further noted the Government's indication that the working group, constituted of representatives of the Ministry of Economy and Trade, the National Confederation of Trade Unions and the Ministry of Justice, examined the possibility of setting administrative sanctions against acts of interference in trade union activities, not covered by section 61. The Committee had requested the Government to provide information on any new developments in this respect and to ensure that these sanctions are applied through effective and expeditious procedures. The Committee notes that the ITUC and CRSM indicate that the scope of section 61 of the Code on Contraventions is very limited since it sanctions solely the obstruction of workers' right to establish and join trade unions and not all acts of anti-union discrimination and interference as prohibited by section 37(1) of the Law on Trade Unions. The Committee further notes that the Government indicates in its report that the possibility of amendment of section 61 of the Code on Contraventions will be reviewed in the near future. The Committee also notes the Government's statement in its reply to the 2008 ITUC comments that up until the adoption of the new Code on Contraventions, violations of trade union rights were covered by section 41 of the Code of Administrative Contraventions, which sanctioned violations of labour legislation and provided for the application of fines amounting to up to 250 conventional units. The Committee notes that section 55 of the new Code on Contraventions is a similar provision to section 41 of the repealed Code of Administrative Contraventions, which sanctions violations of labour legislation but provides for the application of lower fines (amounting up to 50 conventional units for individuals, 75 conventional units for responsible persons and up to 120 conventional units for legal entities). It further notes that, according to the ITUC, law enforcement remains weak. The Committee recalls the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2317 where it had requested the Government to actively consider, in full and frank consultations with social partners, legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions against acts of interference in trade union internal affairs (see 350th Report). The Committee considers that neither section 61, nor section 55 of the Code on Contraventions provide for sufficiently dissuasive sanctions against acts of anti-union discrimination and acts of interference. ***The Committee***

*expresses the firm hope that the necessary legislative amendments ensuring the adequate protection of workers' and employers' organizations against acts of anti-union discrimination and interference will soon be adopted. In this respect, the Committee requests the Government to ensure that the legislative texts adopted in the future provide for sufficiently dissuasive sanctions in cases of violation and for effective and expeditious procedures to guarantee their application in practice.*

*Article 4. Compulsory arbitration.* In its previous observations, the Committee had requested the Government to amend section 360(1) of the Labour Code, which allowed the imposition of arbitration by the authorities at the request of one party so as to ensure that recourse to compulsory arbitration is possible only in the context of essential services in the strict sense of the term (i.e. services, the interruption of which would endanger the life, safety or health of the whole or part of the population) or for public servants engaged in the administration of the State. The Committee notes the Government's indication that the question of amendment of section 360(1) of the Labour Code will be examined after discussions with the social partners on the issue concerning determination of minimum services in the case of strike. The Committee also notes the Government's intention to amend section 359(2) of the Labour Code, pursuant to which in order to settle a collective dispute the parties may, within three calendar days from the beginning of the dispute, establish a conciliation commission formed of an equal number of representatives of the parties to the dispute, so as to repeal the time frame within which a conciliation commission should be established. *The Committee expresses the hope that the necessary amendments to section 360(1) of the Labour Code will be adopted in the near future so as to ensure that the referral to compulsory arbitration is possible only upon request by both parties to the dispute, or for essential services in the strict sense of the term or for public servants engaged in the administration of the State. The Committee requests the Government to indicate measures taken or envisaged in this regard.*

*The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

## Mozambique

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 on the application of the Convention. *The Committee requests the Government to send its observations thereon and on the ITUC's comments of 2008 concerning serious acts of violence against striking workers in the sugar cane plantation sector.*

In its previous comments, the Committee noted that a new Labour Act had been adopted (Act No. 23/2007) some provisions of which are inconsistent with the Convention, namely:

- section 150, which allows the central body of the labour administration 45 days within which to register an employers' or workers' organization. The Committee pointed out that such a protracted registration procedure is a serious obstacle to the establishment of an organization, amounting to a denial of the right of workers and employers to set up organizations of their own choosing, and that this time requirement should be shortened to a reasonable length not to exceed 30 days. The Committee notes in this connection that, according to the Government, the time requirement was prescribed taking account of the country's social and economic development and the fact that Mozambique lacks a modern and computerized communication system, which slows down the transmission of information from one region to another;
- section 189, which allows compulsory arbitration for the essential services listed in section 205, which include the postal service, the loading and unloading of animals and perishable foodstuffs, weather monitoring and fuel supply, and also for export processing zones (section 206 and Decree No. 75/99). The Committee points out that compulsory arbitration to end collective labour disputes or strikes is acceptable only when requested by both parties to the dispute or where a strike may be restricted or prohibited, namely in the case of a dispute in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life or personal safety or public health of the whole or part of the population. In these circumstances, the Committee takes the view that any disputes arising in the above-mentioned services should not be subject to compulsory arbitration and that they could be settled under the mediation and conciliation procedures provided for by law;
- section 207, which provides that the notice of strike must state the duration of the strike. The Committee expressed the view that workers and their organizations should be able, if they so wish, to call an indefinite strike. In this connection it notes the information from the Government to the effect that since nothing in the law imposes a time limit on strikes, this provision may be construed as allowing a strike to be unlimited in time or indefinite;
- section 212, which allows a strike to be ended by a decision of the mediation and arbitration body. The Committee notes in this connection the Government's specification that section 212, subsection 1, provides for other procedures for ending strikes, including agreement between by the parties concerned or a decision of the trade union

organization. The Committee is of the view that such a decision should be taken only by the workers and organizations that declared the strike and not by a mediation body; and

- section 268(3), which provides that any violation of sections 199 (freedom to work of non-strikers), 202(1) and 209(1) (minimum services), constitutes a breach of discipline for which the workers on strike are liable under both civil and penal law. The Committee points out that workers engaging in peaceful strike action should not be liable to penal sanctions and hence to any prison sentence. Such sanctions may be envisaged as regards strikes only in the event of violence against persons or property or other serious breaches of the law, and only in accordance with the provisions punishing such offences. However, even in the absence of violence, if a strike is unlawful due to breach of procedure, proportionate disciplinary sanctions may be applied against the strikers.

The Committee reminds the Government that in its previous comments it noted that the legislation was undergoing revision by a “legal reform technical unit” set up for the purpose and that some provisions of the Labour Code that are inconsistent with the Convention would be amended in due course with assistance from the ILO. *The Committee accordingly requests the Government to provide detailed information in its next report on the progress made in revising the legislation, and hopes that the draft provisions will take account of the Committee’s comments on sections 189, 212 and 268(3) of the Labour Code.*

*Public servants.* In its previous comments the Committee noted that public servants do not have the right to organize. It notes in this connection the adoption of Act No. 14/2009 of 17 March 2009 issuing the General Regulations for Civil Servants and Government Officials (EGFAE). Its notes that sections 76 and 77 provide that the establishment, merger, federation and dissolution of public servants’ unions and occupational associations and the right of public servants to strike shall be regulated by law. *In these circumstances, the Committee requests the Government to indicate in its next report if such a law has been adopted and, if so, to provide a copy.*

## Myanmar

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, referring to grave matters already noted by the Committee.

The Committee notes the conclusions of the Conference Committee on the Application of Standards of June 2010. The Committee notes, in particular, that the Conference Committee noted with great concern the continued failure by the Government, over several years, to eliminate serious discrepancies in the application of the Convention.

*Civil liberties.* In its previous observation, the Committee recalled the ITUC’s reference to the arrest, heavy-handed interrogation and 20 years’ imprisonment sentence for sedition imposed on six workers as well as the additional prison sentences imposed on Thurein Aung, Wai Lin, Kyaw Win and Myo Min (five years sentence for association with the Federation of Trade Unions of Burma (FTUB) and three years sentence for illegally crossing a border). It further noted the arrest of Burma Railway Union leader U Tin Hla and of Su Su Nway, who was sentenced to 12-and-a-half years in prison. Moreover, the ITUC indicated that, at the end of 2008, three workers – Khin Maung Cho (aka Pho Toke), Nyo Win and Kan Myint – employed at the A21 Soap Factory in Hlaing Thayar Industrial Zone, were sentenced to long jail terms for involvement with exiled groups, sedition and other charges.

Furthermore, in its previous observation, the Committee recalled that the ITUC had previously referred to numerous other grave violations of the Convention, including:

- the imprisonment of Myo Aung Thant, member of the All Burma Petro-Chemical Corporation Union, who has now been in jail for over 12 years after having been convicted for high treason for maintaining contacts with the FTUB (under section 122(1) of the Penal Code);
- the killing of Saw Mya Than, FTUB member and official of the Kawthoolei Education Workers’ Union (KEWU), who was allegedly murdered by the army in retaliation for a rebel attack, and in respect of whose murder the Committee on Freedom of Association had requested the Government to institute an independent inquiry in the framework of Case No. 2268;
- the disappearance on 22 September 2007 of Lay Lay Mon, a female labour activist who is a former political prisoner, after helping organize workers to support protesting monks and citizens in the uprising in Yangon; she was believed to be incarcerated in Insein prison but there was no news of if, or when, she would be brought to trial;
- the disappearance of labour activist Myint Soe during the last week of September 2007 after being active in engaging with workers to increase their involvement in the September uprising;
- the arrest by the military authorities on 8 and 9 August 2006 of seven members of the family of the FTUB member and activist Thein Win at their house in the Kyun Thayar section of Pegu city. Three of Thein Win’s siblings (Tin Oo, Kyi Thein and Chaw Su Hlaing) were sentenced to 18 years in jail under sections 17(1) and (2) of the Unlawful Associations Act. Tin Oo was reported to have suffered such intensive torture during detention that he has now become mentally unstable and there are fears for his health;

- the arrest in March 2006, and subsequent sentencing, of five underground democracy and labour activists for a variety of offences connected to efforts to provide information to the FTUB and other organizations considered as illegal by the regime, and to organize peaceful anti-State Peace and Development Council (SPDC) demonstrations (U Aung Thein, 76 years old, sentenced to 20 years; Khin Maung Win, sentenced to 17 years; Ma Khin Mar Soe, 17 years; Ma Thein Thein Aye, 11 years; and U Aung Moe, 78 years old, sentenced to 20 years);
- the intimidation by the army of the 934 workers at Hae Wae Garment, located in South Okkapala Township in Yangon, who went on strike on 2 May 2006 to demand better terms and conditions of work. The 48 workers allowed to meet with the authorities were forced to sign a written statement that indicated that there were no problems at the factory;
- the arrest and sentencing to a four-year prison term with hard labour of Naw Bey Bey, an activist member of the Karen Health Workers' Union (KHWU);
- the arrest, torture and killing of Saw Thoo Di (aka Saw Ther Paw), a Karen Agricultural Workers' Union (KAWU) committee member from Kya-Inn township, Karen State, by an armed column of Infantry Battalion 83 outside his village on 28 April 2006;
- the shelling of the Pha village with mortars and rocket propelled grenades by Light Infantry Battalion 308 which had been sent by the SPDC military upon learning that, on 30 April 2006, the FTUB and Federation of Trade Unions – Kawthoolei (FTUK) were preparing a May Day workers' rights commemoration; and
- the arrest, torture, and sentencing by a special court established in prison of ten FTUB activists to prison sentences, from three to 25 years, for having used satellite phones to convey information to the ILO and to the international trade union movement through an intermediation by the FTUB.

The Committee notes that the Government reiterates in its report that the six persons arrested for allegedly participating in the May Day event, including Thurein Aung, were not workers. The Government's report adds that no workers were sanctioned for the exercise of trade union activities, that workers have the right to request the respect of their rights, individually or collectively, that thousands of workers do so annually and that no worker has taken any action as regards May Day activities. Furthermore, the Committee notes that during the meeting of the Conference Committee, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and that it could therefore not be recognized as a legitimate workers organization.

The Committee notes that the Conference Committee observed with extreme concern that many people remained in prison for exercising their rights to freedom of expression and association, despite calls for their release, and that it urged the Government immediately to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations, including those operating in exile, and called upon the Government to ensure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights.

The Committee can only *deplore* the fact that the Government has not provided any information, in its report, on the situation of the numerous persons referred to above and fails to provide any evidence of the measures taken to implement the Committee's previous requests, in particular as regards the need to establish independent investigations into these matters. Once again, the Committee *deeply regrets* the paucity of the information provided, which is in stark contrast to the extreme gravity of the issues raised by the ITUC.

The Committee recalls that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, as regards the reported torture, cruelty and ill-treatment, the Committee once again points out that trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and governments should give the necessary instructions to ensure that no detainee suffers such treatment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 30).

Finally, the Committee recalls that while trade unions are expected under *Article 8* of the Convention to respect the law of the land, "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention", the authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

The Committee therefore once again most *deeply deplores* the serious allegations of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities. ***The Committee once again strongly urges the Government to provide information on the measures adopted and instructions issued so as to ensure respect for the fundamental civil liberties of trade union members and officers and to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo Min, and all those who have been imprisoned for the exercise of trade union activities and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers' organizations of his/her own choosing.***

***Furthermore, recalling that the right of workers and employers to freely establish and join organizations of their own choosing cannot exist unless such freedom is established and recognized both in law and in practice, the Committee once again urges the Government to indicate all measures taken, including instructions issued, to ensure the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile.***

*Legislative framework.* In its previous comments, the Committee recalled the issues it has been raising over the years with respect to the legislative framework, including the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar (repressive anti-union legislation, obscure legislative framework, military orders and decrees further limiting freedom of association, a single trade union system established in the 1964 Law and an unclear constitutional framework); the FTUB forced to work underground and accused of terrorism; “workers’ committees” organized by the authorities; the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers’ Union of Burma, which is affiliated to the FTUB and the International Transport Workers’ Federation (ITF).

The Committee further recalls that, for several years, it has indicated that there exist some pieces of legislation containing serious restrictions to freedom of association or provisions which, although not directly aimed at freedom of association, can be applied in a manner that seriously impairs the exercise of the right to organize. More specifically: (i) Order No. 6/88 of 30 September 1988 provides that the “organizations shall apply for permission to form to the Ministry of Home and Religious Affairs” (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years (section 7); (ii) Order No. 2/88 prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (iii) the Unlawful Association Act of 1908 provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); (iv) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (v) the 1964 Law Defining the Fundamental Rights and Responsibilities of the People’s Workers establishes a compulsory system for the organization and representation of workers and imposes a single trade union; and (vi) the 1929 Trade Disputes Act contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts. Finally, the Committee recalled that there was no legal basis for the respect for, and realization of, freedom of association and that the broad exclusionary clause of article 354 of the Constitution subjects the exercise of this right “to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality”.

The Committee notes that during the June 2010 meeting of the Conference Committee, the Government representative stressed that, in accordance with its roadmap, Myanmar was committed to pursuing its transformation to a democratic society, that freedom of association rights, as well as other basic civil liberties provided for in the new Constitution would set out the framework within which new trade union legislation would be developed, and that no one has been, or is, apprehended for implicit or explicit exercise of the rights derived from the Convention. The Committee notes that the Conference Committee, recalling the long-standing and fundamental divergences between the national legislation and practice, on the one hand, and the Convention, on the other, and observing that the Government itself has admitted that there could be no legal trade unions in the country as yet, once again urged the Government in the strongest terms to immediately adopt the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention and to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act. The Conference Committee further emphasized that it was crucial that the Government take all necessary measures to ensure a climate wherein workers and employers could immediately exercise their freedom of association rights without fear, intimidation, threat or violence.

The Committee notes that the Government indicates in its report that the drafting process of legislation on workers’ organizations will be based on three pillars: the new Constitution, continued assistance and advice from the ILO and the Convention. The Committee also notes that the Government indicates that the Pyidaungsu Hluttaw (i.e. Union Assembly/Parliament) will take the necessary measures, after the 2010 elections, to repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act as well as Declaration No. 1/2006. The Government’s reports adds that the first draft of the legislation on workers’ organizations was completed in May 2010 and that it consists of 15 chapters addressing, inter alia, issues linked to the organization, duties, rights, fundraising and disbursement. Furthermore, the Government indicates that this first draft has been submitted to the Attorney-General for legal opinion; that the Government is considering requesting the technical assistance from the Office in this respect and that the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) as well as the workers’ representatives will be consulted and their views will be taken into consideration to further improve the instrument. ***The Committee requests the Government to provide a copy of the draft legislation referred to and invites the Government to avail itself of the technical assistance of the Office.***

***In these circumstances, noting that the planned general elections took place on 7 November 2010, the Committee urges the Government to take, without delay, the necessary measures so that the Pyidaungsu Hluttaw will immediately,***



upon its constitution, repeal Orders Nos 2/88 and 6/88 as well as the Unlawful Association Act and Declaration No. 1/2006, so that they will no longer be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee also requests the Government to ensure that the necessary measures are taken without delay for the elaboration of a Trade Union Law that will fully guarantee the right of workers to establish and join organizations of their own choosing, without previous authorization and to provide a copy of the legislation once adopted.

The Committee once again urges the Government to furnish a detailed report on the concrete measures taken, with the full and genuine participation of workers and employers from all sectors of society regardless of their political views, to enact legislation guaranteeing, to all workers and employers, the right to establish and join organizations of their own choosing, as well as the rights of these organizations to exercise their activities and formulate their programmes and to affiliate with federations, confederations and international organizations of their own choosing without interference from the public authorities. It requests the Government to communicate any relevant draft laws, orders or instructions in this regard so that it may examine their conformity with the provisions of the Convention.

Finally, the Committee encourages the Government to avail itself of the technical assistance of the Office in this regard.

*Extension of ILO mandate.* The Committee notes that the Conference Committee, recalling its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize, reiterated its previous request to the Government to accept an extension of ILO presence to cover the matters relating to the Convention. **Recalling that the Government had indicated in its previous report that an extension of ILO presence to cover the matters related to the Convention was under consideration, the Committee once again expresses the firm hope that the Government will be in a position to accept such an extension in the very near future and requests the Government to provide information in this respect.**

## Namibia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)**

*Article 2 of the Convention. Right to organize of prison staff.* In its previous comments, the Committee had noted that section 2(2)(d) of the Labour Act excludes members of the Namibian prison service from the Labour Act's provisions, unless the Prisons Service Act, 1998 (Act No. 17 of 1998), provides otherwise. The Committee further noted, in this regard, that the Prisons Service Act does not provide for the extension of the new Labour Act's guarantees to the Namibian prison service; nor does it contain any provisions establishing their freedom of association rights.

The Committee had noted the Government's indication that it was willing to consider the issue, and that it is therefore thought appropriate to first consult widely with all the relevant parties before a decision is taken on whether to amend the Labour Act or the Prisons Service Act in order to give effect to the principles of freedom of association and the right to organize, as well as to provide for effective mechanisms to deal with and resolve labour disputes. The Committee notes that, in its report, the Government indicates that it is in the process of consulting in the Cabinet with the hope that permission will be granted to proceed with the legislative amendments that are required. **In these circumstances, the Committee once again expresses the hope that the necessary legislative amendments to guarantee to the prison service the rights provided under the Convention will be adopted in the near future and requests the Government to indicate, in its next report, any developments in this regard.**

Finally, the Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 on the application of the Convention, and in particular on the arrests of trade unionists who were participating in strike pickets. The Committee recalls that the detention of trade union members for trade union activities is contrary to the principles of freedom of association. **The Committee requests the Government to provide its observations in this respect.**

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1995)**

*Article 6 of the Convention. Rights of prison staff.* The Committee had previously noted that section 2(2)(d) of the Labour Act excludes members of the prison service from the Labour Act's provisions, unless the Prisons Service Act provides otherwise, and had also noted that the Prisons Service Act does not provide for the extension of the new Labour Act's guarantees to the prison service. The Committee notes that the Government indicates in its report that it is in the process of consulting Cabinet with the hope that permission will be granted to proceed with the legislative amendments that are required. **In these circumstances, the Committee once again expresses the hope that the necessary legislative amendments to guarantee, to the prisons services, the rights provided under the Convention will be adopted in the near future and once again requests the Government to indicate, in its next report, any developments in this regard.**

*International Trade Union Confederation comments.* The Committee notes the comment of the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 concerning difficulties in the application of the Convention in the export processing zones. ***The Committee requests the Government to provide its observations thereon.***

The Committee is raising other points in a request addressed directly to the Government.

## Nepal

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1996)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 concerning anti-union dismissals, threats against trade union members and the weakness of collective bargaining, since collective agreements only cover a very small percentage of workers in the formal economy. ***The Committee requests the Government to provide its observations thereon in its next report.***

In its previous comments, the Committee had noted that articles 12 and 30 of the Interim Constitution, which entered into force in 2007, guarantee the right to organize and engage in collective bargaining. Noting also that the Civil Service Ordinance Act had been amended by the Civil Service Act, so as to restore the right of public employees (up to Gazetted Third Class) to organize and bargain collectively, the Committee had requested the Government to specify which categories of public employees included in the gazetted and non-gazetted classes were covered by the legislative recognition of the right to organize and engage in collective bargaining. The Committee notes that the Government indicates in its report that civil servants from the lowest level up to the highest level (i.e. gazetted third class) can exercise the right to organize and collective bargaining. The Committee also notes that the Government indicates that it is in the process of drafting a new Constitution and that it will strive to ensure that the laws and regulations are compatible with the Convention. ***The Committee requests the Government to provide, in its next report, examples of collective agreements concluded by civil servants as well as information on any progress made in that respect in the framework of the legislative reform.***

Furthermore, the Committee notes that pursuant to article 53(1) of the Civil Service Act, civil employees have the right to form a trade union at the national level and that pursuant to article 53(3), the “authentic trade union of civil employees shall have the right to submit own professional demands and conduct social dialogue and collective bargaining at the concerned institution at the district, departmental and national levels”. The Committee notes that this section further indicates that in the case of not forming the “authentic trade union of civil employees”, the “trade union of civil employees” formed pursuant to paragraph (1) may conduct collective bargaining with mutual consent of each other. ***The Committee requests the Government to clarify in its next report the distinction between “authentic trade unions of civil employees” and other trade unions of civil employees, and to provide information on the procedure established to determine the most representative organization of civil employees entitled to collective bargaining, if any.***

Finally, in its previous observation, the Committee had raised certain issues in relation to the Draft National Labour Commission Act, in the following way.

*Article 1 of the Convention. Anti-union discrimination.* In its previous observation, the Committee had noted from the Government’s report that based on the constitutional provision concerning discrimination and article 23(a) of the Trade Union Act 1992, which explicitly discourages anti-union discrimination in respect of employment, there have hardly been any acts of anti-union discrimination brought to the notice of the authorities. The Committee had also noted that the Government had indicated that maximum protection against acts of anti-union discrimination will be explicitly ensured through the upcoming labour market reform and the revision of the related laws by the tripartite task force. The Committee notes that the Government indicates in its report that the provision of the Constitution on discrimination, together with article 23(a) of the Trade Union Act are the sole provisions regarding this matter. The Committee recalls that *Article 1* of the Convention guarantees workers adequate protection against acts of anti-union discrimination and that legislation prohibiting acts of discrimination is inadequate if it is not coupled with effective, expeditious procedures and sufficiently dissuasive sanctions to ensure their application (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 223 and 224). ***The Committee therefore, once again, requests the Government to take the necessary measures to introduce in the legislation: (i) an explicit prohibition of all prejudicial acts committed against workers by reason of their trade union membership or participation in trade union activities at the time of recruitment, during employment or at the time of dismissal (e.g. transfers, demotions, refusal of training, dismissals, etc.); and (ii) effective and sufficiently dissuasive sanctions in cases of violation of this prohibition. The Committee requests the Government to provide information on any progress made thereon in its next report.***

*Article 2. Acts of interference.* In its previous comments, the Committee had raised the need to ensure the enactment of a provision providing protection to workers’ and employers’ organizations against acts of interference by one another, including effective and sufficiently dissuasive sanctions guaranteeing adequate protection of trade unions against acts of interference in their establishment, functioning or administration and, in particular, against acts that are designed to promote the establishment of workers’ organizations under the domination of employers’ organizations, or to support workers’ organizations by financial or other means, with the objective of placing such organizations under the

control of employers or employers' organizations. The Committee had noted from the Government's report that although there is no explicit provision against such activities in the legislation, interference is hardly practised; and that the issue shall be addressed in the course of the labour market reform. The Committee notes that the Government indicates in its report that the labour market reform has not been completed but that it is fully aware of the concerns of the Committee in this respect. ***The Committee once again requests the Government to indicate the measures taken or contemplated to introduce in the legislation a prohibition of acts of interference, as well as rapid appeal procedures and dissuasive sanctions against such acts. The Committee requests the Government to provide information on any progress made thereon in its next report.***

***Article 4. Collective bargaining. Compulsory arbitration.*** In its previous comments, the Committee had noted that, according to article 9(4) of the draft National Labour Commission Act, the National Labour Commission will have the power, in applying the Essential Services Act 1957 and article 30 of the Trade Union Act, to arbitrate interests disputes in the hotel and transportation sectors as well as in cases where the authorities consider that the economic development of the country so requires. The Committee notes that the Government does not provide information in this respect in its report. The Committee recalls that compulsory arbitration to end a collective labour dispute or a strike is acceptable only if it is at the request of both parties involved in a dispute or if the strike in question may be restricted – i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population (General Survey of 1994 on freedom of association and collective bargaining, paragraphs 256–258). ***The Committee requests the Government to take the necessary measures to ensure that compulsory arbitration can only take place in accordance with the abovementioned principles and to provide information on any progress made thereon in its next report.***

***Composition of arbitration bodies.*** In its previous observation, the Committee had noted that Article 6 of the draft National Labour Commission Act provides that the Appointment Committee responsible for determining the composition of the National Labour Commission shall consist, inter alia, of two persons duly nominated by the Federation of Nepal Chamber of Commerce and Industry. The Committee had recalled that any decision concerning the participation of workers' and employers' organizations in a tripartite body – especially one entrusted with mediation, conciliation and arbitration proceedings – should be taken in full consultation with all the organizations whose representativity has been objectively proven, with a view to ensure that the tripartite body enjoys the confidence of these organizations. The Committee had requested the Government to avoid any reference to the Federation of Nepal Chamber of Commerce and Industry or to any other organization in the draft National Labour Commission Act, and to refer rather to the “most representative” employers' organization. The Committee notes that the Government indicates in its report that it welcomes this suggestion. ***The Committee requests the Government to provide information on any progress made thereon in its next report.***

***The Committee requests the Government to take the necessary measures to ensure the conformity of the National Labour Commission Act with the abovementioned principles as regards all the abovementioned issues and to provide a copy of the Act once adopted.***

***Measures to promote collective bargaining.*** In its previous observation, the Committee had noted from the Government's report that Strategy No. 3.2.6 of the Labour and Employment Policy 2062 states that collective bargaining – which included at that time 155 collective agreements at the level of plants and eight at national level – will be encouraged through legal and institutional provisions and by building an environment conducive to the organization of workers and employers in the informal economy. The Committee notes that the Government does not provide any further information in this respect in its report. ***The Committee therefore, once again, requests the Government to provide, in its next report, information on the measures taken or contemplated to promote collective bargaining as well as statistical data on the scope of the collective agreements that have already been concluded, and the number and categories of workers covered.***

***The Committee reminds the Government that, if it so wishes, it may have recourse to the technical assistance of the Office to address the legal issues raised above.***

## Netherlands

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1993)***

The Committee notes the comments submitted by the Netherlands Trade Union Confederation (FNV) in a communication dated 30 August 2010.

***Article 1 of the Convention. Protection against anti-union discrimination.*** In its previous observation, the Committee had invited the Government to initiate discussions with the most representative employers' and workers' organizations with a view to identifying appropriate means for addressing the issue of the protection against acts of anti-union discrimination other than dismissal (for instance, transfer, relocation, demotion and deprivation or restriction of remuneration, social benefits or vocational training) of trade union members who are not trade union representatives. The

Committee recalled that *Article 1* of the Convention requires protection against all acts of anti-union discrimination for all “workers” with the only possible exceptions contained in *Article 6* of the Convention. The Committee notes that the Government indicates in its report that the most representative employers’ and workers’ organizations will be approached on this issue and that these discussions are to be concluded by the end of 2010, after which the Government possibly – dependent upon the results of the consultation – will consider any further steps. ***The Committee requests the Government to provide information in its next report on any progress made to ensure a comprehensive protection against acts of anti-union discrimination.***

*Comments of the FNV.* In its previous observation, the Committee had requested the Government to provide its reply on the comments made by the FNV in 2008 concerning the impact which an opinion published by the Netherlands Competition Authority (NMA) had had in practice, by discouraging negotiations with employers at the sectoral level, on the terms and conditions of contract labour (i.e. performed by individuals who do not necessarily work under the strict authority of the employer and who may have more than one workplace). The Committee notes that the Government indicates in its report that a collective labour agreement may contain provisions about the self-employed and that there have been no practical cases so far in which the NMA, or in second instance the court, has judged that there is a problem with such agreements containing provisions about the self-employed. The Committee also notes that the FNV recalls that in its 2007 opinion document, the NMA expressed the view that a collective labour agreement which contains provisions on contract labour should be nullified, since the contract worker is considered to be an undertaking pursuant to the competition law and that, as a result, employers have reacted with an unwillingness to renegotiate conditions of labour, especially in the performing arts sector. The FNV also indicates that its affiliate “FNV KIEM”, which represents workers in the performing arts sector, took the State to court, and that the case is still pending. ***Recalling that Article 4 of the Convention establishes the principle of free and voluntary collective bargaining and the autonomy of the bargaining parties, the Committee requests the Government to provide information in its next report on the outcome of this judicial process.***

## Aruba

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)***

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention.* In its previous comments, the Committee had asked the Government to amend or repeal section 374(a)–(c) of the Penal Code and section 82 of Ordinance No. 159 of 1964, which prohibited the right to strike by public employees under threat of imprisonment.

The Committee had noted that, in the Government’s opinion, the abovementioned provisions are in conformity with the Convention, as they do not prohibit public employees from striking. According to the Government, section 374(a) of the Penal Code refers to imprisonment or fine of a public official in the case when he or she, while performing his or her duties, acts with the aim to cause stagnation or to permit the continuation of stagnation, neglects or refuses to perform labour corresponding to his or her inherent duties as a public official. The Government further indicated that section 82(2) of Ordinance No. 159, which states that punishment may be exacted on public employees who neglect or refuse to perform labour as any good public official is expected to perform is aimed at an individual’s refusal to perform his or her duties, and not at collective or individual strikes. The Government further indicated that the Penal Code will not be affected by a revision of the labour legislation as the Penal Code falls under the competency of the Ministry of Justice. However, the Code is currently under evaluation by a special committee established in March 2003. It is estimated that its work will be completed in approximately two years. After the evaluation period, the work on the suggested amendments will commence.

The Committee recalls that, in its 1992 report, the Government acknowledged that strikes by public employees, including teachers in the public sector, were forbidden by law (section 347(a)–(c) of the Penal Code and section 82 of Ordinance No. 159 of 1964), although in practice public employees had resorted to strikes on several occasions and that the local courts had considered such strikes to be legal on condition that they were justified. The Committee recalls that the principle whereby the right to strike may be limited or prohibited in the public service or in essential services would become meaningless if legislation defined the public services or essential services too broadly. The Committee considers that the prohibition should be limited to public servants exercising authority in the name of the State or to services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. ***Noting that the Penal Code is currently under evaluation, the Committee hopes that the Code, as well as section 82 of Ordinance No. 159, will be reviewed in accordance with the Committee’s comments and asks the Government to indicate any progress in this respect. The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Nicaragua

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1967)***

The Committee notes the Government’s reply to the comments of 26 August 2009 by the International Trade Union Confederation (ITUC) concerning the application of the Convention. The Committee also notes the ITUC’s new comments, dated 24 August 2010, on matters already raised by the Committee, and on acts of violence against trade

unionists in the export processing zones – the *maquila* sector. *The Committee requests the Government to provide its observations thereon.*

*Article 3 of the Convention. Right of workers' organizations to freely organize their activities and formulate their programmes.* The Committee has been referring for several years to the need for measures to amend sections 389–390 of the Labour Code which provide for compulsory arbitration of a dispute where 30 days have elapsed since the calling of the strike. The Committee notes that in response the Government states that: (i) this provision on no account alters the rights of trade union organizations to carry out their activities peacefully and freely; (ii) provision is made for compulsory arbitration because of the social and economic conditions in Nicaragua; and (iii) the economic structure of enterprises established in the country cannot sustain a socio-economic crisis of more than 30 days. The Committee recalls that arbitration imposed by the authorities on their own initiative is difficult to reconcile with the principle of the voluntary nature of negotiation (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 258), and in so far as compulsory arbitration obstructs the exercise of the right to strike, it violates the right of trade unions to organize their activities in full freedom, and could only be justified in the context of the public services, or essential services in the strict sense of the term (services the interruption of which could endanger the life, personal safety or health of the whole or part of the population) or in the event of an acute national crisis. *In these circumstances, the Committee once again requests the Government to take the necessary steps to amend sections 389–390 of the Labour Code to take account of the abovementioned principles. It also requests the Government, in its next report, to provide information on any measures taken to this end.*

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1967)**

In its previous comments on the observations of the International Trade Union Confederation (ITUC), the Committee asked the Government to hold an inquiry into the allegation of anti-union dismissals in export processing zones and various enterprises. The Committee notes in this connection the information supplied by the Government referring to the rights and remedies established by law that apply to export processing zones, and the measures taken to promote collective bargaining, including the establishment of a Tripartite Labour Committee for Export Processing Zones, which signed agreements in 2009 and 2010 for the benefit of workers, which cover the fundamental Conventions of the ILO. *The Committee requests the Government to continue to provide information on the exercise of trade union rights in export processing zones, including the number of trade union organizations and the size of their membership, the number of collective agreements signed and their coverage, complaints filed for anti-union discrimination, etc.*

Freedom of association,  
collective bargaining, and  
industrial relations

## **Niger**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)**

The Committee takes note of the Government's report and observes that it does not refer to the question raised in its previous observation which read as follows.

*Articles 3 and 10 of the Convention. Provisions on requisitioning.* The Committee recalls that, for many years, it has been asking the Government to amend section 9 of Ordinance No. 96-009 of 21 March 1996 regulating the exercise of the right to strike of state officials and officials of territorial communities so as to restrict its scope only to cases in which work stoppages are likely to provoke an acute national crisis, to public servants exercising authority in the name of the State, or to essential services in the strict sense of the term. The Government had previously indicated that the revision of the abovementioned Ordinance was before the National Tripartite Committee responsible for the implementation of the recommendations produced by the brainstorming meetings to discuss the right to strike and the representativity of organizations. However, in its 2006 report, the Government indicated that the revision of the Ordinance had been hindered by the lack of agreement between the social partners and the Government and by problems relating to the representativity of trade union organizations. *The Committee notes with regret that, in its latest report, the Government still does not provide an account of the measures taken to amend section 9 of Ordinance No. 96-009 despite the Committee's repeated requests. The Committee trusts that the Government will not fail to take without delay all the necessary measures to that end and recalls the possibility of seeking technical assistance from the Office in that regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Nigeria**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that in its previous observation, it had noted the Trade Union (Amendment) Act (2005) and draws the attention of the Government to the following points.

*Article 2 of the Convention. Legislatively imposed trade union monopoly.* In its previous comments, the Committee had raised its concern over the legislatively imposed trade union monopoly and in this respect, it requested the Government to amend section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee noted that there is no such amendment in the language of the Trade Union (Amendment) Act. The Committee reiterates that under *Article 2* of the Convention, workers have the right to establish and to join organizations of their own choosing without distinction whatsoever (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 45). ***It therefore urges the Government to amend section 3(2) of the principal Trade Union Act so as to ensure that workers have the right to form and join organizations of their own choosing even if another organization already exists.***

*Organizing in export processing zones (EPZs).* The Committee had noted the Government's statement that the Federal Ministry of Labour and Productivity is still in discussion with the EPZ authority on the issues of unionization and entry for inspection in the export processing zones. The Committee notes the ITUC's comments, according to which section 13(1) of the Nigeria Export Processing Zones Authority Decree (1992) makes it difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the EPZs. ***The Committee therefore once again requests the Government to take the necessary measures in the near future to ensure that EPZ workers are guaranteed the right to form and join organizations of their own choosing, as provided by the Convention, and to transmit a copy of any new laws adopted in this respect. It further requests the Government to indicate the measures taken or envisaged to ensure that representatives of workers' organizations have reasonable access to EPZs in order to appraise the workers in the zones of the potential advantages of unionization.***

*Organizing in various government departments and services.* In its previous comments, the Committee requested the Government to amend section 11 of the Trade Union Act, which denied the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications. The Committee notes that this section was not amended by the Trade Union (Amendment) Act. The Committee had noted that according to the Government's statement, the Collective Labour Relations Bill, pending before the lower chamber of Parliament will address this issue. The Committee recalls that workers, without distinction whatsoever, shall have the right to establish and to join organizations of their choosing and that the only exceptions authorized by the Convention are members of the police and armed forces, who should be defined in a restrictive manner and should not include, for example, civilian workers in the manufacturing establishments of the armed forces. Furthermore, the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey, op. cit., paragraphs 55 and 56). ***The Committee therefore requests the Government to take the necessary measures to amend section 11 of the Trade Union Act, which is still in force, and indicate the progress made towards the adoption of the Collective Labour Relations Bill and send a copy of the legislation, once it is adopted.***

*Minimum membership requirement.* The Committee had previously expressed its concern over section 3(1) of the Trade Union Act requiring 50 workers to form a trade union. The Committee considers that even though this minimum membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprise organizations, particularly in small enterprises. ***In these circumstances, the Committee is therefore bound to reiterate that this number is too high and requests the Government to take the necessary measures to reduce the minimum membership requirement, particularly in respect of enterprise trade unions, and thus ensure the right of workers to form organizations of their own choosing.***

*Article 3. The right of organizations to organize their administration and activities and to formulate programmes without interference from the public authorities. Export processing zones (EPZs).* The Committee recalls that it had previously requested the Government to indicate the measures taken or envisaged to ensure that workers in EPZs have the right to freely organize their administration and activities and to formulate their programmes without interference by the public authorities, including through the exercise of industrial action. ***While noting the Government's indication that the EPZ authority is not opposed to trade union activities and that the Federal Ministry of Labour and Productivity is still in discussion on this issue, the Committee reiterates its previous request and expects that the necessary measures will be taken without delay so as to ensure that workers in EPZs enjoy the rights under the Convention.***

*Administration of organizations.* The Committee recalls that, in its previous comments, it had requested the Government to amend sections 39 and 40 of the Trade Union Act in order to limit the broad powers of the registrar to supervise the union accounts at any time and to ensure that such a power was limited to the obligation of submitting periodic financial reports, or in order to investigate a complaint. The Committee notes that these sections were not amended under the new legislation and that the Government refers to the Collective Labour Relations Bill. ***The Committee trusts that the new legislation to which the Government refers will address this matter.***

*Right to strike. Compulsory arbitration.* The Committee had noted that section 30, as amended by subsection (6)(d) of the Trade Union (Amendment) Act, continues to rely on the Trade Disputes Act to restrict strike action through the imposition of a compulsory arbitration procedure leading to a final award. The Committee has already pointed out on several occasions that such a restriction, which is binding on the parties concerned, constitutes a prohibition which seriously limits the means available to trade unions to further and defend the interest of their members, as well as their right to organize their activities and to formulate their programmes. Furthermore, the Committee notes the ITUC's comments, according to which section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) impedes trade unions from handling the resolution of disputes between employers and employees by granting this responsibility to the authorities managing these zones. The Committee recalls that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, and thus the autonomy of bargaining partners (see General Survey, op. cit., paragraph 257). ***The Committee therefore once again requests the Government to take the necessary measures to amend section 7 of Decree No. 7 of 1976, amending the Trade Disputes Act in order to limit the possibility of imposing compulsory arbitration to only essential services in the strict sense of the term, public servants exercising authority in the name of the State or in the case of acute national crisis. Also, the Committee requests the Government to amend section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) in order to guarantee the autonomy of the bargaining partners without giving the right to the authorities to impose compulsory arbitration.***

*Majority required to declare a strike.* The Committee had noted that section 6 of the Trade Union (Amendment) Act amends section 30 of the principal Act by inserting subsection (6)(e), which requires the observance of a simple majority of all registered trade union members for the calling of a strike. The Committee considers that if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast (see General Survey, op. cit., paragraph 170). ***It therefore requests the Government to take the necessary measures to amend the new section 30(6)(e) accordingly, so as to bring it into conformity with the Convention.***

*Restrictions relating to essential services.* The Committee had noted with concern that section 6 of the new Act relies on the definition of “essential services” provided for in the Trade Disputes Act (1990) to restrict participation in a strike. Specifically, the Trade Disputes Act defines “essential services” in an overly broad manner so as to include, among others, services for or in connection with: the Central Bank of Nigeria, the Nigerian Security Printing and Minting Company Limited, any corporate body licensed to carry out banking business under the Banking Act, the postal service, sound broadcasting, maintaining ports, harbours, docks or aerodromes, transportation of persons, goods or livestock by road, rail, sea or river, road cleaning, and refuse collection. The Committee recalls that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159). ***It once again requests the Government to take the necessary measures to amend the Trade Disputes Act’s definition of “essential services”.***

The Committee reminds the Government that in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to the third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (see General Survey, op. cit., paragraph 160).

*Restrictions relating to the objectives of a strike.* The Committee had noted with concern section 30 of the Trade Union Act as amended by section 6(d) of the new Act, limiting legal strikes to disputes constituting a dispute of rights, defined as “a labour dispute arising from the negotiation, application, interpretation or implementation of a contract of employment or collective agreement under the Act or any other enactment of law governing matters relating to terms and conditions of employment”, as well as to a dispute arising from a collective and fundamental breach of employment or collective agreement on the part of the employee, trade union or employer. The Committee considers that the legislation appears to exclude any possibility of a legitimate strike action to protest against the Government’s social and economic policy affecting workers’ interests. The Committee recalls that organizations responsible for defending workers’ socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection, and the standard of living (see General Survey, op. cit., paragraph 165). ***Therefore, it requests the Government to take the necessary measures to amend section 6 of the new Act so as to ensure that workers enjoy the full right to strike and, in particular, to ensure that workers’ organizations may have recourse to protest strikes aimed at criticizing the Government’s economic and social policies without sanctions.***

*Other restrictions.* The Committee had noted that section 42(1)(B) of the Trade Union Act, as amended, requires that “no trade union or registered federation of trade unions or any member thereof shall in the course of any action compel any person who is not a member of its union to join and strike or in any manner whatsoever, prevent aircraft from flying or obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike”. The Committee observes that this section appears to provide for two prohibitions: firstly, with regard to compelling non-union members to participate in a strike action and, secondly, the prohibition to obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike. The Committee recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace should not be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers. As to the second prohibition, the broad wording of this section could potentially outlaw any gathering or strike picket. The Committee recalls that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and, in any event, not such as to place substantial limitation on the means of action open to trade union organizations. In addition, given that aircraft-related services, with the exception of air traffic controllers, are not in themselves considered to be essential services in the strict sense of the term, a strike of workers in that sector or related services should not be the subject of an overall ban, as could be implied from the wording of this section. ***The Committee therefore requests the Government to take the necessary measures to amend section 42(1)(B) so as to bring it into conformity with the Convention and the above principles, so as to ensure that any restrictions placed on strike actions aimed at guaranteeing the maintenance of public order are not such as to render any such action relatively impossible or ban it for certain workers beyond those in essential services in the strict sense of the term.***

*Sanctions against strikes.* The Committee had noted that section 30 of the Trade Union Act, as amended by section 6(d) of the new Act, makes strikers liable to the possibility of both paying a fine and being imprisoned up to six months, which might lead to a penalty which is disproportionate to the seriousness of the violation. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***The Committee therefore requests the Government to take the necessary measures in order to amend its legislation so as to bring it into conformity with the principle above.***

*Article 4. Dissolution by administrative authority.* In its previous comments, the Committee had requested the Government to amend section 7(9) of the Trade Union Act by repealing the broad authority of the Minister to cancel the registration of workers’ and employers’ organizations, as the possibility of administrative dissolution under this provision involved a serious risk of interference by the public authority in the very existence of organizations. The Committee had noted the Government’s statement that this matter will be addressed in the Collective Labour Relations Bill. ***Noting that section 7(9) of the principal Act is still in force, the Committee requests the Government to take the necessary measures to amend it and to provide a copy of the new legislative Act once it is adopted.***

*Articles 5 and 6. The right of organizations to establish federations and confederations and to affiliate with international organizations and the application of the provisions of Articles 2, 3 and 4 of the Convention to federations and confederations of employers’ and workers’ organizations.* The Committee had noted that section 8(a)(1)(b) and (g) of the new Act requires federations to consist of 12 or more trade unions in order to be registered. ***In this respect, the Committee requests the***

*Government to provide information on the practical application of this requirement and, in particular, the level at which federations are established.*

*The Committee expresses the firm hope that appropriate measures will be taken in the very near future to make necessary amendments to the laws referred to above in order to bring them into full conformity with the Convention. It requests the Government to indicate the measures taken or envisaged in this respect.*

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in 2009. The Committee recalls that the 2008 ITUC comments concerned violations of the right to strike, arrest and detention of strikers, police repression during demonstrations and the refusal to recognize a trade union. *The Committee requests the Government to submit its observations on all comments submitted by the ITUC.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

The Committee notes with **deep concern** the comments presented by the ITUC in 2010 concerning violence against trade union leaders and members, including the murder of a trade union leader and serious physical assaults against trade union members. The Committee recalls that freedom of association can only be exercised in conditions in which fundamental rights, and in particular, those relating to human life and personal safety, are fully respected and guaranteed, and that the killing or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. *The Committee requests the Government to provide its observations in this respect.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1960)**

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee noted the comments on the application of the Convention made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009. The ITUC states that in the private sector collective bargaining rights are restricted by the requirement of government approval: collective agreements on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Councils Act. The ITUC also refers to acts of anti-union discrimination, including threats of dismissal made to trade unionists in several companies in the banking sector. *The Committee requests the Government to provide its observations respecting these matters.*

The Committee noted the comments submitted by the ITUC in a communication dated 29 August 2008, concerning refusals to negotiate with trade unions, acts of interference by employers, anti-union practices against workers' representatives, including dismissals. *The Committee requests the Government to submit its observations thereon and to reply to the matters raised by the Committee's previous comment.*

*Bill on collective labour relations.* The Committee noted the Government's statement, according to which the National Assembly has not yet passed the bill on collective labour relations. The Committee recalls that ILO technical assistance has been provided to the authorities and hopes that the future legislation will be in full conformity with the requirements of the Convention. *The Committee requests the Government to send the new law once adopted.*

*Comments made by the Organization of African Trade Union Unity (OATUU) and the International Confederation of Free Trade Unions (ICFTU) (now International Trade Union Confederation (ITUC)) on the application of the Convention.* The Committee notes the comments. The comments concerned in particular the fact that: (1) certain categories of worker are denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Mining Company Limited, the prison service and the Central Bank of Nigeria) and therefore are deprived of the right to collective bargaining; (2) only unskilled workers are protected by the Labour Act against anti-union discrimination by their employer; (3) every agreement on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Council Acts according to the Trade Dispute Act (it is an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister); (4) section 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions but rather by the authorities managing these zones; and (5) section 3(1) of the same Decree makes it very difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the export processing zones (EPZs). *The Committee requests the Government to send its reply on these comments.*

Concerning the abovementioned point (1), the Committee observed that the Committee on Freedom of Association had underlined that the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of Article 9 of Convention No. 87 (see 343rd Report of the Committee on Freedom of Association, paragraph 1027). *The Committee requests the Government to amend section 11 of the Trade Union Act (1973) so that these categories of workers are granted the right to organize and to bargain collectively, as well as for all public employees not engaged in the administration of the State.*

*The Committee underlines the seriousness of the matters previously raised and requests the Government to take measures as a matter of urgency to ensure full respect for the rights enshrined in the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

*Finally, the Committee requests the Government to provide its comments concerning the 2010 observations of the ITUC.*



## Pakistan

### **Right of Association (Agriculture) Convention, 1921 (No. 11)** (ratification: 1923)

The Committee notes the comments made by the Pakistan Workers' Federation (PWF) in a communication dated 30 July 2010, reporting that agricultural workers have no right to freedom of association.

In its previous observations, the Committee observed that small agricultural holdings which do not run an establishment, or farmers working on their own or with their family, appeared to be excluded from the Industrial Relations Ordinance (IRO) 2002 and therefore from the provisions on freedom of association. The Committee noted that the 2008 Industrial Relations Act (IRA), which amended the 2002 IRO, was an interim law due to lapse on 30 April 2010. The Committee also noted that a tripartite conference had to be held to draft a new legislation in consultation with all stakeholders.

The Committee notes that the Government indicates in its report that the 2002 IRO did not expressly exclude agricultural undertakings from its application. It adds that there are no restrictions whatsoever on the workers employed in agriculture to form a trade union and that although no trade union of agricultural workers was registered, there were numerous agricultural workers' associations in place to safeguard their interests. The Committee also notes that the Government enacted the 18th Constitutional Amendment, which transferred responsibility for labour issues from the federal to the provincial governments. The Committee further notes that on 18 June 2010, the High Court of Sindh (Karachi), referring to the 18th Constitutional Amendment, confirmed that the 2008 IRA stood repealed and concluded that the 1969 IRO was now once again in force. The Committee recalls in this respect that it had previously noted that while agriculture was not expressly excluded from the IRO 1969, it was not expressly included and that the definitions given in the IRO could be interpreted as excluding small agricultural workers like self-employed farmers, sharecroppers, tenants and smallholders, from its application. *The Committee expresses the firm hope that new legislation will be adopted in the very near future in full consultation with the social partners concerned. The Committee further hopes that any adopted legislation will be in full conformity with the Convention. It requests the Government to provide a copy of the relevant legislative texts once they have been adopted.*

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** (ratification: 1951)

The Committee notes the comments submitted by the All Pakistan Federation of United Trade Unions (APFUTU) dated 8 March 2010 regarding the difficulties in registering trade unions for the industries established in the City of Sialkot, as well as the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010 concerning acts of violence against protesters, night-time raids, arrests and harassment against trade union leaders and members, as well as other violations of the Convention. The Committee notes in particular the comments of the ITUC concerning the requirement that any gathering of more than four people be subject to police authorization and its impact on trade union activities, as well as the denial of the right to strike to workers in export processing zones (EPZs) and the possibility to impose penalties of imprisonment against illegal strikes, go-slows and picketing activities. The Committee recalls that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations, and that workers have the right to participate in peaceful demonstrations to defend their occupational interests. *The Committee requests the Government to provide its observations on all these matters in its next report.*

The Committee also notes the comments made by the Pakistan Workers' Federation (PWF) dated 30 July 2010 concerning the legal vacuum with regard to the regulation of industrial relations as the Industrial Relations Act (IRA) of 2008 expired on 30 April 2010, in particular as concerns national industry-wide trade unions. In this respect, the Committee notes that the Government indicates in its report that it has enacted the 18th Amendment to the Constitution whereby the matters relating to industrial relations and trade unions are devolved to the provinces. The Government adds that it will ensure that provincial legislations will be in accordance with the Convention. The Committee further notes that on 18 June 2010, the High Court of Sindh (Karachi), referring to the 18th Constitutional Amendment, confirmed that the IRA 2008 stood repealed and concluded that the Industrial Relations Ordinance (IRO) of 1969 was now once again in force. The Committee recalls in this respect that it had previously commented on a number of significant restrictions on the right to organize under the IRO 1969 and in particular: (i) the exclusion from the IRO of public servants of grade 16 and above, of forestry, railway and hospital workers, of agricultural workers like self-employed farmers, sharecroppers and smallholders, as well as of persons employed in an administrative or managerial capacity whose wages exceeded 800 rupees per month (far below the national minimum wage); and (ii) restrictions on the rights to strike. The Committee notes that while some provincial governments have moved to pass their own legislation based on the expired IRA 2008, it expresses its concern over the exercise of their rights by national industry-wide trade unions, the activities of which may be jeopardized in the absence of a national legislation dealing with industrial relations and trade union rights.

*The Committee expresses the firm hope that new legislation will be adopted in the country in the very near future with the full consultation of the social partners concerned. The Committee further hopes that any adopted legislation will be in full conformity with the Convention. It requests the Government to provide, in its next report, information on*

*the developments with regard to the adoption of national and/or provincial legislations on trade unions and industrial relations and to provide a copy of these instruments once adopted. It reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

*Export processing zones (EPZs).* With regard to the right to organize in EPZs, the Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009 had been finalized in consultation with the stakeholders and will be submitted to the Cabinet for approval. ***Noting the Government's statement that the draft Rules are in conformity with the Convention, the Committee requests the Government to provide information on their adoption, as well as a copy thereof as soon as they are adopted.***

*Banking sector.* In its previous comments, the Committee requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment, either by exempting from the occupational requirement a reasonable proportion of the officers of an organization, or by admitting, as candidates, persons who have been previously employed in the banking company. The Committee noted the Government's statement that a bill to repeal section 27-B of the Banking Companies Ordinance of 1962 was submitted to the Senate. The Committee notes that the Government provides, with its report, a copy of the amendment submitted to the Senate and indicates that, as underlined in its Labour Policy 2010, it is committed to repeal this section. The Committee notes in this respect the conclusions of Case No. 2096 of the Committee on Freedom of Association in which it has been requesting amendment of this Ordinance for many years. ***The Committee expresses the firm hope that the Amendment of section 27-B of the Banking Companies Ordinance of 1962 will be adopted in the near future and requests the Government to provide information in this respect in its next report.***

***Furthermore, recalling that Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act by penalizing illegal strikes or slowdowns with up to seven years' imprisonment, would be contrary to the Convention, the Committee once again requests the Government to indicate whether this Ordinance is still in force.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1952)***

The Committee notes that the Government's report has not been received.

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 containing allegations of numerous violations of trade union rights in law, as raised by the Committee below, and in practice. The Committee notes, in particular, the allegations of anti-union dismissals and acts of interference in trade union internal affairs by private employers (intimidation, non-recognition and blacklisting of trade unions and its members), as well as denial of collective bargaining in export processing zones (EPZs). ***The Committee requests the Government to provide its observations thereon.***

The Committee recalls that for several years it has been commenting on serious discrepancies between national legislation and the Convention. At its 2008 session, the Committee took note of the Industrial Relations Act (IRA), adopted in November 2008, which amended the Industrial Relations Ordinance (IRO) 2002. It further noted that the IRA was an interim law due to lapse until 30 April 2010. In this respect, the Committee notes that the Government indicates in its report on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that it has enacted the 18th Amendment to the Constitution whereby the matters relating to industrial relations and trade unions are devolved to the provinces. The Government adds that it will ensure that provincial legislations will be in accordance with the Conventions it has ratified. The Committee further notes that on 18 June 2010, the High Court of Sindh (Karachi), referring to the 18th Constitutional Amendment, confirmed that the IRA 2008 stood repealed and concluded that the Industrial Relations Ordinance (IRO) of 1969 was now once again in force. The Committee recalls in this respect that it had previously commented upon on a number of significant restrictions on the right to organize under the IRO 1969 and in particular: (1) the exclusion from the IRO of public servants of grade 16 and above, of forestry, railway and hospital workers, of agricultural workers like self-employed farmers, sharecroppers and smallholders, as well as of persons employed in an administrative or managerial capacity whose wages exceeded 800 rupees per month (far below the national minimum wage); (2) lack of sufficient legislative protection for workers dismissed for their trade union membership or activities; and (3) denial of free collective bargaining in the public banking and financial sectors. ***The Committee expresses the firm hope that any new legislation whether at the provincial or national level will be adopted in the very near future with the full consultation of the social partners concerned. The Committee further hopes that any adopted legislation will be in full conformity with the Convention. It requests the Government to provide, in its next report, information on the developments with regard to the adoption of provincial legislations on trade unions and industrial relations and to provide a copy of these instruments once adopted. It reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.***

*Export processing zones (EPZs).* With regard to the right to organize in EPZs, the Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009 had been finalized in consultation with the stakeholders and will be submitted to the Cabinet for approval. ***Noting the ITUC comments alleging denial of collective bargaining rights in EPZs and the Government's statement***

*that the draft Rules are in conformity with the Convention, the Committee expresses the firm hope that the Rules will be adopted in the very near future. It requests the Government to provide a copy thereof as soon as they are adopted.*

*Banking sector.* In its previous comments, the Committee had requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, imposing sanctions of imprisonment and/or fines for carrying out trade union activities during office hours. The Committee notes that the Government had provided a copy of the amendment submitted to the Senate and indicates that, as underlined in its Labour Policy 2010, it is committed to repeal this section. The Committee notes in this respect the conclusions of Case No. 2096 of the Committee on Freedom of Association. ***The Committee expresses the firm hope that the Amendment of section 27B of the Banking Companies Ordinance of 1962 will be adopted in the near future and requests the Government to provide information in this respect in its next report.***

*Autonomous bodies and corporations.* The Committee had previously noted the statement of the All Pakistan Federation of Trade Unions (APFTU), according to which the newly imposed section 2-A of the Services Tribunal Act had debarred workers engaged in autonomous bodies and corporations such as the Pakistan Water and Power Development Authority (WAPDA), railway, telecommunication, gas, banks, the Pakistan Agricultural Storage and Supply Corporation (PASSCO), etc., from seeking redress for their grievances from the labour courts, labour appellate tribunals and the National Industrial Relations Commission (NIRC) in the case of unfair labour practices committed by the employer. In this respect, the Committee had noted the Government's indication that a Bill for amendment of this provision has been moved to the Senate. ***The Committee once again expresses the firm hope that section 2-A of the Services Tribunals Act will be repealed in the near future so as to ensure that appropriate means of redress are available to workers concerned. It requests the Government to provide a copy of the amended legislative text.***

The Committee had previously requested the Government to take all necessary measures to ensure that workers of the Karachi Electric Supply Company (KESC) and the trade union existing at the enterprise enjoyed the rights afforded by the Convention in practice. It furthermore requested the Government to provide information on the situation with regard to the determination of a collective bargaining agent. The Committee notes, from the examination of Case No. 2006 of the Committee on Freedom of Association, the Government's indication that the referendum for selecting a collective bargaining agent had been held in accordance with the directive of the Sindh High Court, and that the KESC labour union was declared the collective bargaining agent (357th Report, paragraph 48).

***Finally, the Committee expresses its concern at the situation of trade union rights in the country and urges the Government to take the necessary measures to ensure the application in law and in practice of the rights enshrined in the Convention.***

## Panama

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)***

The Committee notes the Government's reply to the previous comments of the International Trade Union Confederation (ITUC) concerning murders and acts of violence against trade unionists. The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2706. The Committee further notes the comments of the ITUC dated 24 August 2010, which refer to the refusal of the Government to grant trade union status to the National Union of Workers of the University of Panama (SINTUP), and in general report that workers are victims of persecution and murders. ***The Committee requests the Government to provide its observations in this respect.*** The Committee recalls that freedom of association can only be exercised in a climate that is free of violence and in which fundamental human rights are respected and fully guaranteed. ***The Committee also requests the Government to provide its observations in relation to the comments made by the National Council of Private Enterprise (CONEP) in 2009.***

The Committee recalls that for many years it has been commenting on the following matters, which raise problems of consistency with the Convention:

*Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations.*

- sections 174 and 178 of Act No. 9 on administrative careers establishing, respectively, that there may not be more than one association in an institution, and that associations may have provincial or regional chapters, but not more than one chapter per province. The Committee notes the Government's indication in its report that Act No. 9 of 1994 was amended by Act No. 43 of 30 July 2009, but that sections 174 and 178 have not been amended. The Committee recalls that, in accordance with *Article 2* of the Convention, the legislation should envisage the possibility of workers being allowed to establish more than one organization if they so wish. ***The Committee once again requests the Government to take the necessary measures to amend sections 174 and 178 of the Act on administrative careers as indicated above;***
- the requirement of too large a membership (ten) for the establishment of an employers' organization and an even larger membership (40) for the establishment of a workers' organization at the enterprise level, by virtue of section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), and the requirement of a large number (40) of public servants to establish an organization of public servants under section 177 of Act No. 9 on administrative careers (now section 182 of the Single Text of Act No. 9). The Committee notes the Government's indication that Act No. 43 of 30 July 2009 amends section 182 referred to above, raising the required number of members for the establishment of an organization of public servants from 40 to 50. ***The Committee requests the Government to take the necessary measures to reduce the minimum***

*number of members required so that workers, employers and public servants are able to establish their organizations. The Committee requests the Government to provide information in its next report on any developments in this respect;*

- the denial to public servants (non-career public servants, as well as those holding appointments governed by the Constitution and those who are elected and serving) of the right to establish unions. The Committee notes the Government's indication that to bring the legislation into conformity with the Convention it would be necessary to amend article 64 of the Political Constitution, which is a matter for the highest authorities of the country. The Committee recalls that it has always considered that the exclusion of public servants from the right to organize is contrary to the Convention (see the General Survey of 1994 on freedom of association and collective bargaining, paragraph 48). The Committee observes that the legislation grants public servants the right to establish associations for the defence of their interests. ***The Committee once again requests the Government to take the necessary measures to ensure that all public servants, including non-career public servants, as well as those holding appointments governed by the Constitution and those who are elected and serving, are able to establish and join the organizations or associations of their own choosing in full freedom (and not only one organization for each institution), thereby guaranteeing such organizations the rights set out in the Convention.***

*Article 3. Right of organizations to elect their representatives in full freedom.*

- the requirement to be of Panamanian nationality in order to serve on the executive board of a trade union (article 64 of the Constitution). The Committee notes the Government's indication that to bring the legislation into conformity with the Convention, it would be necessary to amend article 64 of the Political Constitution, which is a matter for the highest authorities of the country. The Committee recalls once again that provisions on nationality that are too stringent could deprive some workers of the right to elect their representatives in full freedom; for example, migrant workers could be adversely affected in sectors in which they account for a significant share of the membership. In the Committee's view, the national legislation should allow foreign workers to take up trade union office at least after a reasonable period of residence in the host country (see the General Survey, op. cit., paragraph 118). ***In this respect, the Committee once again requests the Government to take the necessary measures to make the required amendments taking into account the principle referred to above;***
- the right of organizations to organize their administration. In its previous comments, the Committee requested the Government to take the necessary measures to amend section 180-A of Act No. 24 of 2 July 2007, amending Act No. 9 on administrative careers, so as to abolish the requirement for public servants who are not affiliated to associations to pay ordinary trade union dues, with the possibility of providing instead for the payment of a lesser amount than the ordinary trade union contribution for the benefits derived from collective bargaining. In this respect, the Committee notes the Government's indication that, on the occasion of the most recent amendment of Act No. 9 of 1994, section 180-A was not amended. The Committee recalls once again that the requirement by law that non-affiliated public servants shall pay ordinary dues to the association which obtained improvements in labour conditions raises problems of consistency with the Convention as such a requirement may influence the right of public servants to choose freely the association that they wish to join. ***Under these conditions, the Committee once again requests the Government to take the necessary measures for the amendment of section 180-A of Act No. 24 of 2 July 2007 as indicated above.***

*Right of organizations to organize their activities and to formulate their programmes in full freedom.* The Committee recalls that in its previous comments it commented on various aspects related to the exercise of the right to strike. In this respect, the Committee notes the Government's general comments relating to the exercise of the right to strike to the effect that: (1) strikes in Panama, as a constitutionally recognized right, take place within legally established limits set out in the Labour Code; (2) the right to strike per se does not give entitlement to the payment of wages for the days of stoppage, even where it is declared legal; (3) conciliation as a procedure for the resolution of collective labour disputes occurs in accordance with specific rules initiated by the presentation of a list of claims; (4) the abandonment of conciliation does not give rise to "disproportionate penalties", although it brings an end to the procedures; if this step is taken by the employer, it not only precludes the conciliation stage, but sets in motion the period of twenty days for the workers to call a strike; if it is taken by the workers, the latter have to recommence their action; (5) procedures have been established for the settlement of disputes of right involving the interpretation of the law, and primarily through mediation; (6) there are no formalities governing requests for mediation, although where the dispute is such as to admit the exercise of the right to strike, the parties may also request it through the submission of a list of claims; (7) the provision referred to above gives rise to another settlement mechanism, as in the case of the list of claims and the National Labour Act, under the terms of Act No. 53 of 1975, which provides for a jurisdictional body; and (8) although machinery is established in labour law for the settlement of collective disputes, it is not adequate.

The Committee recalls that the following matters raise problems of conformity with the Convention:

- denial of the right to strike in export processing zones (section 49B of Act No. 25 of 1992) and the denial of the right to strike in enterprises of less than two years' standing (section 12 of Act No. 8 of 1981). The Committee notes the Government's indication that the Ministry of Labour and Employment Development (MITRADEL), together with the Ministry of Trade and Industry (MICI), have been working to formulate amendments on this subject, resulting in the formulation of a preliminary draft Bill to amend, among other provisions, section 49 of Act No. 25 of 1992 and to repeal section 12 of Act No. 8 of 1981. ***The Committee requests the Government to keep it informed of any developments in this respect and to provide a copy of the final text when it has been adopted;***
- the denial of the right to strike for public servants. The Committee recalls that the banning of strikes in the public service should be restricted to public servants exercising authority in the name of the State (see General Survey, op. cit., paragraph 158) or to essential services in the strict sense of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population). ***The Committee once again requests the Government to take the necessary measures to ensure the right to strike of public servants who do not exercise authority in the name of the State;***

- the ban on federations and confederations from calling strikes and on strikes against the Government’s economic and social policy, and the unlawfulness of strikes that are unrelated to an enterprise collective agreement. The Committee recalls once again that federations and confederations should have the right to strike and that organizations responsible for defending workers’ socio-economic and occupational interests should, as a rule, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living (see the General Survey, op. cit., paragraph 165). ***The Committee once again requests the Government to take steps for the amendment of the legislation so as to align it with the principles described above and so that the right to strike is not restricted to strikes related to a collective agreement;***
- the authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in order to stop a strike in private transport enterprises (sections 452 and 486 of the Labour Code) which do not provide a service that is essential in the strict sense of the term. The Committee notes the indication that the right to strike as a constitutionally recognized right, is exercised within the legally established limits set out in the Labour Code, and its comment that mediation and conciliation procedures are available. The Committee recalls that compulsory arbitration to end a collective labour dispute is acceptable if it is in all cases at the request of both of the parties involved in the dispute. ***The Committee therefore once again requests the Government to take the necessary steps to amend the legislation so as to provide that compulsory arbitration is possible in the transport sector only at the request of both parties;***
- the obligation to provide minimum services with 50 per cent of the staff in the transport sector, and the penalty of summary dismissal of public servants for failure to comply with minimum services in the event of a strike (sections 152.14 and 185 of Act No. 9 of 1994 on administrative careers). In this respect, the Committee notes the adoption of Executive Decree No. 25 of June 2009, which provides in section 2 that the provisions of the Labour Code respecting strikes in public services shall be applicable to the public air and maritime passenger transport services (sections 485–488 respecting strikes in public services) and of Executive Decree No. 26 of June 2009, which provides that in cases in which striking workers in a public service have designated an insufficient number of workers to provide or cover emergency services through shifts, the Ministry, in taking action to increase the percentage of workers up to the 30 per cent allowed by the law (section 487(2) of the Labour Code), shall justify the decision using criteria such as: (a) it is a situation in which the life, safety and health of the population are placed at risk; (b) if the original conditions for the provision of services determined by the workers were maintained, the normal living conditions of citizens could be seriously affected and/or an economic, social or political crisis created with serious consequences; and (c) the existence of the source of employment for workers and the enterprise would be imperilled. The decision adopted by the authority is immediately enforceable. The Committee finally notes that the legislation does not refer to the possible participation of the organizations of workers concerned in the determination of the minimum services envisaged in those public services, which go beyond essential services in the strict sense of the term. The Committee emphasizes that minimum services should be limited to activities that are strictly necessary to cover the basic needs of the population or to satisfy the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear, and that since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service. Moreover, in the case of any disagreement as to the number and duties in relation to the minimum service, such disagreement should be settled by an independent body enjoying the confidence of the parties. ***The Committee once again requests the Government, taking into account the principles described above, to take the necessary steps to ensure the respective legislative amendments;***
- legislation interfering with the activities of employers’ and workers’ organizations (sections 452.2, 493.1 and 494 of the Labour Code) (closure of the enterprise in the event of a strike and compulsory arbitration at the request of one of the parties). The Committee previously requested the Government to take the necessary steps to ensure that: (1) in the event of a strike, management staff and non-striking workers are guaranteed the right to enter the facilities; and (2) compulsory arbitration is possible only at the request of both parties to the dispute, in essential services in the strict sense of the term or in the case of public servants exercising authority in the name of the State. The Committee notes the adoption of Act No. 68 of 26 October 2010 amending, among other provisions, sections 493–494 of the Labour Code. The Committee notes with *satisfaction* new section 493(3) which, in accordance with the comments made by the Committee for several years, provides that “the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their purpose is not to recommence productive activities”. The Committee nevertheless notes that the free access of non-striking workers is not provided for in the event of a strike. ***The Committee once again requests the Government to take steps to ensure that in the event of a strike the right of entry of non-striking workers to the facilities is guaranteed;***
- the obligation for non-members to pay a solidarity contribution in recognition of the benefits derived from collective bargaining. The Committee notes that section 2 of Act No. 68, amending section 405 of the Labour Code, provides that “the collective agreement shall apply to all persons who work in the categories covered by the agreement, in the

enterprise, commerce or establishment, even though they are not members of the union. Non-unionized workers who benefit from the collective agreement shall be obliged, during the period covered by the collective agreement, to pay the ordinary and extraordinary dues agreed by the union, and the employer shall be obliged to check such dues off from wages and forward them to the union". In this respect, the Committee considers that "solidarity" dues in view of the benefits derived from collective bargaining by workers who are not members of the unions concluding a collective agreement are not contrary to the provisions of the Convention; nevertheless, such dues should be set at an amount which does not prejudice the right of workers to join the trade union organization of their choosing. ***The Committee requests the Government to take the necessary steps for the amendment of the legislation as indicated above, and to provide information in its next report on any measure adopted or envisaged in this respect,***

- the automatic intervention of the police in the event of a strike. The Committee notes section 3 of Act No. 68, amending section 493(1) of the Labour Code, which provides, as amended, that "once the strike has commenced, the Regional or General Labour Inspectorate or Directorate shall immediately give orders for the police authorities to duly guarantee or protect persons and property." The Committee considers, in cases of strike movements, that the authorities should resort to the use of the public forces only in grave situations or those in which public order is seriously threatened. ***The Committee therefore requests the Government to take steps for the amendment of the legislation as indicated above.***

The Committee notes the Government's indication in its report, with regard to the requested legislative amendments, that on various occasions it has shown its will to adapt the national legislation to the provisions of the Convention. However, as this involves the amendment of the Labour Code, as well as of other legal provisions, it is very difficult to engage in a process of the amendment of this legal instrument, as it necessarily involves the will, dialogue and consensus between workers and employers, in accordance with the practice in Panama. The Government adds that regrettably up to now no consensus has been achieved in this respect, for which reason the National Government, with a view to complying with this international commitment and reflecting the conclusions of the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009) and the comments of the Office, has requested the technical assistance of the ILO with a view to addressing the issues relating to freedom of association, in order to seek ways forward to allow the harmonization of national law and practice with the provisions of the Convention. ***Observing that the discrepancies between the law and practice and the Convention have existed for many years, and taking into account the gravity of some of the restrictions referred to above, the Committee hopes that the Government will take the necessary measures to bring the legislation into conformity with the provisions of the Convention and that the requested technical assistance will be provided in the very near future. The Committee requests the Government to provide information in its next report on any progress achieved in this respect.***

*Legislative initiatives.* The Committee notes the adoption of Legislative Decree No. 27 of 5 June 2009 adopting measures intended to preserve the independence and autonomy of workers' trade union organizations.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1966)***

The Committee takes note of the information supplied by the Government relating to the comments of 2009 by the International Trade Union Confederation (ITUC) and the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP). It takes note that the Government's report makes no mention of the comments of 29 May 2009 by the National Council of Private Enterprise (CONEP). The Committee also notes the ITUC's comments of 24 August 2010 concerning: (1) obstacles to collective bargaining and to the right to organize in the public sector; (2) threats, harassment and mass dismissals of trade unionists. ***The Committee requests the Government to send its observations thereon as well as on the CONEP's observations of 2009.***

The Committee recalls that for many years it has been commenting on the following matters, which raise problems of consistency with the Convention:

#### *Article 4 of the Convention. Promotion of collective bargaining.*

- (a) Section 12 of Act No. 8 of 1981 provided that in the first two years of operation, enterprises (other than building enterprises) were not bound to conclude a collective labour agreement, which could in practice imply denial of the right to collective bargaining. The Committee notes the Government's statement in response that the Ministry of Labour and Workforce Development (MITRADEL), together with the Ministry of Commerce and Industry (MICI), have been working on the requested amendments, preparing a preliminary draft that would repeal section 12 of Act No. 8 of 1981 thus allowing collective agreements to be concluded at any time. The Committee notes the Government's statement that the preliminary draft is now in its final phase. The Committee notes, however, that section 7 of Act No. 29 of 29 June 2010 provides that "societies (*personas naturales*) or legal persons established in the Special Economic Area of Barú shall not be required to conclude collective labour agreements in the first six years of operation", which again could imply in practice a denial of the right to collective bargaining. ***The Committee requests the Government to keep it informed of any developments in the preliminary draft that would repeal section 12 of Act. No. 8 of 1981 and to send a copy of the final text once it has been adopted. The Committee also asks the Government to repeal section 7 of Act. No. 29 of 29 June 2010 and to safeguard fully the right to collective bargaining of the workers in question.***

- (b) The need to amend the legislation so that in the event of a strike attributable to the employer, the payment of wages for strike days is not imposed by law (section 514 of the Labour Code) but is a matter for collective bargaining between the parties concerned. CONEP pointed out in this connection that the legislation does not require any proof, prior to the strike, that a collective agreement was breached or legal provisions repeatedly violated. The Committee notes that the Government provides no information on this matter. **Consequently, it reiterates its previous recommendation and again asks the Government to send information and to ensure that the payment of wages in the event of a strike may be settled by collective bargaining.**
- (c) The requirement that the number of representatives of the parties in negotiations shall be from two to five (section 427 of the Labour Code). The Committee notes that the Government supplies no information in response. **The Committee therefore once again requests the Government to amend this provision (for example by providing that the parties shall decide on their representation) and to provide information on the matter.**

*Restrictions on collective bargaining in the maritime sector.* In earlier comments, the Committee took note of restrictions on collective bargaining in the maritime sector pursuant to section 75 of Legislative Decree No. 8 of 1998, establishing the conclusion of collective agreements as an option, which in practice leads to the denial of workers' claims by employers and about which an application had been filed for this legislation to be found unconstitutional. The Committee also took note of the Government's information that a draft of a new Maritime Code would be submitted to the Legislative Assembly. The Committee notes that according to the Government, MITRADEL, the MICI and the Maritime Authority of Panama (AMP) are preparing the first draft of a resolution providing for measures to fulfil the collective rights of seafarers in the interest of ensuring observance of the right to organize, bargain collectively and declare strikes. The Committee also notes the information that the AMP and MITRADEL are currently meeting in order to seek a consensus on the measures to be taken in this regard. **Pointing out that seafarers must be covered by all the guarantees laid down in the Convention, the Committee requests the Government to report on all developments regarding the first draft of the resolution, the complaint asking that the employers' denial of workers' claims be ruled unconstitutional, and the draft new Maritime Code.**

*Article 6. Public servants' right to collective bargaining.* In its previous comments the Committee noted that Act No. 24 of 2 July 2007 amending the Administrative Careers Act contains provisions that afford protection from acts of anti-union discrimination against public servants and recognizes the right to collective bargaining of associations of public servants. In view of FENASEP's assertion that the right to collective bargaining has not been regulated, the Committee asked the Government to indicate whether municipal workers and workers of decentralized institutions enjoy the right to collective bargaining.

The Committee notes in this connection the Government's indication that public servants, including municipal workers and workers in decentralized institutions, do not have this right because organizations of public servants are not considered to be trade unions and so may not negotiate collective agreements. The Government adds that in practice, public servants do form associations and make labour gains though not under the name of "collective bargaining", but they do negotiate and the agreements benefit the membership collectively. The Committee is aware of the foregoing but is bound to point out that the Convention allows exclusion from the rights and safeguards (including the right to collective bargaining) it establishes only for persons engaged in the administration of the State and for the police and armed forces, and that consequently all other public officials and employees must have the right to bargain collectively. **The Committee requests the Government to take steps to ensure that the law establishes this right for public servants who are not engaged in the administration of the State.**

*Issues raised by employers' organizations.* In its previous comments the Committee observed that CONEP was asking for regulations on legal disputes and that employers be allowed to submit claims and initiate conciliation proceedings. The Committee invited the Government to address these matters through tripartite dialogue. The Committee notes that the Government makes no reference to the matter in its report. **In these circumstances, the Committee asks the Government to indicate in its next report whether a tripartite dialogue process has been set in motion and, if so, to provide the results of the discussions.**

With regard to the legislative amendments requested, the Committee notes that according to its report, the Government has made known its intention of aligning the national legislation with the provisions of the Convention. Unfortunately, no consensus having been reached thus far, the National Government, in the interests of meeting this international commitment and in keeping with the conclusions of the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), and pursuant to the offer made by the Office, has requested, in document No. DM.1400.2009, technical assistance from the Office in dealing with freedom of association issues, in order to seek compromise solutions allowing national law and practice to be brought into line with the provisions of the Convention. **Observing that there has been divergence between law and practice for many years, and bearing in mind the seriousness of some of the restrictions mentioned, the Committee hopes that the technical assistance requested will be forthcoming in the very near future and will allow the legislation to be aligned with the Convention, and asks the Government to provide information on all progress in this matter in its next report.**

## Papua New Guinea

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1976)

In its previous observation, the Committee took note that the Third Draft Industrial Relations Bill, which was last revised on 14 August 2006, had replaced the 2003 Draft Industrial Relations Act, as part of an ongoing effort to review and consolidate the labour legislation. The Committee notes that the Government indicates in its report that the Sixth (final) Draft Industrial Relations Bill was finalized in December 2009. ***The Committee requests the Government to indicate any development in this respect and to provide a copy of the Bill once adopted.***

***Power of the Minister to assess collective agreements on grounds of public interest.*** In its previous observation, the Committee had requested the Government to amend section 32 of the Third Draft Industrial Relations Bill, which conferred a broad power on the Minister of Labour to assess collective agreements on grounds of public interest – a principle that also applied to the public sector. The draft legislation had stated that “the Minister may, on behalf of the State, appeal as of right against the making of an award or order (including an award or order made by consent) or the certification of an agreement, on the ground that the making of the award or order, or the certification of the agreement, is contrary to public interest”. The Committee notes that the Government indicates in its report that this provision has been renumbered as section 51 of the Sixth (final) Draft Industrial Relations Bill, which provides that the powers previously conferred to the Minister are now conferred to the Attorney-General who will be acting on behalf of the State and whose powers will be subject to the approval of a Full Bench under the Industrial Relations Commission, so as to allow for him/her to appeal – on grounds of public interest – against the making of an award or order (including an award or order made by consent) or the certification of an agreement. The Committee recalls that such provision could only be compatible with the Convention if it merely stipulates that the approval of collective agreements may be refused if the collective agreement has a procedural flaw, or does not conform to the minimum standards laid down by general labour legislation (General Survey of 1994 on freedom of association and collective bargaining, paragraph 251). ***The Committee requests the Government to take the necessary measures to ensure that section 51 of the Sixth (final) Draft Industrial Relations Bill is in conformity with the abovementioned principle, and to provide information thereon in its next report.***

***Compulsory arbitration.*** In its previous observation, the Committee had noted that sections 151 and 152 of the Third Draft Industrial Relations Bill instituted a system of compulsory arbitration when conciliation between the parties had failed. The Committee notes that the Government indicates in its report that these sections have been repealed by sections 77 and 78 of the Sixth (final) Draft Industrial Relations Bill, which provide that a Commissioner of the Industrial Relations Commission can only begin arbitration where a conciliation proceeding is exhausted with the issues remaining unresolved; and refer to the intervention of the State in an industrial dispute where issues of public interest and public welfare come into calculation. The Committee recalls that compulsory arbitration is only acceptable if it is at the request of both parties involved in a dispute, or in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. ***In these circumstances, the Committee requests the Government to take the necessary measures to ensure that sections 77 and 78 of the Sixth (final) Draft Industrial Relations Bill are in conformity with the abovementioned principle, and to provide information thereon in its next report.***

## Paraguay

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** (ratification: 1962)

The Committee notes the comments of 24 August 2010 by the International Trade Union Confederation (ITUC) referring to matters under examination by the Committee, such as the arrest of trade unionists. The Committee recalls in this connection that the detention of trade unionists on grounds related to activities carried out to defend the interests of workers is a serious violation of fundamental freedoms in general and freedom of association in particular. ***The Committee requests the Government to send its observations thereon.***

The Committee observes that in its report the Government makes no reference to the comments the Committee has been making for many years on the legislation’s inconsistency with the provisions of the Convention. In particular, the report makes no reference to the stage reached in the enactment of the Bill which was to amend various provisions of the Labour Code in line with the Committee’s observations (the Bill had technical input from the ILO). In these circumstances, the Committee repeats its earlier comments.

The Committee reminds the Government that for many years it has been pointing out that the following provisions of the law are incompatible with the Convention:

- the requirement of an unduly large number of workers (300) to establish a branch trade union (section 292 of the Labour Code);



- the prohibition on joining more than one union even if the worker has more than one part-time employment contract, whether at the level of the enterprise or industry, occupation or trade, or institution (section 293(c) of the Labour Code);
- imposition of unduly demanding conditions of eligibility for office on the executive body of a trade union: the need to be an employee in the enterprise, industry, occupation or institution, whether active or on leave (section 298(a) of the Labour Code), to have reached the age of majority and to be an active member of the union (section 293(d) of the Labour Code);
- the requirement for trade unions to respond to all requests from the labour authorities for consultations or reports (sections 290(f) and 304(c) of the Labour Code);
- the requirement that, for a strike to be called, its sole purpose must be directly and exclusively linked to the workers' occupational interests (sections 358 and 376(a) of the Labour Code);
- the obligation to provide a minimum service in the event of a strike in public services that are essential to the community without any requirement to consult the employers' and workers' organizations concerned (section 362 of the Labour Code);
- the referral of collective disputes to compulsory arbitration (sections 284–320 of the Code of Labour Procedure).

The Committee notes the information sent by the Government on the drafting of a Bill to amend certain sections of the Labour Code and Amending Act No. 496/94, which was submitted to the President of the Republic for consideration on 5 June 2009 and that several of the Bill's provisions take account of the Committee's comments. These are: section 290(f) which limits requests for information from the labour authorities to annual statements of account; section 293(c), which allows every worker to belong to several unions on the basis of the category of work they perform; section 293(d), which extends eligibility for membership of the executive body of a trade union to non-active members; section 298(a), which provides that the general assembly shall decide on the election and removal of the authorities who must be dependent or independent workers of the enterprise, industry or occupation, whether active or on leave; sections 358 and 376, extending the purposes of a legal strike to cover not only occupational interests but also economic and social protection interests.

Furthermore, the Committee is of the view that other amendments proposed in the Bill could be improved to bring them fully into conformity with the principles of freedom of association, and in particular:

- the proposed amendment of section 292 to reduce from 300 to 100 the minimum membership for establishing a branch trade union. The Committee is of the view that, although the reduction is significant, the number of 100 workers may still be difficult to attain and ought therefore to be reduced to no more than 50. Similarly, the minimum number of workers required to establish unions in the public sector should also be reduced by half;
- the amendment of section 304(c) limiting the requirement to disclose information and data to "complaints raised by trade unionists". In the Committee's view, so as to avoid acts of interference in trade union activities, a specified percentage (for example 10 per cent) of members should be required in order to request intervention by the administration;
- the amendment of section 362 on minimum services which introduces a last sentence stating "The decision shall be sent to the organizations of workers and employers so that they participate in the determination, and in the event of disagreement shall be referred to the competent authority". In the Committee's view, any disagreement in determining minimum services should be settled by an independent body that the parties deem reliable, such as the judicial authority.

The Committee further observes that the abovementioned draft Bill proposes no amendment to sections 284–320 of the Code of Labour Procedure which cover the referral of collective disputes to compulsory arbitration. The Committee noted in an earlier observation that, according to the Government, these provisions were repealed by section 97 of the Constitution, promulgated in 1992, which provides that "the State shall facilitate conciliatory solutions to labour disputes and social dialogue. Arbitration shall be optional". **The Committee again requests the Government, in accordance with the Constitution and in order to avoid any misinterpretation, to take the necessary steps to repeal sections 284–320 of the Code of Labour Procedure.**

**The Committee hopes that in the near future it will be able to note progress in the legislation and requests the Government to provide information in its next report on all developments in this regard.**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1966)**

*Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference.* The Committee notes the comments of 24 August 2010 by the International Trade Union Confederation (ITUC) referring to anti-union practices in various enterprises or public institutions in the country. **The Committee asks the Government to send its observations thereon.**

The Committee observes that in its report (identical to the report of 2009), the Government makes no reference to the comments the Committee has been making for many years on the inconsistency of the legislation with the provisions of the Convention, and that in particular it makes no reference to the stage reached by the Bill (for which the ILO provided technical input) to amend various sections of the Labour Code in conformity with the Committee's observations. In these circumstances, the Committee repeats its previous comments:

The Committee recalls that for many years it has been commenting on:

- the absence of legal provisions affording protection to workers who are not trade union leaders against all acts of anti-union discrimination (article 88 of the Constitution only affords protection against discrimination based on trade union preferences);
- the absence of adequate penalties for non-observance of the provisions relating to the employment stability of trade unionists and to acts of interference in workers' and employers' organizations by each other (the Committee indicated previously that the penalties laid down in the Labour Code for failure to comply with the legal provisions on this point in sections 385, 393 and 395 are not sufficiently dissuasive, except in the case of a repeat offence by the employer, when the fine is doubled); and
- the delays in the application of justice in relation to acts of anti-union discrimination and interference.

The Committee also notes that the Committee on Freedom of Association requested the Government, in consultation with the social partners, to ensure effective national procedures for the prevention and sanctioning of anti-union discrimination (see Case No. 2648, 355th Report, paragraph 963).

The Committee further recalls that the Convention guarantees to workers adequate protection against any acts of anti-union discrimination during recruitment and employment, and in respect of termination of employment, and that this protection encompasses all measures that are discriminatory in nature (dismissals, transfers, demotion). Although, as the Government points out, the law prohibits acts of interference, the Committee recalls that under the Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of anti-union discrimination and interference, and emphasizes that legislative provisions are inadequate if they are not accompanied by effective and prompt procedures and sufficiently dissuasive penalties to ensure their enforcement in cases of anti-union discrimination or interference. ***The Committee again requests the Government to take measures to resolve these matters, for example through the draft partial reform of the Labour Code that is under examination. In this connection, the Committee requests the Government to report on the status of the reform and to provide a copy of the final text as soon as it is promulgated.***

*Article 6. Public officials not engaged in the administration of the State.* The Committee recalls that in its previous observation it expressed the view that sections 49 and 124 of the Public Service Act afford adequate protection against the dismissal of trade union officers within the meaning of *Article 1* of the Convention, but do not cover protection against dismissal and other prejudicial measures against union members because of their membership or legitimate union activities. ***The Committee requests the Government to take the necessary measures to establish in the legislation adequate protection against acts of anti-union discrimination against civil servants and public employees, including those who are not trade union leaders, and also sufficiently dissuasive sanctions for those who commit violations.***

***The Committee hopes that it will be able to note progress at the legislative level (particularly in relation to the forthcoming reform of the Labour Code) in the near future and again requests the Government to provide information in its next report on any developments in this respect.***

## Peru

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)***

*Comments from workers' organizations.* The Committee notes the Government's reply to the comments from the International Trade Union Confederation (ITUC) dated 29 August 2008, which referred to serious acts of violence against demonstrators and the arrest of trade union leaders for participating in a strike. It notes in particular the Government's indication that the allegations are the subject of examination by the Committee on Freedom of Association. The Committee also notes the Government's indication, in relation to the previous comments of the Autonomous Confederation of Peruvian Workers (CATP) that the executive committee of the Union of Workers of the Public Ombudsman's Office was registered on 7 September 2009. Finally, with regard to the comments of the National Coordinating Committee of Contract Workers of the Ministry of Health dated 3 October 2008 challenging the administrative services contract regime governed by Legislative Decree No. 1057, the Committee notes the Government's statement that the Constitutional Court ruled that the "administrative services contract" must be interpreted as a special scheme for the hire of labour for the public sector, and declared the special administrative services contract regime established by Legislative Decree No. 1057 to be constitutional, recognizing that workers covered by this regime are entitled to exercise the right to organize and the right to go on strike.

The Committee also notes the comments from the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers (CUT), the Workers' Central Union of Peru (CTP) and the Autonomous Confederation of

Workers of Peru (CATP) dated 2 and 25 August 2010 and from the ITUC dated 24 August 2010 concerning the application of the Convention and in particular that they object to: (i) article 153 of the Constitution which denies judges and prosecutors the right to organize; (ii) Legislative Decree No. 1086 of 28 June 2008 establishing the Act to promote the competitiveness, formalization and development of micro- and small enterprises and access to decent employment, which does not contain any reference to the exercise of trade union rights by workers in micro-enterprises; and (iii) the use of temporary contracts to make it difficult for workers to join trade unions. These organizations also refer to issues which have been examined by the Committee on Freedom of Association. The Committee notes the Government's reply to the aforementioned comments and its specific indications that: (i) the prohibition on the right to organize for judges and prosecutors is based on the fact that special authority is conferred on judges for the performance of their duties, they are the highest interpreters of the law, they administer justice on behalf of the nation and exercise power deriving from the people, and prosecutors represent the State in judicial proceedings; both have prerogatives, obligations and incompatibilities which are peculiar to the nature of their posts; (ii) contrary to the indications of the trade union organizations, section 3(5) of Legislative Decree No. 1086 of 28 June 2008 prescribes observance of the right of workers to form trade unions and non-interference with the right of workers to elect, or not elect, to join or not to join, trade union organizations which have been legally established; and (iii) as regards the use of temporary contracts in order to obstruct membership to trade unions, the labour inspectorate, with a view to granting protection of the right to organize in connection with the various types of contract provided for in the legislation, has issued directives to protect the right to organize of temporary workers. **Recalling the content of Article 2 of the Convention, the Committee requests the Government to take the necessary steps to guarantee that judges and prosecutors enjoy the right to form associations or organizations for the defence of their interests. The Committee requests the Government to provide information in its next report on any measures taken in this respect.**

In addition, the Committee notes various cases pending before the Committee on Freedom of Association relating to matters which the Committee of Experts is examining.

*Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes.* The Committee recalls that it has been making comments for many years on section 73(b) of the Industrial Relations Act, which provides that the decision to call a strike has to be adopted in the form expressly set out in the statutes and must in any event represent the will of the majority of the workers concerned. The Committee observes that the Government does not refer to this issue in its report. The Committee recalls once again that if the legislation provides that a vote is required by workers before a strike can be held, it should be ensured that account is taken only of the votes cast, and that the required quorum or majority is fixed at a reasonable level (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 170). **The Committee requests the Government to take the necessary steps to amend the legislation taking account of this principle.**

Furthermore, the Committee referred in its previous comment to the creation, by means of Ministerial Decision No. 0080-2007-ED of 23 February 2007, of the national register of supply teachers to replace teachers on strike and asked the Government to take the necessary steps to overturn the aforementioned Ministerial Decision, taking account of the fact that strikers should only be replaced in the event of a strike in an essential service in the strict sense in which strikes are prohibited by law and if the strike results in an acute national crisis. The Committee notes the Government's indication that: (i) the abovementioned register constitutes a human resources management instrument which registers all professionals who are suitable for recruitment in the public education system, in cases of the continued absence of teachers of classes in basic regular education and does not have the purpose of replacing teachers who exercise their right to strike; and (ii) the aforementioned legislation was enacted in strict observance of the principle of legality and therefore does not conflict with the right to strike established in the national legislation and ratified international Conventions. **While observing that the preamble to the abovementioned Ministerial Decision refers to the hours lost owing to the absence of teachers for strikes and stoppages, the Committee requests the Government to take steps to make it clear in the Ministerial Decision that the replacement of strikers is only possible in the cases referred to above.**

The Committee also recalls that in its previous comments it noted the drafting of a General Labour Bill which would repeal the Industrial Relations Act and therefore the provisions in question, and asked the Government to provide information on any legislative developments relating to this Bill. The Committee notes the Government's indication in its report that: (i) the workplan of the Labour Commission of the Congress of the Republic for 2010–11 gives priority to evaluation of the General Labour Bill and consideration has been given to the holding of macro-regional public hearings with the objective of improving the legislative capacity of the Commission, by means of comprehensive analysis of the labour legislation (priority will be given to the discussion of three fundamental themes for the world of work: public employment, the General Labour Bill and the special bill to promote formal employment), with the aim of achieving balance and optimum labour relations between workers and employers; (ii) the macro-regional public hearings will take place with the participation of representatives of the ILO, members of Congress and the social partners involved (trade union confederations and employers' organizations) in the matters to be the subject of legislation, with the aim of achieving an overview of the proposals in question and due analysis of the consequences for the development of the country; and (iii) the aforementioned hearings seek to strengthen the system of labour relations, in observance of the international labour standards adopted by the ILO. **The Committee expresses the hope that the legislative initiatives in question will take full account of its comments and that the General Labour Bill to be adopted will be in full conformity**

*with the Convention. The Committee requests the Government to provide information in its next report on any developments in this respect.*

Furthermore, the Committee has been informed that in June 2010 the Labour Commission of Congress approved an opinion modifying certain sections of the Industrial Relations Act and that this opinion is to be discussed in the plenary of Congress. *The Committee requests the Government to contemplate the possibility of amending the sections of the Act on which it has been commenting for many years amended in the context of this reform.*

*Article 6. Right of workers' organizations to establish federations and confederations.* The Committee recalls that in its previous comments it asked the Government to take the necessary steps to amend section 19 of Supreme Decree No. 003-82-PCM to allow federations and confederations of public servants to establish or join organizations of their own choosing. The Committee notes that the Government repeats that, under Supreme Decree No. 003-2004-TR (which created the register of trade union organizations of public servants (ROSSP)) and Directive No. 001-2004-DNRT (on guidelines for the registration of trade union organizations in the register of trade union organizations of public servants of the Ministry of Labour and Employment Promotion), federations of state workers who are covered by different labour regimes (private or public sector) are allowed to join and form confederations. *The Committee once again requests the Government to indicate whether, in accordance with these provisions, federations of state workers are allowed to join confederations which contain organizations of non-state workers.*

The Committee is raising a number of other points in a direct request to the Government.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1964)***

The Committee notes the Government's reply to the comments of 3 October 2008 by the National Coordinating Committee of Contract Workers of the Ministry of Health.

It also notes the comments by: (1) the General Confederation of Workers of Peru (CGTP), the Central Confederation of Workers of Peru (CUT), the Workers' Central Union of Peru (CTP) and the Autonomous Confederation of Peruvian Workers (CATP), dated 2 and 25 August 2010 and referring to the breach of *Articles 1–4 of the Convention*; and (2) the International Trade Union Confederation (ITUC) dated 24 August 2010 and referring to undue interference, anti-union practices and dismissals in the textile sector. The Committee notes the Government's reply to these comments, received on 13 October 2010.

The Committee also notes various cases currently before the Committee on Freedom of Association.

*Articles 1 and 2 of the Convention.* The Committee has for several years been examining the effectiveness of the system of protection against acts of anti-union discrimination, including the matter of the efficiency of administrative and judicial procedures. In its previous comments, it noted in this connection that section 25 of the Regulations to the General Labour Inspection Act classifies interference by the employer in the freedom of association of workers or trade unions and anti-union discrimination as very serious offences. Where such offences are noted in the course of an inspection, the applicable penalty varies from 5 per cent of 11 tax units (1,925 new soles, equivalent to US\$687) and 100 per cent of 20 tax units (70,000 new soles, equivalent to US\$24,995), depending on the number of workers affected. The Committee asked the Government to indicate whether the penalties set in the Regulations to the General Labour Inspection Act would continue to apply once the Act is adopted.

The Committee notes that, according to the Government, the General Labour Inspection Act (Act No. 28806) and its Regulations (Supreme Decree No. 019-2006-TR), differ in terms of coverage from the draft General Labour Act. The General Labour Inspection Act and its Regulations cover the inspection activities of the Administrative Labour Authority, empowering the latter to monitor compliance with the social and labour provisions of laws, regulations and agreements and with contractual requirements, and observance of workers' fundamental labour rights, thereby giving it the authority to apply administrative sanctions when an offence is noted. As regards the draft General Labour Act, the Government states that Chapter IV of the Act regulates trade union protection in order to guarantee the free exercise of trade union rights, which enable workers or trade union organizations to take judicial action if they deem their rights to have been abused or threatened. The Committee notes the Government's statement that, even if the draft General Labour Act were to be adopted, the Administrative Labour Authority will continue, through its labour inspection system, to ensure compliance with the social and labour standards that affect the trade union rights of workers and trade unions.

As regards the length of judicial proceedings following complaints of acts of anti-union discrimination or interference, the Committee notes that a new Act on labour procedure (Act No. 29497 of 30 December 2009) has been adopted, section 2(1)(g) of which provides that it is the labour courts that hear claims relating to disputes involving a trade union and disputes between trade unions, including their dissolution. *The Committee requests the Government to provide information on the impact of the new Act on the length of judicial proceedings regarding complaints of acts of anti-union discrimination or interference.*

*Article 3.* The Committee takes note of three directives issued by the Ministry of Labour and Employment Promotion to strengthen the labour inspectorate for its work relating to trade union rights, including the rights of temporary personnel, contract workers or workers engaged under service contracts. The Committee notes with *interest* the

Constitutional Court's ruling of 7 September 2010 establishing that persons employed under administrative service contracts shall enjoy trade union rights.

*Article 4. The Committee asks the Government to send information on the trade union rights enjoyed by workers employed under "vocational training schemes", and particularly the right to collective bargaining of the organizations representing them. Lastly, in view of the comments submitted by various national organizations, the Committee requests the Government to send further detailed information on the manner in which collective disputes about the level of collective bargaining are settled, both in law and in practice.*

## Philippines

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)**

The Committee recalls that in its previous observation it noted the recommendations of the high-level mission which visited the country in September 2009, and the commitment expressed by the Government to embark upon a comprehensive technical cooperation programme on freedom of association and to create a high-level tripartite monitoring body to review the progress made in investigating and prosecuting the cases of violence brought to the attention of the ILO's supervisory machinery. The Committee had requested the Government to provide information on the progress made in establishing such a body, on its mandate and functioning. The Committee notes with *interest* the Government's indication that the National Tripartite Industrial Peace Council (NTIPC) was established on 20 January 2010 as a high-level monitoring body on the application of international labour standards and, in particular, of the Convention. The NTIPC mandate is to: (i) facilitate "out-of-the-box solution" to long-standing Committee on Freedom of Association (CFA) cases; (ii) monitor and report progress on active CFA cases; (iii) facilitate gathering of relevant information on complaints submitted to the ILO; and (iv) evaluate and recommend appropriate action(s). The Committee notes detailed information provided by the Government on NTIPC activity since its establishment.

The Committee welcomes the measures taken by the Government to strengthen the operational capacity of the Philippines National Police (PNP) and Armed Forces of the Philippines (AFP) aimed at fostering an enabling environment for the enjoyment of constitutionally guaranteed civil liberties and trade union rights through: (i) inclusion into the *PNP Operational Procedures (POP) Manual* and the *Manual on Rules on Labour Disputes, Rallies and Demonstration of Human Rights Protection to be Provided to Victims and Criminals*; (ii) supplementing the *POP Manual* with a *Guidebook on Human Rights-Based Policing* to provide police personnel with a basic reference on rights-based policing and to offer practical suggestions on how to mainstream international standards on human rights for law enforcement in police stations; (iii) reinforcement of Human Rights Desks in the police stations; and (iv) the campaign to dismantle all private armies. The Committee further welcomes the Government's indication that the *Revised Joint Guidelines* on the conduct of the PNP personnel and private security guards during strikes and lockouts will be signed before the end of 2010 after the final consultation. **The Committee requests the Government to provide information on the adoption of the Joint Guidelines in its next report.**

The Committee also welcomes the activities conducted under the EU-Philippines Justice Support Program (EPJUST) (police and other investigative bodies, prosecutors and judiciary) aimed, among others, at: (i) enhancing the capacity and effectiveness of the Philippine justice system in the effective and timely investigations, prosecution and bringing to justice perpetrators, ensuring a fair, speedy and impartial trial of those charged with the crimes; (ii) enhancing the capacity and effectiveness of the Commission of Human Rights; and (iii) strengthening the ability of the uniformed services by training their personnel in relevant international human rights standards.

The Committee further welcomes the Government's commitment to continue working closely with the ILO, social partners and other stakeholders in establishing a technical cooperation programme to raise awareness and strengthen the capacity of all relevant government institutions and the social partners in the promotion and protection of labour rights. In this respect, the Committee notes with *interest* that two regional seminars were conducted in April 2010 on civil rights, freedom of association, collective bargaining, and labour law implementation and enforcement in the Philippine Economic Zones; and that a capacity-building seminar for labour justice administrators, Supreme Court justices and their legal staff will be conducted before the end of 2010.

The Committee also notes with *interest* that, following the high-level mission, Republic Act No. 9745 (Anti-Torture Act of 2009) was approved on 10 November 2009. The Government indicates that this reaffirms its commitment to uphold civil liberties, and human and trade rights by penalizing torture and other cruel, inhuman and degrading treatment or punishment and reinforces the earlier issuances of the Supreme Court on the *Writ of Habeas Data* and *Writ of Amparo*, noted by the Committee.

The Committee notes the information provided by the Government on the comments submitted by the International Trade Union Confederation (ITUC) in 2009 in relation to violence against trade unionists and impunity in the country. The Committee notes that, in addition to the above, with regard to some concrete allegations, the Government undertakes to submit its observations on the relevant pending cases to the CFA, and to continue gathering information on other

alleged cases and to provide its reply as soon as possible. ***The Committee trusts that the Government will submit this information with its next report.***

The Committee further notes a communication dated 24 August 2010 from the ITUC in which it provides its comments on the application of the Convention in law and in practice. The Committee notes that some of the ITUC's comments relate to the legislative issues raised by the Committee below (restriction on foreign nationals' right to join trade unions, on the registration of trade union organizations and their activities, including the right to strike, as well as the use of the Human Security Act). The ITUC also alleges that, against a background of a high-level ILO mission to the Philippines, the killings, kidnappings, disappearances and anti-union tactics, including harassment and arrests, continued. ***The Committee requests the Government to provide its observations on these allegations.***

***Human Security Act.*** The Committee had previously requested the Government to provide information on the impact of the Human Security Act upon the application of the provisions of the Convention and to indicate the safeguards which ensure that this Act cannot be used under any circumstances as a basis for suppressing legitimate trade union activities or result in any extrajudicial killing for the exercise of trade union rights. The Committee notes the Government's indication that this law was enacted in 2007 to address terrorist activities that endanger the population. According to the Government, while the Act classifies various crimes as terrorist acts, the exercise of trade union rights (right to self-organization, peaceful concerted activities, collective bargaining, etc.) is not within its scope and that legitimate trade union activities could not be included in the rigid definition of crimes provided for in the Act. The Government points out that the apprehension of the possible abuse of the Act by the police and judicial authorities to curtail trade union activities is more imagined than real. The Government states that, since the enactment of this legislation, there appears to be no case where such abuse had been raised with respect to its implementation. ***The Committee requests the Government to provide information in its next report on the use of the Act, if any, in cases concerning trade unionists.***

***Labor Code.*** The Committee recalls that for a number of years it has been commenting on certain discrepancies between the provisions of the Labor Code and the Convention. In this respect, the Committee notes the Government's indication that it is currently working on the proposed legislative reforms to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights and that two bills are currently undergoing tripartite consultations for submission to the NTIPC prior to their filing with the appropriate Committees of both Houses of the 15th Congress. The Committee recalls that its previous comments referred to the need to bring the national legislation into conformity with the following Articles of the Convention.

***Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, without previous authorization.*** The Committee had previously referred to the need to amend sections 269 and 272(b) of the Labor Code so as to grant the right to organize to all nationals lawfully residing within the Philippines (and not just those with valid permits if the same rights are guaranteed to Filipino workers in the country of the alien workers, or if the country in question has ratified either ILO Convention No. 87 or No. 98). ***Noting that the Government once again refers to the principle of reciprocity, the Committee requests the Government to provide information in its next report on the measures taken to amend the above-noted sections in a manner which enables anyone legally residing in the country to benefit from the trade union rights provided by the Convention.***

The Committee recalls that it had previously requested the Government to communicate the relevant legislation which had lifted the 20 per cent requirement and the requirement to reveal the names of the officers and members, for legitimate federations and national unions. The Committee notes, in this respect, Republic Act No. 9481, which, among others, amended section 234(c) of the Labor Code. The Committee notes, however, that according to this section, as amended, the above-noted requirement is still applicable to unions seeking independent registration. The Committee recalls that the requirement of a high minimum proportion of workers before a union may be formed is contrary to the right of workers to form organizations of their own choosing (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 81). ***The Committee therefore once again requests the Government to take the necessary measures in order to amend section 234(c) of the Labor Code so as to lower the minimum membership requirement for forming an independent union and to indicate, in its next report, the measures taken or envisaged in this respect.***

The Committee had previously requested the Government to indicate all measures taken with a view to lowering the 30 per cent minimum membership requirement for registration of public employees' unions set forth by Executive Order No. 180 of 2004. The Committee notes with ***satisfaction*** the adoption, on 29 June 2010, by the Public Sector Labor-Management Council, of resolution No. 4 lowering the percentage of minimum membership requirement for purposes of registration and thus restoring the earlier longstanding practice, in accordance with the requests of the unions.

***Article 3. Right to strike.*** The Committee had previously requested the Government to take the necessary measures to amend section 263(g) of the Labor Code so as to limit governmental intervention resulting in compulsory arbitration to the essential services in the strict sense of the term only. The Committee notes the Government's indication that, within the context of the abovementioned legislative reform, the first of the abovementioned bills seeks to amend section 263(g) so as to limit the assumption of jurisdiction of the Secretary of Labor (and the President) to the ILO's concept of "essential services". The Committee further notes the Government's indication that Department Order No. 40-G-03 providing the implementing rules on the exercise of the assumption of jurisdiction power of the Secretary of

Labor was adopted as an interim administrative measure on 29 March 2010. The Committee notes that, according to new section 15 of Rule XXII of the Order, “when a labor dispute causes or is likely to cause a strike in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the National Labor Relations Commission for compulsory arbitration” either upon a request by both parties to the dispute or “after a conference called by the Office of the Secretary of Labour and Employment ... *moto proprio* or upon a request of petition by either parties to the labor dispute”. The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, that is in the case of disputes in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that the term “national interest” is too broad to fall within a strict definition of what may constitute an essential service. ***The Committee requests the Government to amend Department Order No. 40-G-03 so as to ensure the application of this principle. The Committee expresses the firm hope that the bill referred to by the Government will ensure that governmental interference resulting in compulsory arbitration will be limited solely to the essential services in the strict sense of the term. The Committee requests the Government to indicate all measures taken in this respect and to provide relevant statistics on the recourse had to section 263(g) in the meantime.***

The Committee had previously requested the Government to amend sections 264(a) and 272(a) of the Labor Code, which provided for dismissal of trade union officers and penal liability to a maximum prison sentence of three years for participation in illegal strikes, so as to ensure that workers may effectively exercise their right to strike without the risk of being penally sanctioned. The Committee notes the Government’s indication that, within the context of the abovementioned legislative reform, the second bill removes the possibility of imposing a criminal sanction for mere participation in an illegal strike on grounds of non-compliance with the administrative requirements. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and on no account should measures of imprisonment be imposed. Such sanctions could be envisaged only where, during a strike, violence against persons or property or other serious infringements of rights has been committed, and can be imposed pursuant to legislation punishing such acts. ***The Committee expresses the firm hope that any new legislative text will ensure the application of this principle.***

*Right of workers’ organizations to organize their administration without interference by the public authorities.* The Committee recalls that it had previously requested the Government to amend section 270 of the Labor Code, which subjected the receipt of foreign assistance to trade unions to the prior permission of the Secretary of Labor, and notes the Government’s indication that the second bill repeals this requirement.

*Article 5. Right of organizations to establish federations and confederations.* ***The Committee once again requests the Government to take the necessary measures in order to lower the excessively high requirement of ten union members for federations or national unions set out in section 237(a) of the Labor Code.***

***The Committee expresses the firm hope that the undertaken legislative reform will soon be completed and that the aforementioned legislative provisions will be brought into full conformity with the Convention. The Committee requests the Government to provide in its next report information on the outcome of this reform and all relevant legislative texts so adopted.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1953)***

The Committee notes a communication dated 24 August 2010 from the International Trade Union Confederation (ITUC) in which it provides its comments on the application of the Convention in law and in practice. ***The Committee requests the Government to provide its observations thereon.***

The Committee recalls that, in its previous observation, it noted the recommendations of the High-level mission which visited the country in September 2009, and the commitment expressed by the Government to embark upon a comprehensive technical cooperation programme on freedom of association and to create a high-level tripartite monitoring body to review the progress. The Committee welcomes the extensive information provided by the Government on the measures taken in this regard as detailed in the comments on the application of Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Articles 1, 2 and 3 of the Convention. Protection against acts of anti-union discrimination and interference.* The Committee notes the Government’s observation on the comments submitted by the ITUC in 2009 on the application of the Convention and, in particular, on the allegation relating to the use of contractual labour as a method to deunionize the workforce. The Committee notes, in particular, the Government’s statement that, under section 243 of the Labor Code, all employees, whether employed for a definite period of time or not, whether undergoing a period of work probation or not, may establish and join a trade union to bargain collectively. Coercing employees in the exercise of their legitimate rights to organize is a prohibited act. According to the Government, violations of the provisions of the Labor Code regulating contractual engagements would result in regularization of employment status with the contractor/subcontractor or the company.

The Committee notes that for several years it has been requesting the Government to respond to the comments made by the ITUC with regard to the alleged acts of anti-union discrimination and employer interference, as well as cases of replacement of trade unions by non-independent company unions, dismissals and blacklisting of activists in export processing zones (EPZs) and other special economic zones. The Committee *regrets* that no information has been provided by the Government in this respect. The Committee notes with *concern* further allegations of anti-union tactics in the EPZs contained in a 2010 ITUC communication, as well as the allegations of anti-union dismissal and anti-union practices at the Temic Automotive Philippines Inc. and Cirtec Electronic Corporation submitted by the Trade Federation for Metals, Electronics and Other Allied Industries-Federation of Free Workers (TF4). ***The Committee requests the Government to provide its observations thereon. It further requests the Government to submit these specific allegations to the National Tripartite Industrial Peace Council (NTIPC), established on 20 January 2010 as a high-level monitoring body on the application of international labour standards, and to provide information on the assessment and recommendations made by this body.***

The Committee further welcomes the two regional seminars that were conducted in April 2010 on civil rights, freedom of association, collective bargaining, and labour law implementation and enforcement in the economic zones. ***The Committee encourages the Government to pursue these actions aimed at strengthening the capacity of all relevant government institutions and the social partners in the promotion and protection of labour rights in EPZs.***

The Committee had previously noted that certain of the reported acts of anti-union discrimination and interference related to certification procedures and elections and requested the Government to provide a copy of the relevant legislation, which, according to the Government, eliminates the employer's interference in such processes. The Committee notes that House Bill No. 1351, previously referred to by the Government, became Republic Act No. 9481 on 25 May 2007, which amended the Labor Code. The Committee notes with *satisfaction* new section 258-A providing that an employer is not a party to the certification process and therefore cannot oppose a petition for certification election.

***The Committee once again requests the Government to indicate any developments as well as any legislative or other measures taken or contemplated to accelerate the procedures and strengthen in practice the protection available against acts of anti-union discrimination and interference, with special emphasis on EPZs and special economic zones. The Committee also once again requests the Government to provide statistical information on the number of complaints of unfair practices and inspections carried out on these matters in EPZs and special economic zones.***

*Article 4. Collective bargaining in the public sector.* In its previous comments, the Committee took note of the Government's indication that, under section 13 of Executive Order No. 180, only terms and conditions not otherwise fixed by law may be negotiated between public sector employees' organizations and the government authorities. The Government had further stated that such matters as the scheduling of vacation leave, the work assignment of pregnant women and recreational, social, athletic and cultural activities are negotiable; however, matters relating, inter alia, to wages and all other forms of pecuniary remuneration, retirement benefits, appointment, promotion and disciplinary action were not negotiable. The Committee recalled in this connection that article 76 of the Labor Code provided that the terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the civil service law, rules and regulations, and that their salaries shall be standardized by the National Assembly as provided for in the Constitution. The Committee noted, moreover, that the Public Services Labor Independent Confederation (PSLINK), in its communication dated 15 September 2008, also referred to the restrictions on bargaining rights in the public sector. The Committee notes with *regret* that the Government provides no information on measures taken to fully grant to public sector employees not engaged in the administration of the State the right to negotiate their terms and conditions of employment. In these circumstances, while considering that the Convention is compatible with systems requiring parliamentary approval of certain labour conditions or financial clauses of collective agreements, as long as the authorities respect the agreement adopted, the Committee stresses the importance of the development of collective bargaining in enterprises and institutions in the public sector that are covered by the Convention. ***The Committee therefore once again requests the Government to take the necessary measures in order to ensure that public sector employees not engaged in the administration of the State enjoy the right to negotiate their terms and conditions of employment in accordance with Articles 4 and 6 of the Convention. It once again requests the Government to indicate the developments in this regard and provide copies of any relevant legislation adopted.***

## Poland

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1957)***

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 6 September 2010 on the application of the Convention and the Government's reply thereon.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations.* The Committee takes note of the information provided by the Government in its report in relation to the 2006 ITUC comments alleging that workers in state-owned enterprises in the health sector, and water and forestry industries had their employment contracts terminated and replaced by civil law contracts depriving them of the right to belong to a trade union. The Committee notes the Government's indication that the legislation in the health sector does not specify the



preferred form of employment for the practice of physicians, nurses and midwives (on the basis of employment contract or a civil law contract) and, thus, leaves the discretion for the parties concerned to decide on it. The Committee also notes that, according to the Government, the right to form and join trade unions is not granted for those individuals who have undertaken to provide employment on the basis of civil law contracts, since they cannot be considered employees under section 2 of the Labour Code. The Committee recalls that under *Article 2* of the Convention, employers and workers, including workers without an employment contract, have the right to establish and join organizations of their own choosing without distinction whatsoever, with the sole exception of members of the armed forces and the police. ***The Committee requests the Government to provide information in its next report on any measures taken or envisaged to amend its legislation so as to bring it into conformity with the Convention.***

*Article 3. Right of organizations to elect their representatives in full freedom.* The Committee recalls that it had previously requested the Government to amend section 49(6) of the Civil Service Act so as to ensure that public servants may exercise their trade union functions at all levels. The Committee notes the entry into force of the Act on Civil Service, 2008. It further notes that, according to its section 78(6), members of the civil service occupying senior positions cannot exercise trade union functions. The Committee considers that while legislation may restrict the right of civil servants in senior positions to join unions of lower grade employees, provided that the persons concerned have the right to form their own organizations to defend their interests, the right to elect representatives in full freedom, as well as the right to perform trade union functions, should be guaranteed to all workers in the public service in their respective trade union organizations. ***The Committee therefore requests the Government to take the necessary measures to amend section 78(6) of the Act on Civil Service so as to ensure that civil servants may exercise their trade union functions at all levels and to indicate measures taken or envisaged in this respect.***

*Denial of the right to strike of public servants.* The Committee recalls that it had previously requested the Government to specify categories of employees whose right to strike was restricted. The Committee notes, in this respect, the relevant provisions of the new Act on Civil Service (2(2) and 78(3)) and Annex 1 to the Ordinance of the Prime Minister of 9 December 2009 “On the Definition of Clerical Positions, Required Professional Qualifications, Clerical Degrees for Civil Servants, Multipliers for Determining the Remuneration and Detailed Rules for Determining and Paying Other Benefits to Members of the Civil Service” provided by the Government. The Committee trusts that public servants who do not exercise authority in the name of the State may exercise their right to strike. ***The Committee requests the Government to provide any information, in its next report, on the practical application of the right to strike by such employees.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1957)***

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 6 September 2010 alleging inefficiency of anti-union discrimination legal protection, and cases of intimidation of trade unionists and anti-union harassment, as well as referring to the issues raised by the Committee below. The Committee notes the Government’s reply thereon.

*Article 1 of the Convention. Protection against anti-union discrimination.* In its previous observation, the Committee had noted the allegations of inefficiency of the proceedings and sanctions established in the legislation, and also noted the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 2395 and 2474 (see 353rd Report) concerning excessive delay in processing cases of anti-union discrimination. The Committee had requested the Government to continue providing information on the number of complaints for anti-union discrimination, the average duration of the proceedings and the outcomes of these proceedings.

The Committee notes the statistics of the State Labour Inspectorate provided by the Government on the number of complaints of anti-union discrimination; a total amount of 108 complaints have been received between 1 January 2008 and 6 June 2010 (most of them were considered founded or partially founded). The Committee further notes the Government’s indication that, between 2008 and 2010, there was no conviction under section 35(3) of the Act on Trade Unions providing that “any person, who in connection with his/her position or function held, discriminates against an employee because of his/her membership in the trade union, non-membership in the trade union, or holding a trade union function, shall be liable to a fine or imprisonment”. The Committee expresses its **concern** about the non-application of the legal sanctions. ***The Committee urges the Government to take the necessary measures to ensure effective application of the legal sanctions for all cases of anti-union discrimination and requests the Government to continue providing information on the number of complaints for anti-union discrimination, as well as on the average duration of the proceedings and their outcomes.***

Moreover, the Committee recalls that it had previously requested the Government to evaluate the results of the Labour Code amendments of 2008 in consultation with the social partners and to indicate any measures taken or contemplated to ensure that trade union officials and members have in practice the right to prompt and effective remedy by the competent national tribunals against acts of anti-union discrimination. The Committee had also requested the Government to keep it informed of the developments regarding the adoption of the amendments to the Code of Civil Procedure. The Committee notes the Government’s indication that no changes had been made in civil procedure to expedite legal proceedings concerning acts of anti-union discrimination against trade union activists. The Government

indicates, however, that one of the means to reduce excessive length of the proceedings is the supervisory action by the Minister of Justice with regard to the activities of presidents of district and appeal courts. The Government also refers to other measures such as the draft Act amending the Law on Common Courts which provides for the periodic assessments of judges' work. The Committee also notes that the Government states that it is worth to consider establishing new measures in the Code of Civil Procedure that would grant the right for trade union activists not to be dismissed until the proceedings in the Labour Court are completed. ***The Committee welcomes this information and requests the Government to continue providing information on the measures taken or envisaged to ensure that trade union officials and members have in practice the right to prompt and effective protection by the competent national tribunals against acts of anti-union discrimination.***

*Compensation for anti-union dismissal.* The Committee notes that, according to ITUC, victims of anti-union dismissals can ask for reinstatement, but court proceedings can take up to two years; moreover, the courts are increasingly awarding just a three-month salary as compensation in lieu of reinstatement, regardless of how long the activist has been out of work. The Committee notes that the Government confirms that according to section 47 of the Labour Code, the compensation provided for an illegal dismissal of a trade union activist is limited to a maximum equivalent of a three-month salary. The Committee considers that the length of compensation proceedings is excessive and that the amount of compensation in cases of anti-union discrimination is insufficient, and therefore has no dissuasive nature. ***The Committee requests the Government to take the necessary measures to ensure the effective implementation of the means of full compensation of dismissed workers because of their trade union affiliation or activities.***

*Article 4. Collective bargaining rights.* The Committee had previously requested the Government to provide information on the 2008 ITUC's comments concerning alleged instances of employers' refusal to negotiate collective agreements or to comply with them. The Committee notes the Government's indication that no instances of employers' refusal to negotiate collective agreements had been reported to the Minister of Labour acting as the registration authority for collective agreements under the national legislation.

## Portugal

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1964)***

The Committee takes note of the comments from the General Workers' Union (UGT) which were attached to the Government's report and which address compulsory arbitration and trade union representativeness. It also notes the comments of 24 August 2010 by the International Trade Union Confederation (ITUC) alleging anti-union practices and restrictions on bargaining rights in the public sector, and those of the Confederation of Portuguese Tourism (CTP) received on 22 September 2010. ***The Committee asks the Government to send its observations thereon.***

*Article 4 of the Convention. Compulsory arbitration.* In its previous observations the Committee referred to the Labour Code, section 567, which provides that "in disputes arising from the conclusion or revision of a collective labour contract, recourse to arbitration may be compulsory where, after protracted and fruitless negotiations and unsuccessful conciliation and mediation, the parties fail to agree within two months of such procedures to refer the dispute to voluntary arbitration". The Committee also noted that, according to the Government, section 1(b) of Amendment Act No. 9/2006 provides that compulsory arbitration shall be allowed "following a majority vote by the representatives of the workers and the employers in the Standing Committee for Social Partnership" (CPCS) (the Committee took the view that this paragraph should be deleted as in many cases it would allow the decision to impose compulsory arbitration in a dispute to be taken by workers' and employers' organizations that are not party to the dispute).

The Committee notes the adoption of Act No. 7/2009 of 12 February 2009 approving the revision of the Labour Code, and the adoption of Legislative Decree No. 259/2009 of 25 September 2009, which regulates the various instances of compulsory arbitration in a manner generally consistent with the principle of free and voluntary bargaining laid down in the Convention. The Committee notes with ***satisfaction*** that with this reform, where protracted and fruitless negotiations have ended in a stalemate deemed impossible to unblock, recourse to compulsory arbitration may be held only for the negotiation of a first collective agreement, in accordance with the principles of the Convention.

However, the Committee notes that section 508(1)(b) of the Labour Code as revised, provides for compulsory arbitration after a majority vote by the representatives of the workers and employers on the CPCS. ***Consequently, the Committee requests the Government to look into the possibility of amending section 508(1)(b) so as to preclude the decision to impose compulsory arbitration from being taken by workers' and employers' organizations that are not parties to the dispute.***

*Representativeness of organizations.* The Committee noted in previous comments the conclusions of the Committee on Freedom of Association in Case No. 2334, which mentioned that the legislation: (1) cites by name the organizations that are to form part of the Economic and Social Council (CES) and the CPCS, which means that some organizations that deem themselves representative are left out; and (2) does not lay down objective criteria for determining the representativeness of workers' and employers' organizations. The Committee had requested the Government, in consultation with the most representative organizations of workers and employers, to work out and lay down objective,

precise and predetermined criteria to evaluate the representativeness and independence of employers' and workers' organizations, and to amend the legislation (Act No. 108/91 of the CES, section 9, concerning the CPCS) by deleting the names of the workers' organizations that are to be members of the CES and the CPCS, referring instead to the most representative organizations. The Committee notes the information sent by the Government to the effect that the President of the CES has taken the initiative of launching a general discussion on the composition of the CES with the cooperation of members. It also notes the Government's statement that it is impossible to forecast the outcome of these discussions or the proposals and recommendations the President may make. ***The Committee hopes that the Standing Committee on Social Partnership will examine these matters in the near future and that the outcome of its discussions will lead to an agreement to amend the legislation along the lines the Committee has been suggesting for years. The Committee asks the Government to provide information on any developments in this regard.***

## Romania

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1957)***

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation's (ITUC) in a communication dated 24 August 2010 and to the comments made by the General Confederation of Industry of Romania (UGIR) in a communication dated 19 August 2010. The Committee further notes the comments made by the National Trade Union Confederation "CNS Cartel Alfa" in a communication dated 6 April 2010, indicating that Law No. 144/2007 (article 41, paragraph (1), point 35) provides that presidents, vice-presidents, secretaries and treasurers of trade union federations and confederations are obliged to publicly declare their wealth and grant the power to state bodies to verify such statements. The Committee finally notes the comments made by the Block of National Trade Unions (BNS) in a communication dated 1 September 2010. ***The Committee requests the Government to provide its observations on all these comments.***

***Draft labour legislation.*** In its previous comments, the Committee had noted that pursuant to an ILO mission, the social partners that are representative at the national level in Romania, as well as representatives of the Romanian Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue. In this regard, the Committee notes that the Government indicates that: (i) the elaboration of Act No. 168/1999 on the settlement of labour conflicts is part of the 2010 legislative schedule; (ii) Act No. 130/1996 on collective agreements and Act No. 54/2003 on trade unions will be debated within the social dialogue commissions from the Ministry of Labour, Family and Social Protection at the latest in December 2010; and (iii) the modification of Act No. 188/199 on the status of civil servants (with its amendments in Law No. 864/2006) was modified by Act No. 140/210 adopted by Parliament on 8 July 2010 but is currently under review.

In this regard, the Committee hopes that in the context of the revision of the abovementioned legislation, due account will be taken of the issues raised in its previous comments which read as follow:

- the need to amend section 62 of Act No. 168/1999 on the settlement of labour disputes (according to which the management of a production unit may submit a dispute to an arbitration commission in the event that a strike has lasted for 20 days without any agreement being reached between the parties and its continuation would affect humanitarian interests) so that compulsory arbitration may only be imposed in essential services in the strict sense of the term and for public servants exercising authority in the name of the State;
- the need for detailed information on the application of sections 55–56 of Act No. 168/1999 on the settlement of labour disputes (according to which the management of a production unit may demand the suspension of a strike, for a maximum period of 30 days, if it endangers the life or health of individuals, and an irrevocable decision may be taken in this respect by the Court of Appeal) and sections 58–60 of the same law (under which the management can request the court to pronounce itself on the illegality of a strike and its ending by issuing an urgent ruling within three days), and to provide copies of decisions handed down under these provisions;
- the need to amend section 66(1) of Act No. 168/1999 on the Settlement of Labour Disputes – which requires that in case of strike in units of public transport one third of the unit's normal activity must be ensured – so as to allow for the minimum services in this sector to be negotiated by the social partners concerned rather than set by the legislation; in the absence of agreement between the parties, minimum services should be determined by an independent body.

***The Committee trusts that the Government will be in a position to report progress in the near future on all the issues raised above in the framework of the law reform currently under way, and encourages the Government to continue to avail itself of the technical assistance of the Office if it so wishes.***

The Committee is raising other points in a request addressed directly to the Government.

## **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1958)**

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* The Committee notes from the International Trade Union Confederation's (ITUC) comments of 24 August 2010, that in recent years, certain employers have made employment conditional upon the worker agreeing not to create or join a union. In this regard, the Committee notes that the Government indicates in its reply dated 19 October 2010 that it does not have any information concerning this issue. **The Committee requests the Government to discuss this situation with the most representative organizations of workers and employers and to keep it informed of any developments in this regard.**

The Committee also notes that according to ITUC although anti-union activities are prohibited, the sanctions for restricting trade union activities are rarely applied in practice, the procedure for lodging a complaint appears to be too complicated and the authorities do not prioritize the trade unions' complaints. ITUC states that the labour inspectorates do not always respect the confidentiality of the complaints and that certain employers prefer facing penalties rather than complying with the labour laws in place. The Committee finally notes that according to the ITUC, while the law provides for sanctions for obstructing union activities, those sanctions cannot be applied in practice due to loopholes in the Penal Code. The Committee also notes the comments made by the Block of National Trade Unions (BNS) in a communication dated 1 September 2010. **The Committee requests the Government to provide its observations thereon.**

Moreover, in its previous observation, the Committee had requested the Government to provide statistical information regarding the protection against acts of anti-union discrimination. The Committee takes note from the Government's report that the Ministry of Labour, Family and Social Protection does not have statistical data concerning discrimination against trade unions. **The Committee once again requests the Government to indicate in its next report, statistical information, or at least the maximum information available, on the number of cases of anti-union discrimination brought to the competent authorities, the average duration of proceedings and their outcome, as well as information concerning the nature and the outcome of the registered labour disputes that are currently being conciliated before the services of mediation and council of the Ministry of Labour, Family and Social Protection.**

*Articles 2 and 3. Protection against acts of interference.* In its previous comments, the Committee requested information on the penalties against acts of interference which are prohibited under sections 221(2) and 235(3) of Act No. 53/2003 and Act No. 54/2003. The Committee had noted from the Government's report that under Act No. 54/2003, the restriction of the exercise of the activities of trade union officials or the obstruction of the exercise of the right of freedom of association are punished with imprisonment from six months to two years or a fine between 2,000 Romanian new lei (RON) and RON5,000 (approximately US\$600–1,600). The Committee considers that these fines might, in some cases, not be sufficiently dissuasive. **The Committee requests the Government to take the necessary measures to increase the amount of the existing sanctions so that they constitute a sufficient deterrent against all acts of anti-union discrimination.**

*Articles 4 and 6. Collective bargaining with public servants not engaged in the administration of the State.* In its previous comments, the Committee had noted from the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2611 and 2632 that in the public budget sector which covers all public employees, including those who are not engaged in the administration of the State (e.g. teachers), the following subjects are excluded from the scope of collective bargaining: base salaries, pay increases, allowances, bonuses and other staff entitlements which are fixed by law. The Committee notes from the Government's report that the salary rights in the budget sector were settled by Law No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds which stipulates that the fixation of salaries is exclusively by law and that it cannot be negotiated.

The Committee recalls that all public servants who are not engaged in the administration of the State should enjoy guarantees provided for in *Article 4* of the Convention with regard to the promotion of collective bargaining. The Committee further recalls that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. **Therefore, the Committee requests the Government to indicate in its next report if Law No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds is considered as an exceptional measure within the context of an economic stabilization policy, if adequate safeguards were established in order to protect workers' living standards and if it provides for a limited length of application.**

*Draft labour legislations.* In its previous comments, the Committee had noted that pursuant to the ILO mission, the social partners that are representative at the national level, as well as representatives of the Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue and in this regard, the Committee notes that the Government indicates that: (i) the elaboration of Act No. 168/1999 on the settlement of labour conflicts is part of the 2010 legislative schedule; (ii) Act No. 130/1996 on collective agreements and Act 54/2003 on trade unions will be debated within the Social Dialogue Commissions from the Ministry of Labour, Family and Social Protection at the latest in December 2010; and (iii) the modification of Act No. 188/1999 on the status of civil servants (with its amendments in Law No. 864/2006) was modified by Act No. 140/2010 adopted by the Parliament on 8 July 2010, but is currently under review.

The Committee has not yet received any update concerning the possible amendments of these legislative texts. *It trusts that the Government will be in a position to report progress soon on the issues raised above in the framework of the law reform currently underway and transmit a copy of the relevant legislation once adopted. The Committee encourages the Government to continue to avail itself of the technical assistance of the Office if it so wishes.*

## Russian Federation

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1956)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 alleging numerous violations of trade union rights in practice, including denial of registration of trade unions, interference by the authorities in internal trade union affairs, harassment of trade union leaders, and restrictions on the rights to strike. The Committee recalls that in its previous observations it had also noted communications submitted by the ITUC containing similar allegations. The Committee further notes the comments submitted by the Russian Labour Confederation and the Seafarers' Union of Russia in a communication dated 16 December 2009. The Committee notes with *regret* that the Government once again did not provide observations on the comments submitted by the ITUC or other workers' organizations. ***The Committee strongly urges the Government to provide its observations thereon, as well as on the previous comments of the ITUC.***

*Article 3 of the Convention. Right of workers' and employers' organizations to organize their administration and activities. Right to strike. Labour Code.* The Committee recalls that it had previously requested the Government to amend section 412 of the Labour Code, so as to ensure that any disagreement concerning minimum services in organizations responsible for safety, health and life of people and vital interests of society, where the minimum services must be ensured during a strike, is settled not by the executive body but by an independent body having the confidence of all parties to the dispute. The Committee notes that while the Government confirms that a body of executive power of the Russian Federation is entitled to define minimum services, it indicates that such a decision may be appealed by the parties to the collective labour dispute to the court. The Committee considers that since the system of minimum services restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service, and empowered to issue enforceable decisions (see General Survey on freedom of association and collective bargaining, 1994, paragraph 161). ***The Committee therefore once again requests the Government to amend section 412 of the Labour Code so as to ensure that any disagreement concerning minimum services is settled not by the executive body but by an independent body having the confidence of all the parties to the dispute.***

The Committee recalls that it had previously requested the Government to amend section 413 of the Labour Code so as to ensure that when a strike is prohibited, any disagreement concerning a collective dispute is settled by an independent body and not by the Government. The Committee takes due note of the Government's explanation that it is entitled to stop a strike in services of a vital interest until the issue is solved by the court under this section, but this injunction may not last longer than ten days.

The Committee notes the Government's indication that the Ministry of Health and Social Development together with the social partners are elaborating the Concept of the Social Partnership Development and that within the framework of this exercise, it is envisaged to address the issues related to the provisions of the Labour Code and other rules and regulations regarding the organization and conduct of strikes, to establish an efficient mechanism for solving labour collective disputes and to improve the labour legislation taking into account the comments of the ILO supervisory bodies. The Government further indicates that the permanent tripartite working group of the State Duma Committee on Labour and Social Policy has resumed its work with a view to study the legal practice and prepare proposals aimed at improving labour legislation. This working group intends to consider proposals of the social partners on the Labour Code amendments. In this respect, the Committee notes the comments submitted by the Russian Labour Confederation and the Seafarers' Union of Russia alleging that the work on amending the Labour Code pursuant to the recommendations of the ILO supervisory bodies was not moving forward. ***The Committee hopes that the work of the abovementioned working group will result in the near future in a legislative reform that will take into account the abovementioned comments and requests the Government to provide information on any further developments in this respect. The Committee once again reminds the Government that it can avail itself of the technical assistance of the Office if it so wishes.***

*Other legislation.* The Committee recalls that it had previously requested the Government to ensure that workers of postal services, municipal services and railways can exercise the right to strike and, to that effect, amend section 9 of the 1994 Federal Postal Service Act, section 11(1(10)) of the 1998 Federal Municipal Services Act and section 26 of the 2003 Federal Rail Transport Act. It further requested the Government to indicate whether there are any legislative restrictions imposed on the right to strike of civil servants other than civil servants exercising authority in the name of the State. The

Committee notes the Government's indication that the right to strike of the following categories of workers is restricted: workers of the federal courier communications and the municipal employees, as well as certain categories of railway workers. The Government further indicates that the Law on State Civil Service of the Russian Federation of 2004 prohibits civil servants from stopping their duties to solve a labour dispute. The Committee notes that the Government considers that the restrictions imposed on the right to strike of certain categories of workers do not contradict international standards and indicates that workers whose right to strike is restricted have the possibility of using other means of solving collective labour disputes, such as mediation procedure or applying to the Government. The Government refers, in particular, to Article 8(2) and (3) of the International Covenant on Economic, Social and Cultural Rights and points out that under these provisions, a State may impose prohibition on the exercise of the right to strike by members of the armed forces, of the police, or of the administration of the State, but that nothing in this Article shall authorize States parties to Convention No. 87 to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention. The Committee recalls its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87. It further recalls that in addition to the armed forces and the police (members of which could be excluded from the application of the Convention), the right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State and in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that railway services and postal services do not constitute essential services. ***The Committee therefore once again requests the Government to amend the abovementioned legislative acts so as to bring its legislation into conformity with the Convention and ensure that workers of the federal courier communications, railway workers, municipal employees, as well as public servants who do not exercise authority in the name of the State, can exercise the right to strike. It requests the Government to indicate in its next report all measures taken in this respect.***

The Committee had previously requested the Government to specify the categories of workers employed in the internal affairs agencies who are prohibited from striking. The Committee takes due note of the Government's indication that members of the police, holding the rank and file or command posts, are prohibited from stopping their duties in order to solve a labour dispute.

The Committee is raising other points in a request addressed directly to the Government.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1956)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 alleging numerous violations of trade union rights in practice, including acts of anti-union discrimination and interference by employers in trade union internal affairs, as well as ineffective mechanisms of protection against such violations. The Committee recalls that in its previous observations it had also noted communications submitted by the ITUC containing similar allegations. The Committee further notes the comments submitted by the Russian Labour Confederation and the Seafarers' Union of Russia in a communication dated 16 December 2009 alleging that the work on amending the Labour Code pursuant to the recommendations of the ILO supervisory bodies was not moving forward. ***The Committee notes with regret that the Government once again does not provide observations on the comments submitted by ITUC and other workers' organizations and expects that the Government will provide its observations on the 2006, 2008 and 2010 comments of ITUC with its next report.***

*Articles 1–3 of the Convention.* The Committee had previously requested the Government to specify concrete sanctions imposed on employers found guilty of anti-union discrimination, as well as sanctions imposed for acts of interference by workers' or employers' organizations or their agents in each other's affairs, particularly in the establishing, functioning and administration of the organizations, and to indicate the relevant legislative provisions. The Committee notes that in its report, the Government refers to the provisions of the Labour Code (section 195), Criminal Code (sections 201 and 285) and Code of Administrative Offences (sections 5.28–5.34). In particular, it indicates that section 195 of the Labour Code provides for a possibility of bringing the head of an organization/undertaking and his or her deputies to the disciplinary liability, including dismissal, for violation of labour legislation and trade union rights. The Committee notes that this section imposes an obligation on an employer to consider an application by an employees' representative body alleging violations of labour laws, other normative legal acts and terms of a collective agreement by the head of an organization/undertaking and/or his or her deputies and, if such violations are confirmed, to impose a disciplinary penalty, including dismissal, on the person responsible. The Committee further notes sections 201 and 285 of the Criminal Code, both punishing abuse of power, concern crimes against the interests of services in profit-making and other organizations, and crimes against State power and interests of the civil service and the service in local self-governing bodies, respectively, and provide for heavy sanctions, including fines and imprisonment. Finally, the Committee notes sections 5.28–5.34 of the Code of Administrative Offences, providing for punishment in the form of a fine from five to 50 minimum wages for violation of labour laws, generally, and for: (1) avoidance of participation in collective bargaining; (2) refusal to provide information; (3) unreasonable refusal to conclude a collective agreement; (4) violations of collective agreement; (5) avoidance of receiving employees' demands and participating in conciliatory procedures; and (6) dismissal of employees in connection with a collective labour dispute or a strike, in particular. The Government indicates that cases related to administrative offences are considered by the officials of the Federal Service on Labour and Employment and

the bodies of the Federal Labour Inspection subordinated to it (section 23.12 of the Code). It further indicates that according to section 353 of the Labour Code, the Federal Labour Inspection ensures the supervision and control over the compliance with the labour legislation and other rules and regulations containing labour law provisions by all employers in the territory. While noting this information, the Committee refers to the allegations of ineffective mechanisms of protection against acts of anti-union discrimination and interference by employers in trade union internal affairs, as well as numerous violations of this nature in practice submitted by ITUC. **The Committee therefore requests the Government to provide, in its next report, information on the application of the abovementioned legislative provisions in practice and, in particular, on the number of complaints of anti-union discrimination and acts of interference submitted, investigated and prosecuted within the last two years, as well as on the number of persons punished and the concrete sanctions imposed.**

**Article 4. Parties to collective bargaining.** The Committee had previously requested the Government to amend section 31 of the Labour Code so as to ensure that it is clear that it is only in the event where there are no trade unions at the workplace that an authorization to bargain collectively can be conferred to other representative bodies. The Committee notes the Government's indication that this issue will be discussed with the social partners at the October 2010 conference on the improvement of labour legislation. **The Committee expresses the hope that section 31 of the Code will be soon amended and requests the Government to provide a copy of the amended text once it has been adopted.**

**Compulsory arbitration.** The Committee notes the Government's indication that with the adoption of amendments to the Labour Code in 2006, the Law on collective labour disputes is no longer in force. The Committee further notes the Government's explanation that pursuant to sections 402–404 of the Labour Code, labour arbitration can only be established by the consent of the parties to the dispute, who also elect the arbitrators. The Government points out that it is impossible to establish an arbitration board at the will of only one of the parties to the dispute, except in cases provided for by Part 7 of section 404 of the Labour Code. The Committee notes that this provision refers to section 413, Parts 1 and 2, of the Labour Code and thereby imposes compulsory arbitration not only in essential services in the strict sense of the term, but also in other services determined by federal laws. The Committee recalls that recourse to compulsory arbitration in cases where the parties do not reach an agreement is generally permissible only in the context of essential services in the strict sense of the term or in the case of civil servants exercising authority in the name of the State. **The Committee requests the Government to take the necessary measures to amend the relevant sections of the Labour Code so as to ensure the application of the abovementioned principle and to indicate measures taken or envisaged in this respect.**

**Level of collective bargaining.** With regard to the Committee's previous request to ensure that the legislation provides for a possibility to conclude an agreement at the occupational or professional level, the Committee notes the Government's indication that section 45 of the Labour Code provides that agreements may be concluded at the general, interregional, regional, industrial, inter-industrial, territorial and other levels. The Government further explains that the legislation does not contain any provision prohibiting a possibility of concluding agreements at the occupational level and that while their number is small, there have been agreements signed at the occupational level. Furthermore, the Government indicates that the federal bodies of the executive power had not received any complaint regarding the lack of possibility to conclude agreements at the occupational or professional levels. The Committee takes due note of this information.

The Committee notes examples of collective agreements applicable to civil servants and civil employees of the military service and the system of execution of penal sentences provided by the Government.

With regard to its previous comments on the Labour Code amendment, the Committee refers to its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), where it noted the information provided by the Government and, in particular its indication that the permanent tripartite working group of the State Duma Committee on Labour and Social Policy has resumed its work with a view to prepare proposals aimed at improving labour legislation, while taking into consideration proposals of the social partners. **The Committee hopes that the work of the abovementioned working group will result in the near future in a legislative reform that will take into account the comments above and requests the Government to provide information on any further developments in this respect. The Committee once again reminds the Government that it can avail itself of the technical cooperation of the Office if it so wishes.**

## Rwanda

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

**Article 2 of the Convention.** *Right of workers, without distinction whatsoever, to establish organizations of their own choosing.* In its previous comments, the Committee noted that: (1) articles 11, 33, 35, 36, 38 and 39 of the Constitution of 4 June 2003 guarantee freedom of expression and association for state employees, as for all other citizens; (2) Law No. 22/2002 of 9 July 2002, on the General Statute for the Rwanda public service, is silent on the right of public servants to organize and to collective bargaining, although section 73 of the Law provides that public servants and the staff of public enterprises enjoy rights

and freedoms on the same basis as other citizens; (3) the procedures for the implementation of section 73 of Law No. 22/2002 are still to be determined, and the scope of the relevant provisions of the Labour Code respecting occupational organizations need to be extended to state officials; and (4) although the Government indicated that there are unions of public servants in Rwanda, the legal void as regards the right to organize of this category of workers could give rise to problems in practice. The Committee had noted that, under the terms of section 3 of the new Labour Code, “every person employed under the general statutes for the Rwanda public service or every person under specific statutes shall not be subject to the provisions of this law, except for matters that may be provided for by Prime Minister’s orders”. It further noted that, according to the Government’s report, the process is under way of revising the General Statute governing public civil servants. The Committee recalls that public servants shall enjoy the right to establish and join organizations of their own choosing to further and defend their interests. ***The Committee trusts that the revision of the General Statute governing public civil servants will be completed in the near future and that it will take duly into account the above principle so as to ensure that public servants enjoy the guarantees laid down in the Convention. It requests the Government to provide a copy of the Law once it has been adopted.***

***Article 3. Right of organizations to organize their administration and activities and to formulate their programmes in full freedom.*** The Committee had noted that section 155(2) of the new Labour Code refers to an order of the Minister responsible for labour to determine “indispensable services” and the conditions of exercising the right to strike in these services. In its report, the Government had indicated that the order is prepared following consultations with the National Labour Council and that the text is still at the draft stage. ***The Committee requests the Government to provide a copy of the order once it has been adopted.***

The Committee had noted that, under the terms of section 124 of the Labour Code, any organization requesting recognition as the most representative organization has to authorize the labour administration to check the register of its members and property. In this respect, the Committee recalls that the control exercised by the public authorities over trade union finances should not go beyond the requirement for the organizations to submit periodic reports. ***The Committee trusts that the Government will take the necessary measures to amend section 124 of the Labour Code taking into account the above principle.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

Finally, the Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010. ***The Committee requests the Government to provide its observations thereon.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1988)***

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

***Articles 1 and 2 of the Convention.*** In its previous comments the Committee asked the Government to take steps to establish sufficiently dissuasive penalties for acts of anti-union interference and discrimination. The Committee noted that, according to the provisions of section 114 of the new Labour Code, any act which infringes the provisions providing protection against acts of discrimination and interference shall constitute an offence and incur the payment of damages. The Committee noted that the amount of damages has not been fixed, except for wrongful termination of an unemployment contract, as laid down by section 33 of the Code. In the latter case, the damages vary from three to six months’ wages, and may amount to as much as nine months’ pay where the worker has more than ten years’ service with the same employer, or where staff delegates or union representatives are concerned. ***The Committee requests the Government to provide further information on the amount of damages applicable for acts of discrimination against trade union members or officials, other than the dismissal of trade union representatives.***

***Article 4.*** With reference to its previous comments concerning compulsory arbitration in the context of collective bargaining, the Committee noted with *regret* that the collective dispute settlement procedure provided for in section 143 ff. of the new Code culminates, in cases of non-conciliation, in referral to an arbitration committee whose decisions may be the subject of an appeal to the competent jurisdiction, whose decision shall be binding. The Committee recalls that, except for the cases of public servants engaged in the administration of the State and essential services in the strict sense of the term, arbitration imposed by the authorities or at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements established by the Convention, and thus the autonomy of bargaining partners (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 257). ***The Committee requests the Government to take the necessary steps to amend the legislation in such a way that, except in the circumstances referred to above, a collective labour dispute in the context of collective bargaining may be submitted to the competent legal authority only with the agreement of both parties.***

Moreover, with reference to its previous comments, the Committee noted that section 121 of the Code provides that, at the request of a representative organization of workers or employers, the collective agreement shall be negotiated within a joint committee convened by the Minister of Labour or his delegate or the competent labour inspector. The Committee recalls that such a provision may well restrict the principle of free and voluntary negotiation of the parties within the meaning of the Convention, and even of being applied where one party wishes to have a new collective agreement even before the existing agreement has expired. ***The Committee requests the Government to take steps to amend section 121 of the Labour Code so that recourse to a joint committee for negotiating a collective agreement is possible only with the agreement of both parties.***

With regard to the question of the extension of collective agreements, the Committee noted that, under section 133 of the Labour Code, at the request of a representative workers’ or employers’ organization, whether or not it is a party to the agreement or on its own initiative, the Minister of Labour may make all or some of the provisions of a collective agreement binding on all employers and workers covered by the occupational and territorial scope of the agreement. ***The Committee requests the Government to take the necessary steps to amend the legislation so that the extension of collective agreements is the subject of in-depth tripartite consultations (even where provision is made, as is the case in section 136 of the Code, for the parties affected by the application of an extended collective agreement to file a request for an exemption with the Minister of Labour).***

***Article 6.*** With reference to its previous comments, the Committee noted that, under section 3 of the Code, any person governed by the general or individual public service regulations is not subject to the provisions of the Code other than for matters determined by an Order of the Prime Minister. ***The Committee regrets that the national authorities have not taken the***



*opportunity afforded by the reform of the Labour Code to guarantee the right to collective bargaining for public servants covered by the Convention and requests the Government to indicate any measures taken or contemplated to this end.*

*Finally, the Committee requests the Government to supply information in its next report on the activities of the National Labour Council with regard to collective bargaining, on the number of collective agreements concluded, and on the sectors and numbers of workers covered.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010. *It requests the Government to send its observations on this matter.*

## Saint Kitts and Nevis

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 2000)

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination in respect of employment.* In its previous comments, the Committee had noted that section 11 of the Protection of Employment Act refers to protection against termination of employment on the grounds of union membership or participation in union activities. The Committee had recalled that, under the Convention, workers should enjoy adequate protection against any measures of anti-union discrimination both at the time of employment and throughout the course of employment, including up to the time of work termination (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 203 and 210). *Noting the Government's indication that the Committee's recommendation will be submitted to the competent authority, the Committee once again requests the Government to take the necessary legislative measures so as to ensure that workers are granted adequate protection against acts of anti-union discrimination at the time of employment, and throughout the course of employment up to termination and to provide information on any development in this regard.*

*Sufficiently dissuasive sanctions.* In its previous comments, the Committee had noted that, according to section 44(2) of the Protection of Employment Act, any employer who fails to comply with any of the provisions of this Act (including section 11 which prohibits anti-union dismissals) shall be guilty of an offence and on summary conviction shall be liable to a fine not exceeding 2,000 East Caribbean dollars (equivalent to US\$745). The Committee had requested the Government to take the necessary measures to increase the amount of the existing sanctions so that they constitute a sufficient deterrent against all acts of anti-union discrimination. *Noting the Government's indication that the Department of Labour held discussions with the Minister of Labour and a legal consultant to provide assistance on labour matters in an effort to ensure that the existing sanctions outlined in the Act be increased according to the Committee's recommendation, the Committee requests the Government to provide information on any development in this regard.*

*Article 2. Adequate protection against acts of interference.* In its previous comments, the Committee had recalled that legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application in practice of *Article 2* of the Convention; moreover, to ensure that these measures receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down these substantive provisions, as well as appeals and sanctions in order to guarantee their application (see General Survey, op. cit., paragraph 232). The Committee had requested the Government to adopt specific measures, coupled with effective and sufficiently dissuasive sanctions, against acts of interference. *Noting that consideration will be given by the Government to adopt specific measures according to its recommendation, the Committee requests the Government to provide information on any development in this regard.*

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee had noted that the laws referred to by the Government did not contain any provision concerning the right to bargain collectively. The Committee had requested the Government to take the necessary measures to explicitly recognize in legislation and to regulate the right of collective bargaining in conformity with the principles of the Convention. *Noting that consideration will be given by the Government to adopt specific measures according to its recommendation, the Committee requests the Government to provide information on any development in this regard.*

## Saint Lucia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** (ratification: 1980)

The Committee notes that the Government did not provide any information concerning its previous comments in its report. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Right of workers and employers without distinction whatsoever, to establish and to join organizations of their own choosing and without previous authorization. Requirements for the establishment of an organization.* In its previous comments, the Committee had noted that in a draft Labour Code the minimum founding membership for a trade union and for an employers' organization had been reduced from 30 to 20 and from ten to six, respectively. It had requested the Government to keep it informed of new developments concerning the draft and to submit a copy of the Code. The Committee notes that the Government indicates that the draft Labour Code had passed into law but has been placed on hold by the new

Government and that it is currently with the Attorney-General. *The Committee again hopes that the new legislation will soon be applicable and requests the Government to submit a copy of the legislation with its next report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Sao Tome and Principe

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1992)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Right of organizations to organize their activities and formulate their programmes.* The Committee recalls that it has been commenting for a number of years on the need for the Government to take steps to amend the provisions of Act No. 4/92, which refer to the following issues:

- the majority required for calling a strike is too high (section 4 of Act No. 4/92);
- with regard to minimum services, it is important, in the event of disagreement in determining such services, that the matter be settled by an independent body and not by the employer (section 10(4) of Act No. 4/92);
- the hiring of workers without consultation with the trade unions concerned to perform services essential to maintain the economic and financial viability of the enterprise should it be seriously threatened by a strike (section 9 of Act No. 4/92); and
- compulsory arbitration for services which are not essential in the strict sense (services whose interruption might endanger the life, personal safety or health of the whole or part of the population) (postal, banking and loan services; section 11 of Act No. 4/92).

*The Committee asks the Government to take steps to amend the abovementioned legislative provisions so as to bring the legislation into line with the Convention and to indicate, in its next report, any measures adopted in this respect. The Committee also asks the Government to indicate whether federations and confederations are able to exercise the right to strike.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

*Finally, noting that Law No. 4-2002 of 30 December 2002 allows requisition of workers in cases of strikes in non-essential services, the Committee requests the Government to take measures to modify the legislation so as to guarantee that the requisition of workers is only possible in the essential services in the strict sense of the terms.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)**

The Committee notes with *regret* that the Government's report has not been received. Nevertheless, it notes the information supplied in connection with the application of the Collective Bargaining Convention, 1981 (No. 154).

*Articles 1 and 2 of the Convention.* In its previous comment the Committee asked the Government to indicate what sanctions may be imposed against acts of discrimination that undermine freedom of association and acts of interference by employers and their organizations in workers' organizations and vice versa. The Committee noted the Government's indication that there is no legislation that lays down penalties for acts of anti-union discrimination. *The Committee therefore requests the Government once again to take the necessary steps to adopt appropriate legislation which imposes sufficiently effective and dissuasive sanctions against acts of anti-union discrimination and acts of interference committed by employers against trade union organizations, in conformity with the provisions of the Convention. The Committee requests the Government to indicate whether specific legal protection exists for trade union members should they be subjected to acts of anti-union discrimination on the basis of their participation in legitimate trade union activities.*

*Article 4.* The Committee notes the Government's statement concerning the adoption of a new Constitution, a copy of which will be sent to the Office. The Committee observes that the right to collective bargaining is recognized in Act No. 5/92 of 28 May 1992 concerning trade unions but is not itself governed by legislation. The Committee also notes the Government's statement that collective bargaining does not apply to the public service. The Committee notes the Government's indication in various reports on the bill concerning the legal framework of collective bargaining that this bill has still not been adopted. In these circumstances, the Committee reiterates the importance of the bill being adopted as soon as possible and of the right to collective negotiation of their conditions of work and employment being secured to all workers in the public and private sectors, including public servants. *The Committee requests the Government to indicate the progress of the legislative procedures relating to the adoption of the bill and to take all possible steps to ensure its adoption in the very near future, in consultation with the most representative organizations of employers and workers.*

*Application in practice.* Finally, the Committee notes the Government's statement that no collective agreements currently exist in the country owing to geographical factors. *The Committee requests the Government to avail itself of technical assistance from the ILO to resolve this major issue.*

The Committee notes the Government's statement that the Labour Directorate of the Ministry of Labour might act as an intermediary between the parties to collective bargaining, including in order to ensure the effectiveness of the

agreement. *The Committee requests the Government to provide further information on the role of the Labour Directorate in the collective bargaining process.*

## Senegal

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)**

In its previous observation, the Committee noted the comments made by the International Trade Union Confederation (ITUC) in August 2008, by the National Confederation of Workers of Senegal (CNTS) in September 2008 and the Free Workers Union of Senegal (UTLS) in September 2007. The Committee notes the comments dated 24 August 2010 made by the ITUC on the application of the Convention and in particular on discriminatory practices in the recognition of trade unions, as well as on dismissals and suspensions of strikers. The Committee notes that the Government indicates that unions can be established freely, that they are recognized by the authorities and that therefore there could be no discriminatory practice. *The Committee requests the Government to provide without delay its observations on the comments made by the ITUC on dismissals and suspensions of strikers, as well as on the comments of the ITUC, the CNTS and the UTLS referring to the intervention by the security forces during duly authorized protest marches and discriminatory practices in the recognition of unions.*

*Bringing national legislation into conformity with the Convention.* In general, the Committee notes from the Government's report that following a study on the compliance of the national legislation with the ILO fundamental Conventions, carried out with the assistance of the Office, measures are being taken to amend the legislation, including the Labour Code, with a view to ensuring full compliance with the Convention. *The Committee welcomes the initiative and expects that the Government will provide in its next report all relevant information on the measures taken to amend its legislation taking into account the following points.*

*Article 2 of the Convention. Trade union rights of minors.* *The Committee expects that the Government will take all necessary measures to guarantee the right to organize of minors who have access to the labour market (persons of 15 years of age, according to section L.145 of the Labour Code) both as workers and as apprentices, without parental authorization being necessary.*

*Articles 2, 5 and 6. Right of workers to establish organizations of their own choosing without previous authorization.* The Committee recalls that for many years it has been commenting on the need to repeal Act No. 76-28 of 6 April 1976 and to amend section L.8 of the Labour Code (as amended in 1997) so as to guarantee to workers and their organizations the right to establish organizations of their own choosing without previous authorization. *The Committee expects that the Government will take without delay the necessary measures in order to repeal the legislative provisions that restrain workers' freedom to form their own organizations, especially provisions directed at the morality and capacity of workers' representatives, or that granting to the authorities a discretionary power of prior approval, which is contrary to the Convention.*

*Article 3. Requisitioning.* The Committee notes the Government's indication that the Decree implementing section L.276 has not yet been adopted and that Decree No. 72-017 of 11 January 1972 determining the list of posts, jobs and functions in which the occupants may be requisitioned continues to be applied under section L.288 of the Labour Code. The Government indicates that it is considering adopting legislative texts implementing the Labour Code and, in particular, section L.276. *The Committee expects that the Government will take without delay the necessary measures to adopt the Decree implementing section L.276 of the Labour Code and to establish a list of posts, jobs and functions authorizing requisitioning of workers only with a view to ensuring the operation of essential services in the strict sense of the term.*

*Occupation of workplaces during a strike.* In its previous comments, the Committee noted that, under the terms of section L.276 *in fine*, workplaces or their immediate surroundings may not be occupied during a strike under penalty of sanctions established in sections L.275 and L.279. *Noting the Government's indication that it will consider the Committee's proposal in the framework of the Labour Code reform, the Committee expects that the Government will take the necessary measures in order to include a provision which would ensure that the restrictions set forth in section L.276 *in fine*, apply only when strikes cease to be peaceful or when respect for freedom to work of non-strikers and the right of the management to enter the premises of the enterprise are hindered.*

*Article 4. Dissolution by administrative authority.* The Committee notes the Government's indication that it is committed to taking the relevant measures in order to amend its legislation with a view to including an explicit provision establishing that the dissolution of seditious associations, as envisaged by Act No. 65-40, may in no event be applied to occupational trade union organizations. *The Committee expects that the Government will indicate all measures taken in this respect.*

## Serbia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2000)**

The Committee notes the comments submitted by the Confederation of Autonomous Trade Unions of Serbia (CATUS) received on 15 November 2010 and by the International Trade Union Confederation (ITUC) dated 24 August 2010. *The Committee requests the Government to provide its observations thereon in its next report.*

In its previous comments, the Committee had requested the Government to provide its observations on the comments made by the ITUC and the CATUS concerning alleged physical assaults against union officials and members, especially in the educational and health-care sectors. The Committee takes note that the Government indicates, in its report, that it has no knowledge of physical attacks on trade union officials or members in these sectors.

*Article 2 of the Convention. Right of employers to establish and join organizations of their own choosing.* The Committee recalls that for a number of years, it has been commenting upon the need to amend section 216 of the Labour Act which provides that employers' associations may be established by employers that employ no less than 5 per cent of the total number of employees in a certain branch, group, subgroup, line of business or territory of a certain territorial unit, in order to establish a reasonable minimum membership requirement. In its previous observation, the Committee had noted the Government's indication that the Committee's comments on section 216 will be taken into consideration in the course of amendment of the Labour Act. The Committee notes that the Government indicates in its report that the work on amendments and addendums to the Labour Act is under way and that the completion of the work is planned for the end of 2010. *The Committee hopes that in the process of revising the legislation, due account will be taken of its comments concerning the amendment of section 216 of the Labour Code and requests the Government to provide a copy of the amendments and addendums to the Labour Act as soon as adopted.*

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2000)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) on 24 August 2010 and the Government's reply thereon. The Committee further notes the comments made by the Confederation of Autonomous Trade Unions of Serbia (CATUS) received on 15 November 2010. *The Committee requests the Government to provide its observations thereon in its next report.*

*Article 1 of the Convention. Protection against anti-union discrimination in practice.* In its previous comments, the Committee had noted that, according to the ITUC and the CATUS, although the Labour Law of 2005 prohibits discrimination on the basis of trade union membership, it does not expressly prohibit discrimination for trade union activities and establishes no specific sanctions for anti-union harassment and, moreover, the right to organize is not protected in practice. The Committee had requested the Government to provide information on the application of the Convention in practice, including through statistical data on the number of complaints of anti-union discrimination brought to the competent authorities (labour inspectorate and judicial bodies), the outcome of any investigations and judicial proceedings and their average duration. The Committee notes that, while the Government recalls in its report that specific and dissuasive sanctions against anti-union discrimination are provided in sections 13, 18–21, 273 and 274 of the Labour Law, it does not provide the information previously requested by the Committee. *In these circumstances, the Committee once again requests the Government to provide information, in its next report, on the application of the Convention in practice, including through statistical data on the number of complaints of anti-union discrimination brought to the competent authorities (labour inspectorate and judicial bodies) as well as on the outcome of investigations and judicial proceedings and their average duration.*

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee had noted that, according to section 263 of the Labour Law, "[c]ollective agreements shall be concluded for a three-year term". The Committee had recalled that the parties should be in a position to shorten this duration by mutual agreement, if they consider it appropriate. The Committee had requested the Government to indicate the measures taken or contemplated to amend section 263 of the Labour Law in accordance with the above. The Committee notes that the Government indicates in its report that: (i) section 264 of the Labour Law provides that the validity of a collective agreement may cease prior to the expiry of a three-year period, by mutual agreement of all parties, or by termination, in the manner stipulated by law; and (ii) in case of termination, collective agreements shall be applied for a maximum of six months after the termination and the parties are bound to commence the bargaining process within 15 days after the termination, at the latest.

In its previous comments, the Committee had raised the need to amend section 233 of the Labour Law – which imposes a time period of three years before an organization which previously failed to obtain recognition as most representative, or a new organization, may seek a new decision on the issue of representativeness. The Committee had emphasized the need to ensure that a new request may be made after a reasonable period has elapsed, sufficiently in advance of the expiration of the applicable collective agreement. The Committee had recalled that the Serbian Association of Employers (SAE) had criticized this provision in its communication of 7 April 2005 as imposing an excessively long

period of time. The Committee had noted the Government's indication that this provision is aimed at protecting unions and employers' associations whose representativeness has been established by providing that their status may not be reviewed prior to the expiry of a three-year term. Moreover, according to the Government, this provision does not prevent trade unions and employers' organizations, that had previously failed to establish their representativeness, from asking for a new decision on this issue at any moment, without having to wait for three years. The Committee notes the Government's indication that amendments and addendums to the Labour Law are under way, which will address, inter alia, the conditions and procedures for the establishment and reconsideration of trade unions' and employers' associations' representativeness. ***In these circumstances, the Committee hopes that due account will be taken of its comments concerning the amendment of section 233 of the Labour Law, in a manner which will reduce the three-year time span to a more reasonable period or allow explicitly the procedures for the determination of most representative status to take place in advance of the expiration of the applicable collective agreement and requests the Government to indicate any development in this regard in its next report.***

***Representativeness of workers' and employers' organizations.*** In its previous comments, the Committee had noted the comments made by the CATUS, according to which there is a lack of a mechanism for the identification of the number of members of representative workers' and employers' organizations, as well as for the verification of such data at the enterprise level. The Committee had noted that, according to section 227(4) and (5) of the Labour Law, "[t]he total number of employees and employers on a territory of a certain territorial unit, in a branch, group, subgroup or a line of business shall be determined on the basis of information supplied by the competent statistical body, or other body keeping the pertinent records" and "[t]he total number of employees with an employer shall be determined according to the certificate issued by the employer". The bodies in charge of assessing representativeness are the employer, in the first place, and the tripartite panel for establishing representativeness, in the second place. The Committee had requested the Government to provide additional information on the mechanism for assessing representativeness of trade unions and employers' organizations. The Committee notes the Government's indication that the conditions and mechanism for the establishment of the representativeness of trade unions and employers' organizations: (a) are decided by the Minister of Labour upon a proposal by a specific tripartite committee; and (b) will be subject to amendments in the process of the current revision of the Labour Law, in consultation with the social partners. ***The Committee requests the Government to provide information in its next report on any developments in this regard as well as a copy of the amended Labour Law once adopted.***

The Committee recalls that, in its previous observations, it had requested the Government to lift the 10 per cent requirement for employers' organizations to be able to engage in collective bargaining which is particularly high, especially in the context of negotiations in large enterprises, at the sector or national level. The Committee notes that section 222 of the Labour Law still requires employers' associations to represent 10 per cent of the total number of employers and employ 15 per cent of the total number of employees in order to exercise collective bargaining rights. The Committee had noted that, according to the Government, the issue will be reconsidered in the framework of the revision of the Labour Law, with the participation of the representative workers' and employers' organizations. The Committee notes that the amendments to the Labour Law that are currently under way also address the representativeness of trade unions and employers' organizations. ***In these circumstances, the Committee hopes that due account will be taken of its comments concerning the amendment of section 222 of the Labour Law so as to lower the percentage requirements which must be fulfilled by employers' organizations in order to engage in collective bargaining and requests the Government to indicate any development in this regard in its next report.***

***The Committee expresses the hope that the Government will take the necessary measures without delay in order to bring the legislation into conformity with the requirements of the Convention and requests the Government to indicate the progress made in this respect.***

## Seychelles

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1978)***

The Committee recalls that for several years it has been commenting upon several provisions of the Industrial Relations Act (IRA) concerning the issues of trade union registration and the exercise of the right to strike. The Committee notes that, according to the information provided in the Government's report, while a review of the IRA is high on the list, it will only be undertaken after the revision of the Employment Act, currently under review. The Government indicates that once the committee responsible to review the IRA is set up, the Committee's observations will be brought to its attention for further action. ***The Committee therefore once again requests the Government to amend the following sections of the IRA:***

- ***section 9(1)(b) and (f), which confers to the registrar discretionary power to refuse registration;***
- ***section 52(1)(a)(iv), which provides that a strike has to be approved by two-thirds of union members present and voting at the meeting called for the purpose of considering the issue;***

- section 52(4), which allows the minister to declare a strike to be unlawful if he is of the opinion that its continuance would endanger, amongst other things, “public order or the national economy”;
- section 52(1)(b), which provides for a cooling-off period of 60 days before a strike may begin; and
- section 56(1), which imposes penalties of up to six months of imprisonment for organizing or participating in a strike declared unlawful on the basis of the IRA provisions.

*The Committee expresses the hope that the Industrial Relations Act will soon be amended, taking into account previous comments by the Committee and requests the Government to indicate any progress in this respect.*

In its previous observation, the Committee had noted the Government’s desire to avail itself of the technical assistance of the Office in this process. *The Committee trusts that the necessary technical assistance of the Office, requested by the Government, will be provided in the near future.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1999)

*Articles 2, 3 and 4 of the Convention.* The Committee recalls that for several years it has been commenting upon several provisions of the Industrial Relations Act (IRA) concerning insufficient protection against acts of interference and restrictions on the right to bargain collectively. The Committee notes that, according to the information provided in the Government’s report, while a review of the IRA is highly envisaged, it will only be undertaken after the revision of the Employment Act, currently under review. The Government indicates that once the committee responsible to review the IRA is set up, the Committee’s observations will be brought to its attention for further action. *The Committee therefore once again requests the Government to:*

- *adopt legislative provisions providing for protection against acts of interference by employers or their organizations into workers’ organizations, in particular, acts which are designed to promote the establishment of workers’ organizations under the domination or control by employers or employers’ organizations, coupled with effective and sufficiently dissuasive sanctions; and*
- *to amend its legislation so as to ensure that recourse to compulsory arbitration in cases where the parties do not reach an agreement through collective bargaining is permissible only in the context of essential services, in the strict sense of the term, and for civil servants engaged in the administration of the State.*

*The Committee expresses the hope that the Industrial Relations Act will soon be amended, taking into account previous comments by the Committee and requests the Government to indicate any progress in this respect.*

*Article 6.* The Committee recalls that in its previous comments it had requested the Government to take the necessary measures so as to ensure that prison staff, excluded from the scope of the IRA are granted the right to bargain collectively. The Committee notes that no information has been provided by the Government in this respect. *It therefore reiterates its previous request and once again asks the Government to indicate the measures taken or envisaged in this respect.*

In its previous observation, the Committee had noted the Government’s wish to avail itself of the technical assistance of the Office with regard to the amendment of the IRA. *The Committee trusts that the necessary technical assistance of the Office, requested by the Government, will be provided in the near future.*

## **Sierra Leone**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1961)

The Committee notes with *regret* that for several years the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention.* *Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers’ organizations against acts of anti-union discrimination and acts of interference.* The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body had been received and that the document had just been forwarded to the Law Officers’ Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it had been adopted. *Noting that, according to the information previously sent by the Government, the revision of the labour laws was submitted to the Law Officers’ Department in 1995, the Committee requests the Government once again to make every effort to take the necessary action for the adoption of the new legislation in the very near future and to indicate the progress made in this regard.*

*Article 4.* *The Committee requests the Government to provide detailed information on the collective agreements in force in the education sector and in other sectors.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

The Committee notes that, since 1992 when a draft Industrial Relations Act was under discussion, the Government only provided a report in 2004. *The Committee therefore requests the Government to furnish a detailed report on the*

*application of the Convention, accompanied by copies of any legal texts concerning freedom of association adopted since 1992.*

## Slovenia

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1992)

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, the Committee had noted the comments submitted by the Association of Free Trade Unions of Slovenia (AFTUS) referring to certain acts of anti-union discrimination against trade union representatives in the private sector which, in practice, according to AFTUS, are difficult to prove. The Committee notes the Government's indication that the Slovenian Labour Inspectorate has indicated that, in the period between 1 January 2008 and 1 June 2010, no infringements on the provisions of section 6 of the Employment Relationship Act that would be associated with the workers' membership in a trade union were recorded.

*Act implementing the Principle of Equal Treatment (No. 93/2007, UBP (ZUNEO)).* The Committee takes note of the adoption of the Act implementing the principle of equal treatment explicitly applicable to cases of anti-union discrimination. The Committee further notes the Government's indication that, in the period between 1 January 2008 and 1 June 2010, there was one case in which discrimination of the workers representative was established. In this case, the Committee notes that the inspector determined that an employer had infringed the provisions of section 4 of ZUNEO while terminating the employment contract allegedly for business reasons but for only three workers who belonged to the trade union, among whom was a trade union representative.

*Act Amending the Employment Relationships Act (ERA-A) (OGRS, 103/2007).* The Committee notes that the Act Amending the Employment Relationships Act has introduced the principle of reversed burden of proof in its section 6, paragraph 6. Therefore, if, in the event of a dispute, an applicant or a worker cites the fact giving ground for the suspicion that the prohibition of discrimination has been violated, the employer must demonstrate that in the case in question, the principle of equal treatment and the prohibition of discrimination was not violated. The Committee further notes that section 6, paragraph 8, states that persons who have been discriminated against and persons who help the victims of discrimination may not be exposed to unfavourable consequences owing to actions aimed at fulfilling the prohibition and discrimination. The Committee notes with *interest* this information.

*Article 2. Protection against acts of interference.* In its previous direct request, the Committee concluded that the protection against acts of interference afforded by sections 42 (right to associate) and 76 (free establishment, and functioning of, and membership in trade unions) of the Constitution, as well as section 6 of the Representativeness of Workers' Unions Act (providing that independence from employers is one of the characteristics of a representative trade union), was not sufficient and that sufficiently dissuasive sanctions were necessary. The Committee had noted the Government's indication that it would study the possibility of introducing additional legislative provisions that would address the Committee's concerns. The Committee notes the Government's indication in its report, that concrete sanctions for employers or their associations in case of interference in the activities of trade unions are currently not provided for by law and that legislative amendments have not yet been adopted in this regard. ***The Committee hopes that the Government will take the necessary measures in order to adopt specific provisions ensuring adequate protection to workers' organizations against acts of interference in their establishment, functioning and administration by employers or their organizations, and providing for effective and sufficiently dissuasive sanctions. It once again requests the Government to indicate any developments in this respect.***

## South Africa

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, reporting in particular acts of violence and arrests of workers – including trade union leaders – during the course of demonstrations and strikes in various sectors (municipal workers, communication workers, paper workers, clothing workers, parking attendants, hotel workers, etc.), as well as the dismissal of strikers, in 2009. The Committee wishes to recall as a general principle that trade union rights include the right to organize and participate in public demonstrations and the authorities should resort to the use of force only in situations where law and order is seriously threatened. The Committee further notes that, according to the ITUC, although the right to strike is recognized for all workers including in the public sector, it is undermined by the legal right of employers to hire replacement workers during a strike. The Committee recalls that in 2008 the ITUC had sent comments on serious infringement of trade union rights including attempts to obstruct unionization in the agricultural and communication sectors, police repression during a general strike and, in the mine sector, intimidation and mass dismissals following strikes. ***While taking due note of the Government's report on the implementation of the Convention, the Committee requests the Government to provide its observations to the ITUC's comments of 2008 and 2010.***

## Spain

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1977)**

*Article 2 of the Convention.* The Committee recalls that in its previous comments it noted with satisfaction Ruling No. 236/2007 of the Constitutional Court declaring unconstitutional section 11 of the Act respecting foreign nationals (Basic Act No. 8/2000 on the rights of foreign nationals in Spain and their social integration), which made the right of foreign nationals to organize or to join an occupational organization freely, under the same conditions as Spanish workers, subject to obtaining a permit to stay or reside in Spain. In this respect, the Committee notes with *satisfaction* the Government's indication in its report of the adoption of Act No. 2/2009 of 11 December, reforming Basic Act No. 4/2000 and integrating into the provisions of the Act the contents of Rulings Nos 236/2007 of 7 November and 259/2007 of 19 December of the Constitutional Court, which found that the requirement imposed by Basic Act No. 4/2000 on foreign nationals to be legally resident in Spain in order to exercise the fundamental rights of assembly, association, trade union membership and strike constituted an unjustified restriction and are therefore contrary to the Constitution. The Committee observes that the new section 11 of Basic Act No. 4/2000, in accordance with the wording set out in Basic Act No. 2/2009, provides that foreign nationals shall have the right to organize freely or to join an occupational organization and to exercise the right to strike under the same conditions as Spanish workers.

## Sri Lanka

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)**

The Committee notes the Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) dated 29 August 2008. The Committee further notes the comments submitted by the Lanka Jathika Estate Workers' Union (LJEWU) dated 2 August 2010, and by ITUC dated 24 August 2010. It notes in particular that the ITUC refers to certain restrictions on the right to strike in sectors which do not provide essential services. *The Committee requests the Government to provide its observations thereon.*

The Committee notes that the Government indicates in its report that a project entitled "Promotion of Principles and Fundamental Rights at Work" is being implemented by the Ministry of Labour Relations and Productivity Promotion in collaboration with the ILO; and that a Special National Labour Advisory Council Meeting will take place in this framework in September 2010, in order to reach consensus among the social partners to effectively address the issues related to the implementation of ILO Convention No. 87, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135). *The Committee trusts that these initiatives will result in legislative amendments which will bring the legislation into conformity with the Convention. The Committee hopes that, in this process, due account will be taken of its comments, and requests the Government to provide information thereon in its next report.*

*Article 2 of the Convention. Minimum age.* In its previous observation, the Committee noted the discrepancy between the minimum age for admission to employment and the minimum age for trade union membership and pointed out that the minimum age for trade union membership should be the same as the minimum age for admission to employment. The Committee noted the Government's statement that a proposal initiated by the ILO-IPEC Sri Lanka programme to increase the minimum age for employment to 16 years – the same minimum age as for trade union membership – was being pursued. The Committee notes that the Government indicates in its report that this issue will be taken up by the Labour Law Reform Committee and that consultations are being held in this regard with all stakeholders. *The Committee requests the Government to indicate in its next report any developments in this regard.*

*Articles 2 and 5. Public servants.* Previously, the Committee had underlined the need to amend the Trade Unions Ordinance of 1935 (CAP 138) in order to ensure that organizations of Government staff officers may join confederations of their own choosing, including organizations of workers in the private sector, and that first-level organizations of public employees may cover more than one ministry or department in the public service. The Committee noted that the Government reiterated that the matter had been given priority under the overall labour law reforms by the subcommittee appointed by the National Labour Advisory Council (NLAC), that the Labour Law Reform Committee had examined the proposed amendment and made recommendations to the NLAC, that the matter was under serious consideration by the Ministry of Public Administration and Home Affairs, and follow-up action was being taken by the Ministry of Labour Relations and Manpower. The Committee notes that the Government indicates in its report, that while the law restricts the organization of trade unions for more than one department or service, as well as the federation of trade unions in the public sectors (section 21 of the Trade Union Ordinance), in practice, nine federations of public service trade unions directly bargain with the Ministry of Public Administration about the rights, terms and conditions of employment of civil servants. The Government's report adds that the restrictions in the law have never deprived public officers' unions from exercising their right to freedom of association and that action is being taken, in consultation with the Ministry of Public Administration, to bring the law in line with the Convention. *The Committee expresses the hope that the amendments to the Trade Unions Ordinance will be adopted in the near future and requests the Government to take the necessary*



*measures to harmonize the legislation with what appears to be the practice, in order to ensure that trade unions in the public sector may join confederations of their own choosing, and to indicate the progress made in this respect in its next report.*

*Article 3. Dispute settlement machinery in the public sector.* In its previous observation, the Committee noted that the Industrial Disputes Act – which provides for conciliation, arbitration, industrial court and labour tribunal procedures – did not apply to the public service, that a mechanism for dispute prevention and settlement in the public sector was being developed by the Ministry of Labour Relations and Manpower and the Ministry of Public Administration and Home Affairs with technical assistance from the ILO, and that a document concerning the dispute settlement mechanism had been adopted. The Committee notes that the Government refers in this respect to a draft report on the ILO Project for the Prevention and Solution of Disputes in the Public Sector, which provides in particular that: (i) the level of collective action in the public sector is very high and has a heavy impact on the efficiency of the whole public administration; (ii) the first proposal to be submitted to the social partners would be to distinguish between “rights disputes” and “interest disputes”; (iii) for “interest disputes” arising out of demands for employment improvement and working conditions, mediation and conciliation could be options available to the parties; and (iv) that a reference to the National Arbitration Board could be used as a last resort bearing in mind that, exception being made for some public services, it should remain a voluntary process for both parties. The Committee recalls that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State or in essential services in the strict sense of the term, i.e. services the interruption of which, would endanger the life, personal safety or health of the whole or part of the population. ***The Committee requests the Government to take the necessary measures, following the report on the ILO project, so that public service dispute settlement mechanisms referred to by the Government will be developed in conformity with this principle.***

*Compulsory arbitration.* In its previous observation, the Committee expressed concern at the broad authority of the Minister to refer disputes to compulsory arbitration and recalled the need to ensure that workers’ organizations can organize their programmes and activities without interference by the public authorities. It noted that under section 4(1) of the Industrial Disputes Act, the Minister may, if he or she is of the opinion that an industrial dispute is a minor dispute, refer it by an order in writing for settlement by arbitration to an arbitrator appointed by the Minister or to a labour tribunal, notwithstanding that the parties to such dispute or their representatives do not consent to such reference, and under section 4(2), the Minister may, by an order in writing, refer any industrial dispute to an industrial court for settlement. The Committee notes that the Government once again reiterates in its report that sections 4(1) and 4(2) were intended to provide safeguards against strikes that are likely to seriously affect the national economy, and that in practice, however, arbitration was seldom imposed without the consent of the trade union. While noting that the Government further indicates that consultations were held to set up a public service dispute settlement mechanism with ILO technical assistance (as referred to above), the Committee recalls that provisions under which, at the request of one of the parties or at the discretion of the public authorities, disputes must be referred to a compulsory arbitration procedure, make it possible to prohibit virtually all strikes, or to end them quickly; such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with *Article 3* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 153). ***In these circumstances, the Committee once again requests the Government to amend sections 4(1) and 4(2) of the Industrial Disputes Act, so as to ensure that any reference to compulsory arbitration may only occur: (i) at the request of both parties to the dispute (i.e. voluntary arbitration); (ii) in the case of essential services in the strict sense of the term; and (iii) in the case of public servants exercising authority in the name of the State. The Committee requests the Government to indicate any developments in this regard in its next report.***

*Article 4. Dissolution of organizations.* In its previous observation, the Committee had requested the Government to take the necessary measures to ensure that in all cases where an administrative decision of dissolution of a trade union is appealed to the courts, the administrative decision will not take effect until the final decision is handed down. The Committee noted the Government’s indication that this matter had been referred to the Labour Law Reform Committee. The Committee notes that the Government’s report provides information on the procedure for the withdrawal or cancellation of the registration of a trade union, including the appeal procedures against the decisions of the registrar, but does not confirm that the decision of the registrar will not take effect until the final decision of the appeal procedure is handed down. ***The Committee therefore requests the Government to take the necessary measures to ensure that administrative decisions of dissolution are suspended pending their appeal in court, and to indicate any progress in this respect in its next report.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1972)***

The Committee notes the comments submitted by the Ceylon Bank Employees’ Union (CBEU) dated 16 February 2009 as well as by the Lanka Jathika Estate Workers’ Union (LJEWU) dated 2 August 2010 and by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010.

The Committee notes that the Government indicates in its report that a project entitled “Promotion of Principles and Fundamental Rights at Work” is being implemented by the Ministry of Labour Relations and Productivity Promotion in collaboration with the ILO and that a Special National Labour Advisory Council Meeting would take place in this framework in September 2010, in order to reach consensus among the social partners to effectively address the deficits in the implementation of ILO Convention No. 98, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Workers’ Representatives Convention, 1971 (No. 135).

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* In its previous observation, the Committee noted that under section 43(1A) of the 1999 Industrial Disputes (Amendment) Act, any contravention of the provisions concerning anti-union discrimination shall be punished by a fine not exceeding 20,000 rupees (approximately US\$175) and requested the Government to provide information on the dissuasive character of this provision, in particular as regards the relationship of the amount of the fine with the average wage. The Committee noted the Government’s indication that there was no relationship between the amount of the fine and the average wage, that a proposal had been initiated to revise and update penalties, surcharges and stamp duties under existing labour legislation and that this matter had been referred to the National Labour Advisory Council (NLAC) in order to obtain the views of the social partners. The Committee notes that the Government indicates in its report that, on the recommendations of the Labour Law Reform Committee, it has decided to increase the fine up to 100,000 rupees and that a Bill was drafted in this sense, which will be presented to the Parliament in the next few months. The Committee recalls that *Article 1* of the Convention guarantees workers adequate protection against acts of anti-union discrimination and that legislation prohibiting acts of discrimination is inadequate if it is not coupled with effective, expeditious procedures and sufficiently dissuasive sanctions to ensure their application (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 223 and 224). ***The Committee requests the Government to take the necessary measures to ensure that the views of the social partners are fully taken into consideration in the drafting process of updating penalties, to indicate any progress made in this respect in its next report, and to provide a copy of the Bill once adopted.***

Furthermore, the Committee had previously noted allegations according to which adequate protection against anti-union discrimination was not provided in practice, as only the Department of Labour could bring cases before the Magistrate’s Court and that there were no mandatory time limits within which complaints should be made to the Court. The Committee had requested the Government to take measures in consultation with the social partners to guarantee a more expeditious and adequate procedure which, in particular, would establish short time periods for the examination of the cases by the authorities, and to indicate whether trade unions had the capacity to bring their grievances concerning anti-union discrimination directly before the courts. The Committee notes that the Government indicates in its report that: (i) the courts always try to conclude cases as expeditiously as possible while accommodating the concerns of all parties and the principles of law; (ii) the opportunity of granting trade unions the right to bring anti-union discrimination claims directly before the courts will be closely examined, taking into account the difficulties which may arise in relation to the collection of the requested evidences by the unions; (iii) concern should also be given to the possibility for employers to bring claims before the courts in cases of unfair labour practices by the trade unions; and that (iv) the Government wishes to further negotiate the issue with the social partners in the framework of the Special National Labour Advisory Council Meeting of September 2010 and inquire from the Attorney General the feasibility of granting such rights. ***The Committee requests the Government to take the necessary measures, in consultation with the social partners, to guarantee a more expeditious and adequate procedure which would, in particular, establish short time periods for the examination of cases by the judicial authorities, and to provide information in this regard in its next report.***

Finally, the Committee notes the communication submitted by the Government dated 26 January 2009 in response to the petition submitted by the CBEU dated 17 October 2008 concerning alleged acts of discrimination against trade union members, in particular retrenchment measures adopted by the employer which lead to the termination of employment of 97 employees members of the CBEU, in violation of a collective agreement in force. The Committee notes the comments submitted by the employer involved. The Committee also notes that the Government indicates in its report that the conflict arose as a result of a merger of two financial institutions and that the Court of Appeal, in this case, rejected the requests of the CBEU.

*Article 4. Measures to promote collective bargaining.* In its previous observation, the Committee requested the Government to indicate the measures taken by the Social Dialogue and Workplace Cooperation Unit (SDWC) as well as the measures taken under the auspices of the National Policy for Decent Work, to promote collective bargaining. The Committee noted that 29 Provincial Labour Advisory Councils (PLACs) were established in order to promote collective bargaining and tripartite consultations in a decentralized manner, and that their activities were coordinated by the SDWC Unit. The Committee notes that the Government indicates that the most representative trade unions’ and employers’ organizations are consulted by the PLACs on labour matters and that it provides, with its report, a list of collective agreements concluded between 2008 and 2010. ***The Committee requests the Government to keep it informed of any progress achieved by the measures taken by the Social Dialogue and Workplace Cooperation Unit and those taken in furtherance of the National Policy for Decent Work to promote collective bargaining.***

*Export processing zones (EPZs).* In its previous observation, as regards the need to promote collective bargaining within the EPZ sector, the Committee noted the information provided by the Government according to which 40 per cent of EPZ enterprises have employees’ councils that have bargaining rights, and that some of them were in the process of

concluding collective agreements. The Committee also noted that, according to the ITUC, employees' councils were bodies funded by the employer without workers' contributions – thus giving them an advantage over trade unions which require membership dues – and that employees' councils were promoted by the Board of Investment (BOI) as a substitute for trade unions in EPZs. The Committee notes that the Government indicates in its report that around ten trade unions operate in EPZs and provides statistical information showing that out of 260 enterprises operating in EPZs, 25 enterprises negotiate with trade unions, 13 enterprises have granted “check-off” facility to trade unions and five have signed collective agreements. The Government's report adds that neither the Ministry of Labour, nor the BOI, promote the establishment of employees' councils or trade unions, that the BOI's role in establishing employees' councils is strictly restricted to that of a facilitator, and that registered employees' councils are entitled to bargain collectively and conclude agreements on behalf of workers where there is no trade union with bargaining status. Finally, it adds that the “Promotion of Principles and Fundamental Rights at Work” project (referred to above) has a special focus on EPZs. ***Given the low number of collective agreements in EPZs indicated by the Government, the Committee requests it to provide information in its next report on measures taken to promote collective bargaining in the EPZ sector, as well as information concerning complaints made by trade unions against non-independent employees' councils.***

*Provisions on trade union recognition.* In its previous observation, the Committee had requested the Government to indicate the measures taken so as to ensure that the recognition provisions for collective bargaining purposes were effectively implemented in practice. The Committee had requested the Government in particular to comment upon the allegations made by the ITUC – reiterated this year – that the recognition of unions for collective bargaining purposes is hampered by excessive delays, and that employers tend to delay the holding of union certification polls to identify, victimize and on occasion dismiss the union activists concerned and that as a result, workers are afraid of being identified with the union, and the union loses the poll. The Committee notes that the ITUC indicates that the unions should be able to hold their elections within four weeks of sending their application for recognition. The Committee further notes that the Government indicates in its report, that a Circular adopted on 19 September 2000 sets the guidelines for the conduct of the referendum, referred to in section 32A of the Industrial Dispute Act, in order to ascertain whether a trade union possesses at least 40 per cent of the workers on whose behalf it seeks to bargain. Section 1 of the Circular provides that the relevant officer should hold a referendum (poll) within 30 days of the trade union's request. The Government's report adds that experience has shown that in the majority of the cases these time limits have been adhered to by the labour officers.

*Representativeness requirements for collective bargaining.* In its previous observation, the Committee had noted that, under section 32A(g) of the 1999 Industrial Disputes (Amendment) Act, no employer shall refuse to bargain with a trade union which has in its membership not less than 40 per cent of the workmen on whose behalf the trade union seeks to bargain. It subsequently requested the Government to ensure that if no trade union covers more than 40 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members, and to indicate the measures taken in this regard. The Committee noted the Government's indication that this matter was placed before the Labour Law Reform Committee appointed by the NLAC and that the Ministry, for its part, was of the view that reducing the percentage requirement might lead to inter-union rivalry. The Committee notes that the Government indicates in its report that the issue has been taken up several times in 2010, including before the NLAC and the Labour Law Reform Committee, but that in both these forums there were no consensus amongst the trade unions themselves. The Government's report adds that the majority of trade unions therefore collectively agreed to retain the present threshold and viewed that trade unions with different views would weaken the collective bargaining power of the unions. The Committee also notes that the ITUC indicates that certain employers change their staffing figures to ensure that the 40 per cent representation target is hard to meet, for instance by including middle and top managers in the calculation of the total staff. The Committee recalls that if no union covers more than 40 per cent of the workers' collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members. ***The Committee therefore requests the Government to pursue its efforts in this respect, to take the necessary measures to give effect to this principle, and to indicate the progress made in this regard in its next report.***

*Article 6. Denial of the right to collective bargaining in the public service.* In its previous observation, the Committee considered, on the basis of the information provided by the Government, that the procedures regarding the right to collective bargaining of public sector workers do not provide for genuine collective bargaining, but rather establish a consultative mechanism – with perhaps some elements of arbitration – under which the demands of public service trade unions are considered, while the final decision on salary determination rests with the Cabinet of Ministers. The Committee notes that the Government recalls in its report that while a National Salaries and Cadre Commission was appointed in 2005 to restructure and determine salaries of public officers at all levels, it is difficult for the public administration to have different wage systems and terms and conditions for each profession, occupation and service. The Government's report adds that there is however no obstacle for trade unions in the public services to bargain with authorities on issues specific to certain professions, occupations and services. The Committee once again recalls that all public servants, with the sole possible exception of those engaged in the administration of the State, should enjoy the right to collective bargaining with respect to salaries and other conditions of employment (see General Survey, op. cit., paragraph 262). ***Noting that, as at 31 December 2008, there were 1,933 registered trade unions out of which 1,130 were public officers' unions representing 1.2 million public employees, the Committee once again requests the Government to take the necessary measures to ensure and promote civil servants' right to collective bargaining in accordance with this principle, and to indicate any developments in this regard in its next report.***

Furthermore, the Committee notes that a draft report on the ILO Project for the Prevention and Solution of Disputes in the Public Sector is attached to the Government's report. The draft report provides, in particular, that efforts should be made to improve industrial relations in the public sector, which should be based on the improvement of social dialogue mechanisms at different levels of decision-making and on the creation of a sound system for collective dispute settlement. More specifically, the draft report indicates that the setting up of a National Arbitration Board is high in the agenda of both trade unions and Ministry officials, and that it is conceived rather as a mechanism to regulate industrial relations, than as a last resort to settle disputes. As regards conflicts in the public sector, the Committee recalls that compulsory arbitration may only occur at the request of both parties to the dispute (i.e. voluntary arbitration), or if the conflict relates to essential services in the strict sense of the term, or if the conflict involves public servants engaged in the administration of the State. ***The Committee requests the Government to take the necessary measures to ensure that the abovementioned principle is taken into account in the discussions on the mechanism for collective dispute settlement, and to provide a copy of the report once adopted.***

## Sudan

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1957)***

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in communications of 26 August 2009 and 26 August 2010, referring to the issues the Committee has been raising for a number of years and in particular, trade union monopoly controlled by the Government, denial of trade union rights in the export processing zones (EPZs) and nearly non-existent collective bargaining. The Committee recalls that it had previously requested the Government to provide its observation on similar 2008 ITUC comments. The Committee notes the Government's reply denying the ITUC allegations, which it considers general, unfounded and mostly political. It also notes the observations of the Sudanese Businessmen and Employers Federation (SBEF) and the Sudan Workers Trade Unions Federation (SWTUF). According to the SBEF, Sudanese society is characterized by an active involvement of trade union organizations, which enjoy full freedom in carrying out their activities and participate in tripartite activities, as partners of tripartite social dialogue. Finally, the SBEF indicates that it collaborates with workers and enjoys the right to bilateral negotiations to determine the conditions of work and service in conformity with the legislative provisions in force. The SWTUF concurs with the SBEF. It denies the ITUC comments and stresses the independence of the Sudanese trade union movement, the efficiency of its bodies and its democratic structure. The Committee notes that a new Trade Union Act had been adopted on 28 January 2010. ***The Committee requests the Government to send this legislation and to indicate if it maintains trade union monopoly.***

*Violence against trade unionists and repression of trade union rights.* In its previous comments, the Committee expressed its deep concern over the allegations of harassment, intimidation, arbitrary arrest, detention and torture made by the ITUC. The Committee had urged the Government to take the necessary measures to guarantee the personal safety of trade unionists and ensure respect for the rights enshrined in the Convention. The Committee notes that the Government points out that these issues are of a political nature and are not related to the Convention. In this respect, the Committee recalls the Resolution of 1970 concerning trade union rights and their relation to civil liberties which recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights". The Resolution refers, in particular, to the right to freedom and security of person and freedom from arbitrary arrest and detention. The Committee notes with ***concern*** the most recent allegations of the ITUC on brutal and fatal repression of workers in the oil sector, who demanded improved working conditions, by security forces. The Committee notes that the Government states that no arrests of workers have occurred at the company in question. The Committee points out that, according to the ITUC, two workers were shot and injured. ***The Committee requests the Government to provide its observations on the ITUC allegations. It urges the Government to provide information on the measures taken or envisaged to guarantee the personal safety of trade unionists and ensure respect for the rights enshrined in the Convention. Recalling that trade union rights can only be exercised in a climate that is free from violence and intimidation, the Committee requests the Government to ensure observance of civil liberties and human rights.***

*Article 4 of the Convention.* The Committee recalls that it had observed that section 112 of the 1997 Labour Code allowed referral of a collective dispute or a collective labour dispute to compulsory arbitration and had requested the Government to take measures to amend the legislation so that arbitration may only be compulsory with the agreement of both parties, or in the case of essential services. The Committee notes that the ITUC comments also refer to this issue. In this respect, the Committee had previously noted the Government's indication that a new Labour Code was being prepared (the Committee understands that the reference was made to the draft Labour Code for Northern Sudan) and requested the Government to keep it informed of the progress made in this respect. The Committee notes the Government's indication that the law currently in force is the Labour Code of 1997, which provides for optional phases of resolving conflicts and that a draft Labour Code was sent to the ILO Office in Cairo for review, advice and comments. The Committee has been informed that the Office has indeed provided its assistance with regard to the draft Labour Act of Southern Sudan,

section 117(1) of which stipulates that parties “may agree” to refer their dispute to arbitration, however no request for assistance was formally made with regard to the draft Labour Code for Northern Sudan, which is currently pending before the Federal Assembly. **The Committee expresses the hope that the new Labour Code (for Northern Sudan) will ensure that compulsory arbitration may only be permitted with the agreement of both parties or in the case of essential services. It requests the Government to provide a copy of the said Code as well as a copy of the Labour Act of Southern Sudan, once these legislative texts are adopted.**

**Collective bargaining in practice.** The Committee previously noted the ITUC’s allegation that collective bargaining was nearly non-existent and that salaries were set by a government-appointed and controlled tripartite body. The Committee notes the Government’s indication that the Higher Council for Wages, a body responsible for preparing collective agreements and studies on minimum wages, has a tripartite structure. The Government further indicates that it is up to employers and workers at the level of undertaking, factory, province and industry to engage in open bargaining between each other in order to reach agreements which determine their wages. The Government states that there are many collective agreements attesting to it and provides a copy of one such agreement. **The Committee requests the Government to keep providing information on the application of the right of collective bargaining in practice, including the number of existing collective agreements as well as the sectors and workers covered, as well as the ways the authorities promote the exercise of this right.**

**Scope of the application of the Convention.** On the issue of trade union rights in the EPZs, the Committee notes the Government’s indication that legislative texts clearly determine the exempted categories of workers employed in the oil exporting zones and the Port of Sudan. **The Committee requests the Government to transmit the relevant legislative texts.**

The Committee recalls that the only possible exemptions from the application of the Convention are the armed forces, police and public servants engaged in the administration of the State. **The Committee therefore requests the Government to take the necessary measures to ensure that all workers engaged in the EPZs and the Port of Sudan can enjoy the rights provided to them under the Convention.**

## Swaziland

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1978)**

The Committee notes the information provided in the Government’s reports and the comments, dated 27 August 2010, of the International Trade Union Confederation (ITUC) concerning the issues under examination, as well as allegations of government interference in union affairs and further elaboration around the 2010 May Day incident. The Committee takes note of the comments made by the Government to the ITUC allegations and in particular its assurances that the public service enjoys the freedom of association and right to organize in terms of the Industrial Relations Act, 2000 (as amended) and that as a result, four unions are active and recognized: the Swaziland National Association of Teachers (SNAT), the Swaziland National Association of Government Accounting Personnel (SNAGAP), the Swaziland National Association of Civil Servants (SNACS) and the Swaziland Nurses Association (SNA). According to the Government, these unions bargain with the Government collectively and freely without intimidation. **In light of the allegations made by the ITUC that the Public Service Bill currently before Parliament infringed the organizational rights of public sector workers, the Committee requests the Government to indicate the impact that this Bill might have on the rights of public service workers under the Convention and to transmit a copy of the Bill.**

The Committee notes the discussion which took place in the Conference Committee in June 2010. The Committee observes that the Conference Committee continued to raise its concern over the lack of progress made on matters that had been raised for many years now and had thus decided to place its conclusions once again in a special paragraph. Further, observing that the Conference Committee had urged the Government to accept a high-level tripartite mission, in order to assist the Government in bringing the legislation into full conformity with the Convention, to inquire into the 2010 May Day incident and to facilitate the promotion of meaningful and effective social dialogue in the country, the Committee welcomes the Government’s acceptance of this mission, which visited the country from 25–28 October 2010. The Committee notes the report of this tripartite mission, its conclusions and recommendations.

The Committee notes with *interest* from the mission report that certain provisions of the Industrial Relations Act (IRA), upon which it has been commenting for many years, have been amended by the House of Assembly and Senate, were awaiting royal assent and should be shortly promulgated into law. In particular, the Committee observes that Industrial Relations (Amendment) Bill No. 6 of 2010 would appear to:

- provide for the right to organize for domestic workers, by including domestic service in a household or a private house within the definition of “undertaking” (section 2(b) and (c) of the Bill);
- remove the restrictions on the nomination and eligibility of candidates for trade union office in section 29(1)(i) of the IRA;

- ensure that the supervision of strike ballots by the Conciliation, Mediation and Arbitration Commission (CMAC) provided for in section 86 of the IRA may only occur upon request by an organization in terms of its statute or constitution; and
- shorten the compulsory dispute settlement procedures provided in section 85(4) of the IRA by limiting the period for arbitration to 21 days.

The Committee observes from the latest information provided by the Government that the Bill has received royal assent and is now published as the Industrial Relations (Amendment) Act No. 6 of 2010. ***The Committee trusts that the Amendment Act fully addresses the abovementioned issues and requests the Government to transmit a copy of the IR (Amendment) Act No. 6 of 2010.***

As regards its previous request that the Government amend the IRA to recognize the right to strike in sanitary services (at present banned by IRA section 93(9)), and establish only a minimum service with the participation of workers and employers in the definition of such a service, the Committee observes that the Bill provides for a clear definition of “sanitary services” in section 2. It further understands from the mission report that the Government intends to have discussions with the social partners within the framework of the Essential Services Committee for the determination of the minimum service that should be provided with respect to sanitary services. The Committee notes from the latest information provided by the Government that the Essential Services Committee has discussed this issue with the trade union and the Staff Association. ***The Committee requests the Government to provide information on the discussions held in this regard and the final outcome with respect to the determination of the minimum service to be afforded for sanitary services.***

***Finally, noting from the Government’s report that a proposal to amend section 40 (civil liability of trade union leaders) and section 97(1) (criminal liability of trade union leaders) of the IRA would be brought before the Labour Advisory Board before June 2011, the Committee requests the Government to provide information on all progress made in this regard.***

As regards the need to take measures to amend the legislation so as to guarantee for prison staff the right to organize in defence of their economic and social interests, the Committee recalls that in its previous comments it had noted the Government’s indication that consultations had already been initiated to review the Prisons’ Act. The Committee further notes from the mission report that the Supreme Court judgment in relation to the organizational rights of the Correctional Services Union refers to the possibility of adopting appropriate legislation for these workers to enjoy their rights under the Convention, with the exception of the right to strike. ***Noting from the Government’s latest report that a zero draft of the Correctional Services Bill was being developed, the Committee urges the Government to consult rapidly the social partners on the measures required in this regard and to propose the necessary legislative amendments without further delay.***

Furthermore, the Committee recalls that its previous comments referred to the following legal acts and proclamations which gave rise to practices contrary to the provisions of the Convention:

- ***The 1973 Proclamation and its implementing regulations.*** The Committee takes note of the information provided by the Government in relation to the status of this Proclamation and in particular the “Attorney-General’s Opinion”, which states that “on the coming into force of the Constitution, the Proclamation died a natural death”. The Committee observes, however, from the mission report that, despite assurances of the Government to the contrary, the social partners considered that there remained a certain ambiguity and uncertainty in respect of the residual existence of the Proclamation. ***In line with the mission’s recommendations, the Committee would request the Government to take all necessary steps to clarify that all provisions of the 1973 Proclamation were now null and void.***
- ***The 1963 Public Order Act.*** The Committee recalls that in its previous comments it had requested the Government to take the necessary measures to amend the Act so as to ensure that it could not be used to repress lawful and peaceful strike action. The Committee observes from the conclusions of the mission that, despite the provisions exempting trade union meetings from the scope of the Act, it appeared that the Act was resorted to in respect of trade union activities if it was considered that these activities included matters relating to broader calls for democratic reforms of interest to trade union members. In this respect, the Committee observes that the ban on displaying any flag, banner or other emblem signifying association with a political organization or with the promotion of a political object, which was added to the Act in 1968, apparently has affected the right of trade unions carry out peaceful protest actions. The Committee observes from the latest information provided by the Government that the Ministry of Labour and Social Security was invited to a meeting between the police and the trade unions on 16 November 2010 in preparation for a protest action the following day. The Government indicates that it views the Ministry’s participation at these consultation meetings as a positive development. ***The Committee requests the Government to provide information on the steps taken to ensure that the 1963 Public Order Act is not used in practice to repress lawful and peaceful strike action, including any police guidelines or other instructions that may be elaborated to this end, as well as to indicate the measures taken to amend the Act where its provisions may have given rise to undue interference in trade union meetings or protest actions.***

The Committee notes with *grave concern* from the Conference Committee discussion and the mission report the serious disruption of the 2010 May Day demonstrations, the series of arrests and finally the death in custody of a participant in the demonstrations who had been arrested for wearing a t-shirt with the name of a political organization proscribed under the 2008 Suppression of Terrorism Act. *The Committee observes that the Government immediately appointed a coroner to carry out an official investigation into the circumstances surrounding this death and requests the Government to provide a copy of the coroner's report as soon as it is concluded.*

The Committee is raising other points in a request addressed directly to the Government.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1978)***

The Committee notes the information provided in the Government's report, as well as the comments of the International Confederation of Trade Union (ITUC), which refer to issues already under examination, as well as to a number of acts of anti-union discrimination in the textile sector and in export processing zones (EPZs), and to the denial of collective bargaining to prison staff and problems in practice in the banking sector, demonstrating weaknesses in the collective bargaining machinery. In its previous comments, the Committee had noted the Government's indication that the issue of anti-union discrimination in the textile sector was being addressed and a report would be submitted in due course. The Committee notes the Government's response to these allegations. In particular, the Government states that there are two powerful trade unions in the EPZs: the Swaziland Manufacturing and Allied Workers Union (SMAWU) and the Swaziland Processing Refining and Allied Workers Unions (SPRAWU) and that they are fully covered by the rights consecrated in the Constitution and the Industrial Relations Act, 2000, as amended. *As the Government does not specifically address the allegations of anti-union discrimination in the EPZs in practice, the Committee requests it to provide any available information and statistics from the labour inspectorate in this regard, as well as any remedial measures eventually taken.*

The Committee recalls that its previous comments referred to the following points:

- the need to adopt specific provisions accompanied by sufficiently dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations (*Article 2 of the Convention*); and
- the need to adopt a specific legislative provision so as to ensure that, if no union covers more than 50 per cent of the workers, this does not prevent the exercise of the collective bargaining rights of the unions in the unit at least on behalf of their own members (*Article 4 of the Convention*).

The Committee notes with *satisfaction* that section 42 of the Industrial Relations Act (IRA) has been amended so as to provide that, where in an establishment employees are represented by more than two trade unions whose respective membership does not cover at least 50 per cent of the employees eligible to join the union, the employer shall grant collective bargaining rights to the unions to negotiate on behalf of their members (now published as the Industrial Relations (Amendment) Act No. 6 of 2010).

The Committee recalls that, in its previous comments, it had noted the Government's indication that the issue of the adoption of specific provisions, accompanied by sufficiently dissuasive sanctions, for the protection of workers' organizations against acts of interference by employers or their organizations, as required by *Article 2* of the Convention, was being addressed. The Committee *regrets* that the Government has not provided any information on the developments in this regard. *It requests the Government to put this matter before the Labour Advisory Board or the Steering Committee on Social Dialogue so as to ensure that workers and their organizations are effectively protected against acts of interference and anti-union discrimination, in accordance with the Convention.*

## **Sweden**

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*** (ratification: 1949)

The Committee refers to the observation formulated as regards the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1950)***

The Committee notes the comments made by the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Employees (TCO) on the application of the Convention within the framework of the European Court of Justice (ECJ) judgment in the case *Laval un Partneri v. Svenska Byggnadsarbetareförbundet (Laval)*. The LO and the TCO refer in particular to the ex post facto application of the interpretation given to European Union law in the *Laval* judgment with regard to the industrial action giving rise to that case and the punitive damages and legal fees levied against the unions, as well as the subsequent legislative amendments to the Foreign Posting of Employees Act and the Co-determination Act of 1976, as well as other matters which they consider to undermine collective bargaining. The Committee takes due note of the Government's report in which it touches upon the questions raised in a general manner

and informs the Committee of the adoption of the new legislation and of the Government's additional reply to the comments made by the Swedish trade unions, received on 30 November 2010. ***The Committee requests the Government to send detailed information on all of the matters raised, including in further response to the views of the social partners.***

The Committee observes that the matters raised by the LO and the TCO touch upon both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98, and that the unions highlight the intrinsic link between collective bargaining rights and effective industrial action. ***Given the importance of the matters raised by the LO and the TCO, and the significance of the potential effect of the recent measures taken in the country, the Committee requests the Government to monitor the impact of these legislative changes on the rights under the Convention and provide a detailed report in time for its examination at the Committee's next meeting in November–December 2011.***

## Switzerland

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1999)***

The Committee takes note of the Government. It also notes the communications of September 2010 from the Union of Swiss Employers (UPS) and the Swiss Federation of Trade Unions (USS). Lastly, the Committee notes the communication of 24 August 2010 from the International Trade Union Confederation (ITUC). ***The Committee requests the Government to send observations thereon.***

*Articles 1 and 3 of the Convention. Protection against anti-union dismissals.* In its previous comments the Committee noted the observations by the USS, endorsed by the ITUC, objecting, on the basis of cases ruled on by the courts, that protection against anti-union dismissals was not adequate. The Committee also noted the Government's reply maintaining, on the contrary, that protection against anti-union acts, including recourse to the courts, is adequate. According to the Government, Swiss law offers adequate protection to trade union delegates and representatives, thereby fully complying with the Convention; the compensation for unfair dismissal which may amount to as much as six months' pay is sufficiently dissuasive given that the great majority of Swiss firms are small and medium-sized enterprises. The Government added that parliament had been unwilling to incorporate in Swiss law on employment contracts the principle of reinstatement of the dismissed worker, which in any event is not required by the Convention; so there was no question of proposing an amendment to the law to introduce further protection against acts of anti-union discrimination as it would be doomed in advance to failure. Lastly, the Government stated that following the adoption in November 2004 of the interim conclusions of the Committee on Freedom of Association in Case No. 2265, the matter had been notified to the Tripartite Federal Committee for ILO Affairs, but in the absence of agreement, it was not deemed necessary to take measures to strengthen protection against unfair dismissal on anti-union grounds or make it more effective in practice. The Committee expressed the view that while the applicable compensation for unfair dismissal (up to six months' wages) may be a deterrent for small and medium-sized enterprises, this is not so for high productivity and large enterprises. It accordingly asked the Government to resume tripartite dialogue in the light of its comments on the issue of adequate protection against anti-union dismissals.

The Committee notes that in its latest report, the Government again expresses serious concern that the Committee should apply to the Convention principles drawn from the interim conclusions of a case that is under examination by the Committee on Freedom of Association and is narrower in scope. The UPS endorses this position in its latest communication. The Committee furthermore notes the information sent by the Government that the Federal Council decided on 16 December 2009 to reconsider the matter of penalties for unfair dismissal, including the dismissal of elected staff representatives, dismissal for membership or non-membership of a trade union or for lawful trade union activity, but solely for the purpose of looking into an increase of the maximum penalty and not of replacing the principle of compensation with reinstatement of the worker. The Committee notes that according to the Government's report, the first draft of a bill is to be debated in the autumn of 2010 with specific proposals for amendments to the law. The Committee notes that in its latest communication, dated 17 September 2010, the USS indicates that there are still anti-union practices and dismissals and that the legislation has no dissuasive effect at all on employers, and particularly large enterprises. The USS states that it has submitted many new cases of anti-union dismissals to the Government with a view to amendment of the legislation, but to no avail so far. However, while objecting that the Government has taken no action despite the ILO's recommendations, the USS welcomes the Government's initiative to hold consultations on improving protection against dismissal which were to start in September 2010. ***The Committee takes note of this information, welcomes the decision of the Federal Council and hopes that the consultations on improving protection against unfair dismissal, including dismissal on anti-union grounds, will take account of the comments it has been making for several years on the application of Article 1 of the Convention. It hopes that in its next report the Government will provide information on the outcome of the consultations and the measures taken.***

*Article 4. Promotion of collective bargaining.* In its previous comments the Committee asked the Government to indicate how the law and case law address improper practices in collective bargaining (proven bad faith, unwarranted delay in the bargaining process, failure to comply with agreements, etc.), and to indicate any measures taken to promote



the broadest possible development and use of machinery for the voluntary negotiation of collective agreements. In 2008 the Government referred to the case law concerning the obligation to engage in collective bargaining, indicating that precedent also establishes an obligation to negotiate in good faith. The Committee asked the Government to provide copies of the court rulings in question together with any other relevant rulings on improper practices in collective bargaining. The Committee notes that for the period covered by the report, the Government indicates that there have been no court rulings involving matters pertaining to the application of the convention. ***The Committee requests the Government to send a copy of the case law to which it referred in its 2008 report. It also asks the Government to send up to date statistical information on the number of collective agreements by sector and the number of workers covered.***

## Syrian Arab Republic

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010 concerning the application of the Convention. ***The Committee requests the Government to provide its observations thereon in its next report.***

***Article 2 of the Convention. Trade union monopoly.*** In its previous comments, the Committee had requested the Government to indicate the measures taken or contemplated so as to repeal or amend the legislative provisions establishing a regime of trade union monopoly (sections 3, 4, 5 and 7 of Legislative Decree No. 84; sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 3, amending Legislative Decree No. 84; section 2 of Legislative Decree No. 250 of 1969; and sections 26–31 of Act No. 21 of 1974). The Committee notes that the Government indicates in its report that the majority of workers confirmed their position independently by declaring, through their trade union congresses, their wish to hold on to the General Federation of Trade Unions (GFTU) as a single union organization. The Committee notes that the Government's statement is once again corroborated by the comments of the GFTU forwarded by the ITUC. While taking due note of the above information, the Committee must once again recall that although it is generally to the advantage of workers and employers to avoid proliferation of competing organizations, trade union unity, imposed directly or indirectly, by law runs counter to the standards expressly laid down in the Convention. Although it was clearly not the purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 91). ***The Committee therefore once again requests the Government to indicate in its next report the measures taken or contemplated so as to repeal or amend the legislative provisions which establish a regime of trade union monopoly so as to allow possible trade union diversity.***

***Article 3. Financial administration of organizations.*** In its previous comments, the Committee had requested the Government to take the necessary measures to amend section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, so as to lift the power of the Minister to set the conditions and procedures for the investment of trade union funds in financial services and industrial sectors. The Committee notes that the Government indicates that the GFTU reiterated that it is a financially independent organization, that it has the full right to dispose of its funds in the manner it sees appropriate for their investment without the interference of anybody whatsoever in accordance with Act No. 25 of 2000, and that it invests its funds in particular in establishing hotels and tourist agglomerations, without interference. The Committee recalls, with regard to the financial administration of workers' organizations, that legislative provisions that give authorities the right to restrict the freedom of trade unions to invest, administer and utilize their funds as they wish for normal and lawful trade union purposes are incompatible with the principles of freedom of association. ***Therefore, taking into account what appears to be the practice and in order to bring the legislation into conformity with the principle of freedom of association, the Committee requests the Government to take the necessary measures to amend section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, in accordance with the abovementioned principle. The Committee requests the Government to provide information on any measures taken or contemplated in this respect in its next report.***

***Right of organizations to elect their representatives in full freedom.*** In its previous comments, the Committee had requested the Government to take the necessary measures to repeal or amend the legislative provisions which determine the composition of the GFTU Congress and its presiding officers (section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84). The Committee notes that the Government does not refer to these issues in its report. The Committee recalls that it should be up to trade union constitutions and rules to establish the composition and presiding officers of trade union congresses; national legislation should only lay down formal requirements in this respect; any legislative provisions going beyond such formal requirements constitute interference contrary to *Article 3* of the Convention (General Survey, op. cit., paragraphs 109 and 111). ***The Committee, therefore, once again requests the Government to provide specific information on the measures taken or contemplated to repeal or amend section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84, in accordance with the abovementioned principle. The Committee requests the Government to provide information on any measures taken or contemplated in this respect in its next report.***

Furthermore in its previous comments, the Committee had requested the Government to indicate the provisions which explicitly amend section 44(B)(3) of Legislative Decree No. 84 so as to allow a certain percentage of trade union officers to be non-Arab. The Committee had noted that, according to the Government, Legislative Decree No. 25 of 2000 amending Legislative Decree No. 84 of 1968 explicitly provides for the right of non-Syrian workers to join occupational trade unions, and that the law does not set down any discriminatory restrictions or provisions on the possibility of election of workers as trade union officers, regardless of their nationality. The Committee notes that the Government indicates in its report that every worker is allowed to become a member of a trade union to which he/she is affiliated, and that as long as he/she is affiliated to a trade union, he/she has the right to nominate himself/herself to leading union posts.

*Right to strike.* In its previous comments, the Committee had requested the Government to indicate the progress made with regard to the adoption of draft amendments to provisions which restrict the right to strike by imposing heavy sanctions including imprisonment (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949, issuing the Penal Code). The Committee notes that the Government indicates in its report that the amendment procedure takes time, that it will keep the Committee informed of any new developments and that the Ministry of Justice will take the Committee's comments into account. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. ***The Committee expresses the hope that the measures envisaged to bring the legislation in conformity with the Convention will be adopted in the near future, in accordance with the abovementioned principle. It requests the Government to provide, with its next report, a copy of the amendments as adopted.***

***The Committee reminds the Government that, if it so wishes, it may include the issues under this Convention when receiving the technical assistance of the Office it has requested under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1957)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010 concerning the failure to implement collective bargaining rights, for union representatives can only participate with employers' representatives and the supervising ministry in the establishment of minimum wages, or hours and conditions of employment.

*Article 4 of the Convention. Collective bargaining in practice.* In its previous observation, the Committee noted that for the second consecutive year, the Government indicated in its report that no collective agreement had been concluded in the last three years since none of the social partners had expressed the need for it. The Committee wished to draw the Government's attention to the terms of *Article 4* of the Convention, which states that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee therefore urged the Government to indicate in its next report the measures to promote collective bargaining adopted by the national authorities in both the public and private sectors and reminded it of the possibility of requesting technical assistance from the Office in this respect.

The Committee notes that the Government indicates in its report that the Labour Code No. 17 of 2010 contains an entire chapter on collective bargaining (sections 178–202) and adds that collaboration is ongoing with the Chamber of Industry and the General Federation of Trade Unions to issue an order by the Minister of Labour and Social Affairs to clarify the mechanism for collective bargaining, and will transmit it to the Office as soon as it is issued. ***The Committee welcomes the request by the Government for ILO's technical assistance in order to clarify the mechanism for the promotion of collective bargaining so as to encourage its use by representatives of workers and employers. The Committee, while expressing its concern about the deficient application of the Convention in practice, trusts that the requested technical assistance will take place in the very near future and requests the Government to indicate in its next report the measures taken or contemplated by national authorities to promote collective bargaining, in both the public and private sectors.***

## **United Republic of Tanzania**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2000)**

The Committee notes the Government's reply to the 2009 comments made by the International Trade Union Confederation (ITUC), as well as the comments submitted by the ITUC in a communication dated 24 August 2010 concerning issues already raised by the Committee.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations.* In its previous comments, the Committee had requested the Government to amend section 2(1)(iii) of the

Employment and Labour Relations Act No. 6 of 2004 (ELRA) so that prison guards enjoy the right to establish and join organizations of their own choosing. The Committee notes that the Government indicates in its report that account will be taken of the Committee's observations. ***The Committee hopes that the Government will take the necessary measures without delay to amend section 2(1)(iii) of the ELRA so that prison guards enjoy the right to establish and join organizations of their own choosing, and provide information on any progress made thereon in its next report.***

In its previous comments, the Committee had requested the Government to provide information on the types of workers included in the category of the "national service" referred to in section 2(1)(iv) of the ELRA – which is excluded from the provisions of the ELRA – so that it may assess whether they qualify for the exceptions of *Article 9* of the Convention. The Committee had noted that the Ministry of Labour, Employment and Youth Development was at a preparatory stage of formulating rules on the definition of the category of workers included in the national service. The Committee notes that the Government indicates in its report that as regards the national service, the rules and regulations for the implementation of the ELRA and the Labour Institutions Act are not yet finalized. The Committee recalls that only the armed forces and the police may be deprived of the rights provided in the Convention. ***The Committee requests the Government to take the necessary measures to ensure that these rules and regulations will be adopted in the near future, and to provide information thereon in its next report, as well as a copy of the regulations once adopted.***

*Right of workers and employers to establish organizations without previous authorization.* In its previous observation, the Committee had noted that section 48 of the ELRA, which provides for the process of registration, does not set forth a time period within which the registrar must either approve or refuse an organization's application, and had requested the Government to consider amending the ELRA so as to provide for a reasonable time period for the processing of applications for registration. The Committee notes that the Government reiterates in its report that the rules and regulations referred to above will address this matter. ***The Committee requests the Government to take the necessary measures to ensure that the rules and regulations will provide for a reasonable time period for the processing of applications for registration, and to provide information on any progress made thereon in its next report.***

*Article 3. Right of organizations freely to organize their activities and to formulate their programmes.* In its previous observation, the Committee had noted that while sections 4 and 85 of the ELRA allow for protest action (i.e. strikes in disputes that are not interest disputes) under section 4, such action is not lawful when taking place in relation to "a dispute in respect of which there is a legal remedy" which, according to the Government, refers to any dispute in which a party may apply for relief in any authority with competent jurisdiction. The Committee therefore requested the Government to amend section 4 of the ELRA so that restrictions on protest actions would be limited to a rights dispute. The Committee notes the Government's indication in its report, that the Committee's observations will be communicated to stakeholders for consultation. ***The Committee requests the Government to provide information on any progress made thereon in its next report.***

Furthermore the Committee had requested the Government to amend section 76(3)(a) of the ELRA, which prohibits picketing in support of a strike or in opposition to a lawful lockout. The Committee notes the Government's indication in its report that the Committee's observations will be communicated to stakeholders for consultation. ***The Committee expects that, following consultations, due measures will be taken to amend section 76(3)(a) of the ELRA and requests the Government to provide information on any progress made thereon in its next report.***

*Public sector.* In its previous observation, the Committee had requested the Government to modify the draft Public Service (Negotiating Machinery) Bill so as to ensure that restrictions on the right to strike in the public sector were limited to public servants exercising authority in the name of the State. The Committee notes that the Government indicates in its report that section 26(1) of the 2003 Act of the Parliament No. 19 (Public Service (Negotiating Machinery)) stipulates that "any public servant" may take part in a strike or lockout in the case of a subsisting dispute or complaint. The Committee further notes that section 26(2) provides, as conditions to be satisfied to take part in a strike, that: (i) a ballot strike has to be conducted under the supervision of the labour officer and the majority of the public servants of the respective service scheme has to support the strike; and (ii) a 60 days' notice has to be served to the Government counting from the date on which the ballot was cast. The Committee considers that the supervision by the administrative authority of the strike ballot constitutes an act of interference in trade union activities; that the requirement of a decision of the majority of the public servants of the respective service scheme for the calling of a strike is excessive and could unnecessarily hinder the possibility of carrying out a strike; that if the legislation requires a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast (General Survey of 1994 on freedom of association and collective bargaining, paragraph 170). The Committee considers that the 60 days' notice could constitute an obstacle to collective bargaining. ***In these circumstances, the Committee requests the Government to take the necessary measures to amend section 26(2)(d) of the Act No. 19 in accordance with the abovementioned principles, and to provide information thereon in its next report.***

Finally, the Committee notes that the Government indicates that there is no service that has been designated as essential by the Essential Services Committee pursuant to section 77 of the ELRA. The Committee recalls that essential services should be defined in the strict sense of the term that is services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159). ***The Committee requests the Government to take the necessary measures to ensure that account will be taken of this***

*principle when establishing the list of essential services referred to by section 77 of the ELRA, and to provide information on any developments in this respect in its next report.*

### Zanzibar

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations.* In its previous observation, the Committee had requested the Government to review and amend section 2(2) of Labour Relations Act No. 1 of 2005 (LRA), which excluded the following categories of employee from the LRA's provisions: (a) judges and all judiciary officers; (b) members of special departments; and (c) employees of the House of Representatives. Noting the Government's indication in its report that the amendment of section 2(2) of the LRA is not yet done, the Committee once again recalls that the only admissible exceptions to the right to organize are those explicitly provided for under *Article 9* of the Convention (i.e. the armed forces and the police) and that other categories of workers, without distinction whatsoever, should enjoy the right to establish and join organizations of their own choosing. ***The Committee requests the Government to take the necessary measures to amend section 2(2) of the LRA in accordance with this provision and to provide information thereon in its next report.***

*Right of workers and employers to establish organizations without previous authorization.* The Committee had previously requested the Government to provide further information on section 21(1)(c) of the LRA, particularly on the criteria employed by the registrar for determining whether an organization's constitution contains suitable provisions to protect its members' interests, and on the expeditiousness of the registration procedure, including the average time period, from the submission to the application, for an organization to be registered. The Committee had recalled that the competent authority must not be given discretionary power to refuse registration, as it could amount in practice to a system of previous authorization, contrary to the principles of the Convention. The Committee had also recalled that the registration procedure must not be too long and complicated, so as to comply with the Convention (see General Survey, op. cit., paragraphs 73–75). The Committee notes that the Government indicates in its report that the rules and regulations for the implementation of the Act will take into account the concerns raised by the Committee. ***The Committee requests the Government to provide a copy of the said rules and regulations once adopted and to provide information thereon in its next report.***

*Article 3. Right of organizations to organize their administration and activities and to formulate their programmes.* In its previous observation, the Committee had noted that the Government indicated that section 42 of the LRA forbids the union to use, directly or indirectly, its funds to pay any fines or penalties incurred by a trade union official in the discharge of his or her duties on behalf of the organization. The Committee had recalled that trade unions should have the power to manage their funds without undue restrictions from the legislation (see General Survey, op. cit., paragraph 124). The Committee notes that the Government indicates in its report that this provision does not apply to fines or penalties imposed upon the union itself and that the objective pursued by this section was to prevent embezzlement and fraudulent use of trade unions' funds by individuals. The Government's report adds that this section will be reviewed and that consultations will be held in line with the concerns raised by the Committee. ***The Committee requests the Government to provide information on any progress made thereon in its next report.***

*Political activities.* In its previous observation, the Committee had requested the Government to provide information on the definition of political affiliation under section 8(2) of the LRA, and to indicate in particular whether under this provision trade unions may still pursue certain political activities, including the expression of opinions on economic and social policy. The Committee takes due note of the Government's indication that while section 8(2) of the LRA forbids trade unions from being affiliated to political parties, all citizens under the 1984 Zanzibar Constitution – including trade unions' members and the unions themselves – enjoy the right to express their opinions on any matter, be it social, economic and political, without any intimidation.

*The right to strike.* In its previous observation, the Committee had requested the Government to take the necessary measures to amend section 64(1) of the LRA, which sets forth categories of employees – namely: (a) employees of any public authority who are actually engaged in the management of such authority; and (b) employees actually engaged in the management of a business of the employer for which such an employee is engaged – that may not participate in a strike, without any additional indication, and section 64(2) of the LRA, which lists several services that are deemed essential, including sanitation services, and in which strikes are forbidden. The Committee notes that the Government indicates that section 64(1) (a) and (b) was meant to enable people in the managerial cadre to have an opportunity to resolve strikes, but that the comments of the Committee will be taken into account. The Committee recalls that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the case of an acute national crisis. ***The Committee hopes that the Government will take the necessary measures to amend sections 64(1) and 64(2) of the LRA in accordance with this principle and requests it to provide information on any progress made thereon in its next report.***

*Protests.* Previously, the Committee had requested the Government to amend sections 63(2)(b) and 69(2) of the LRA, which determine that before resorting to protest action, the trade union must give the mediation authority at least 30 days to resolve it and subsequently give 14 days' advance notice explaining the purpose, nature and place and date of the protest action; it had requested the Government to shorten this 44-day period (to a maximum of 30 days, for example).

The Committee notes that the Government indicates that the amendments of sections 63(2)(b) and 69(2) of the LRA are not yet done. The Committee once again recalls that the period of advance notice should not be an additional obstacle to bargaining, with workers in practice simply waiting for its expiry in order to be able to exercise their right to strike (see General Survey, op. cit., paragraph 172). ***The Committee urges the Government to take the necessary measures to amend sections 63(2)(b) and 69(2) of the LRA in the near future in accordance with the abovementioned principle, and to provide information on any progress made thereon in its next report.***

Finally, in its previous observation, the Committee had regretted that the Government did not provide information about section 41(2)(j) of the LRA, which concerns restrictions on the use of trade unions' funds and had requested it to take the necessary steps to amend section 41(2)(j) of the LRA so that the institutions a trade union may wish to contribute to are not subject to the Registrar's approval. The Committee notes that the Government refers in this respect to its comments under *Article 3* concerning the use of trade unions' funds (see above). ***In these circumstances, the Committee reiterates its request to the Government to take the necessary measures to amend section 41(2)(j) in light of the principles referred to above and to provide information thereon in its next report.***

***Expressing the hope that the Government will make every effort to bring its legislation into full conformity with the Convention, the Committee welcomes the Government's request for technical assistance and hopes that it will be provided as soon as possible.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1962)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010. The Committee also notes the Government's reply to the allegation made by the ITUC in a communication dated 26 August 2009 that collective agreements must be submitted to the Industrial Court for approval and may be refused registration if they do not conform to the Government's economic policy. The Government indicates in its report that section 71(1) of the Employment and Labour Relations Act (ELRA) provides that a collective agreement shall be in writing, signed by the parties and binding on the last signatures, and that the parties are not bound to submit it for approval to a court.

Furthermore, the Committee notes the Government's replies to the points raised by the Committee in its previous observation concerning the 2003 Public Service (Negotiating Machinery) Act, in particular:

- (i) As regards the scope of application of the Act, the Government indicates in its report that the Act does not cover all civil servants, but covers teachers, servants of the health sector, and servants of the local and central Government and excludes employees of the prison service and national service. The Committee recalls that all public servants, with the sole possible exception of those engaged in the administration of the State, in the armed forces and the police, should enjoy the right to collective bargaining with respect to salaries and other conditions of employment (General Survey of 1994 on freedom of association and collective bargaining, paragraphs 199 and 262). ***The Committee requests the Government to provide information in its next report on the types of workers included in the national service and to take the necessary measures to ensure to prison staff the rights enshrined in the Convention.***
- (ii) As regards the protection against acts of anti-union discrimination and interference, the Government indicates in its report that section 29 of the Act prohibits acts of discrimination against any public servant who takes part in a strike or lock-out, or is a leader or activist of a trade union which inspired or incited public servants to take part in a strike or lock-out. The Committee recalls that *Article 1 of the Convention* guarantees workers adequate protection against acts of anti-union discrimination in taking up employment and in the course of employment including at the time of termination, and covers all measures of anti-union discrimination (dismissals, transfers, demotions and any other prejudicial acts) – i.e. not only acts of anti-union discrimination related to strikes and lock-outs – and that legal provisions prohibiting acts of anti-union discrimination shall be accompanied by effective and rapid procedures to ensure their application in practice. Furthermore, the Committee recalls that legislation should explicitly prohibit all acts of interference and make express provision for rapid appeals procedures, coupled with effective and sufficiently dissuasive sanctions against such acts, in order to ensure the application in practice of *Article 2* (General Survey, op. cit., paragraphs 214, 223 and 232). ***The Committee requests the Government to provide information in its next report on the measures taken or contemplated to include in the legislation adequate protection against all acts of anti-union discrimination and acts of interference, as well as sufficiently dissuasive sanctions against such acts, in accordance with the abovementioned principles.***
- (iii) As regards the subjects that may be negotiated under the Act, the Government indicates in its report that these relate to the terms and conditions of employment, including wages.
- (iv) As regards the duration of the collective agreements provided for in the Act, the Government indicates in its report that section 17(5) of the Act provides that every award made shall be final and binding upon the Government and the public servants to whom the agreement relates for a period of 12 months beginning on the date on which the award was made.

- (v) As regards the cases in which compulsory arbitration may be imposed under the Act, the Government indicates in its report that the functions of the Service Joint Staff Council include to negotiate on matters relating to the terms and conditions of service with respect to the public servants generally or to the service scheme to which that Service Joint Council belongs; that pursuant to section 8(1), all decisions on any matter which is subject of consideration and determination by the Service Joint Staff Council shall be referred to the Public Service Joint Staff Council for endorsement; that pursuant to sections 17–19, an agreement reached by the Public Service Joint Staff Council or any matter referred to it by the Service Joint Staff Council for approval in relation to any dispute regarding terms and conditions of service of public servants shall be forwarded to the minister; that the matters forwarded to the minister are for award making and in case upon finding that the Public Service Joint Staff Council was unable to reach an agreement, the Minister may refer the dispute to the court. The Committee recalls that compulsory arbitration in the framework of collective bargaining is only acceptable if it is at the request of both parties involved, or in the case of the public service, or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. ***In light of the above, the Committee requests the Government to take the necessary measures to amend sections 17 and 18 of the Public Service (Negotiating Machinery) Act, so as to ensure their full conformity with the abovementioned principles, and to provide information on any developments in this respect in its next report.***
- (vi) As regards to the question whether all individual public services have the right to conclude collective agreements, the Government indicates in its report that section 4 of the Act provides that a Service Joint Staff Council shall be established for each of the following services: civil service, teachers service, local government, health service and fire and rescue services and immigration service; that according to section 6, the functions of the Service Joint Staff Council shall be, inter alia, to negotiate on matters relating to the terms and conditions of service with respect to the public servants generally or to the Service Scheme to which that Council belongs.

### Zanzibar

*Article 4 of the Convention. Trade union recognition for purposes of collective bargaining.* In its previous observation, the Committee had requested the Government to amend section 57(2) of the Labour Relations Act of 2005 (LRA), which provides that in order to be designated as representative – and thus be accorded exclusive bargaining agent status – the union concerned must be registered and represent “the majority of employees at the appropriate bargaining level”, which corresponds in fact to 50 per cent of the members of a bargaining unit. While noting once again the Government’s indication that the Committee’s comments have been noted, the Committee recalls that such a system denies the possibility of bargaining to a majority union which fails to secure this absolute majority (General Survey, op. cit., paragraph 241). ***The Committee therefore requests the Government to take the necessary measures, in the very near future, to amend section 57(2) of the LRA so that if no union covers more than 50 per cent of the workers, the minority unions in the bargaining unit are not denied collective bargaining rights, at least on behalf of their members, and to provide information thereon in its next report. The Committee also requests the Government to indicate whether, in practice, minority unions enjoy collective bargaining rights in cases where there is no union representing 50 per cent of the workers concerned. If this is the case, the Committee requests the Government to provide relevant examples and statistics.***

Furthermore, the Committee had requested the Government to provide full information on the procedures and criteria by which the disputes resolution authority, in cases brought before it under section 57(4) of the LRA, determines representative trade union status when there is an objection from another trade union or when the employer does not recognize the trade union. ***Noting the Government’s statement that the rules and regulations for the implementation of the Act are not yet finalized, the Committee requests the Government to take the necessary measures, in the very near future, to ensure that the rules and regulations will provide for objective procedures and criteria for the determination of representative trade union status and to provide a copy of the said rules and regulations once finalized, as well as information thereon in its next report.***

*Article 6. Public servants.* The Committee had previously requested the Government to amend section 54(2)(b) of the LRA, so as to guarantee to managerial employees the right to bargain collectively, and to indicate the categories of employees excluded from the right to bargain collectively by the minister under section 54(2)(c) of the LRA. The Committee recalls that all public servants, with the sole possible exception of those engaged in the administration of the State, the armed forces and the police, should enjoy the right to collective bargaining with respect to salaries and other conditions of employment. ***Noting once again the Government’s statement that the rules and regulations referred to above will address this matter, the Committee requests the Government to take the necessary measures, in the very near future, to amend section 54(2)(b) of the LRA so as to guarantee to managerial employees the right to bargain collectively, and to indicate the categories of employees excluded from the right to bargain collectively under section 54(2)(c).***

## The former Yugoslav Republic of Macedonia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1991)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010 concerning issues already raised by the Committee, and the Government's reply thereon.

The Committee notes that the Government indicates in its report that, within the process of harmonization of its labour legislation with that of the European Union, and in accordance with the recommendations of the International Labour Organization, it has made significant changes and amendments to the Law on Labour Relations. The Committee welcomes the laws changing and amending the Law on Labour Relations (*Official Gazette*, No. 106/2008 and No. 130/2009). More particularly, the Committee notes with *satisfaction* that:

- Section 236(5) of the Labour Relations Act which provided that workers had to specify the duration of a strike has been repealed by article 23 of the Law changing and amending the Labour Relations Act (No. 106/2008) and that no provision requires the workers and their organizations to specify the duration of the strike.
- Section 201(2) of the Labour Relations Act which stated that a trade union or an employers' association shall terminate its activities if, without any important and justified reasons, it did not hold a meeting of its highest executive body for a period exceeding twice the period provided for in its statutes has been amended by the law changing and amending the Labour Relations Act (No. 130/2009) and now provides that the trade union or employers' associations shall cease to operate only if such is decided by the competent body of the trade union or employers' association, which by statute is authorized to decide on the termination of operation of the trade union or employers' association.
- Section 194, paragraph 4, which provided that if a trade union or an employer's association ceases its activity, its property may not be divided among its members has been repealed by the law changing and amending the Labour Relations Act, No. 130/2009.

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1991)**

*Article 4 of the Convention. Collective bargaining.* In its previous comments, the Committee had requested the Government to take the necessary steps to amend sections 212, 213 and 219 of the Labour Relations Law (2005) so as to: (i) lower the 33 per cent representation requirement imposed on trade unions and employers (or their organizations) for collective bargaining purposes at all levels; (ii) adopt legislative provisions regulating the procedure for determining the most representative organization, based on objective and pre-established criteria; and (iii) adopt legislative provisions regulating the procedure for establishing the negotiation board (the members of which are appointed by trade unions) when no trade union organization represents 33 per cent of employees or no employers' organization meets the same requirement.

In this regard, the Committee notes that the Government indicates in its report that, within the process of harmonization of its labour legislation with that of the European Union, and in accordance with the recommendations of the ILO, it has made significant changes and amendments to the Law on Labour Relations. The Committee further notes the law changing and amending the Law on Labour Relations (*Official Gazette*, No. 130/2009):

(i) *Representativeness of a trade union and procedure for establishing the negotiation body when no trade union organization represents 20 per cent of employees.* The Committee notes that sections 211 of the Law on Labour Relations now provides that the representativeness of a trade union or an organization of employers is determined for the purposes of participation in tripartite social partnership bodies and tripartite delegations of the social partners at the national level; for the participation in the collective bargaining at the public sector level, and within the private sector, at national level, industrial level and employer level. The criteria for determining the representativeness are defined in sections 212 and 213 of the Law on Labour Relations. The Committee notes that collective bargaining is possible for the trade unions representing 20 per cent of the employees at the level it wishes to bargain, except at the state level where the trade union must represent 10 per cent of the labour force.

In addition, in its previous comments, the Committee had requested the Government to adopt legislative provisions regulating the procedure for establishing the negotiation board (the members of which are appointed by trade unions) when no trade union organization represents 20 per cent of employees or no employers' organization meets the same requirement (sections 219 and 221 of the Law on Labour Relations). The Committee notes that no information was provided in this regard by the Government. *Given that the 20 per cent threshold could be difficult to obtain in certain sectors and in large enterprises and taking into consideration the principle set out in section 4 of the Convention concerning the promotion of free and voluntary collective bargaining, the Committee requests the Government to adopt legislative provisions regulating the procedure for establishing the negotiation board (the members of which are*

*appointed by trade unions) when no trade union organization represents 20 per cent of employees or no employers' organization meets the same requirement.*

(ii) *Procedure for determining the most representative organization.* The Committee notes with *interest* that new articles laying down the procedure and the competent body establishing the representativeness have been added to the Law on Labour Relations: Body competent for Establishment of Representativeness (213-a); Composition and manner of operation of the Commission (213-b; tripartite); Application for establishment of representativeness (213-c); Procedure upon application and appeal (213-d); Re-assessment of the representativeness (213-e); and Publication of the decision (213-f). The Committee further notes that the mode of operation of the Commission is laid down by the Rules of Procedures of the Commission. *In this regard, the Committee requests the Government to provide a copy of the Rules of Procedures of the Commission with its next report.*

As concerns the application for establishment of representativeness, the Committee notes that section 213-c provides that the application to the Commission for establishment of representativeness to bargain collectively shall be filed by a trade union at a higher level. The Committee recalls that the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law. *The Committee requests the Government to indicate if section 213-c allows trade unions at enterprise level or industry level to apply for the establishment of representativeness.*

The Committee also notes that section 205 of Law on Labour Relations, as amended by law changing and amending Law on Labour Relations (*Official Gazette*, No. 130/2009) provides that General Collective Agreement in the private sector (area of the economy) and public sector shall apply directly and are mandatory for the employers and employees of the respective sectors. *The Committee requests the Government to clarify, in its next report, if the General Collective Agreement for economy and the General Collective Agreement for public sector can only be concluded by the most representative trade union organizations at the state level.*

*Comments made by the International Trade Union Confederation (ITUC) and the Federation of Trade Unions of Macedonia (CCM).* The Committee notes the comments made by the ITUC in a communication dated 24 August 2010. These comments concern problems already examined by the Committee. The Committee also notes the comments made by the CCM in a communication dated 2 October 2008 concerning the lack of social dialogue that occurred during the process of the labour law reform. *The Committee requests the Government to provide its observations thereon.*

## Togo

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)**

The Committee notes the Government's reply to the observations made by the International Trade Union Confederation (ITUC) dated 26 August 2009, and the observations of the ITUC dated 24 August 2010.

*Article 2 of the Convention. Export processing zones.* The Committee recalls that for a number of years it has been requesting the Government to recognize the trade union rights of workers in export processing zones. The Committee notes the Government's indication in its report that no provisions of the specific texts respecting processing zones exclude the application of the provisions of the Labour Code (Act No. 2006-010 of 13 December 2006) and that all workers in enterprises approved with the status of processing zones benefit from the guarantees afforded by the Labour Code. The Committee also notes with *interest* the Government's indication in its report that trade union organizations for workers in processing zones were created in 2009 and 2010 (the Trade Union Federation of Workers in Export Processing Zones (USYNTRAZOF), the National Union of Workers in Processing Zones of Togo (SYNATRAZOFT) and the Free Trade Union of Workers in Processing Zones of Togo (SYLITRAZOF)) and that, for the purposes of clarification, including the extent of trade union freedoms, the Government has decided, with the support of the International Labour Office, to undertake the revision of Act No. 89-14 of 18 September 1989 establishing the rules governing processing zones and subsequent texts. *The Committee requests the Government to indicate the progress achieved in relation to the revision of the Act, and to provide a copy of such instrument with its next report. It recalls the importance that it attaches to the value of the consultation of employers' and workers' organizations in the preparation and implementation of legislation affecting their interests.*

The Committee is raising other points in a request addressed directly to the Government.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1983)**

The Committee notes the Government's reply to the observations of 2006, 2008 and 2009 of the International Trade Union Confederation (ITUC). The Committee also notes the communication from the ITUC dated 24 August 2010.

*Article 1 of the Convention. Export processing zones. With regard to the difference in the protection against anti-union discrimination, alleged by the ITUC in its 2009 comments, between workers in export processing zones and other workers, the Committee refers to its comments on the application of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).*



*Article 4. Measures to encourage and promote the development of voluntary negotiation between employers' and workers' organizations.* In its previous observation, the Committee requested the Government to provide information on the exercise of collective bargaining in practice. The Committee notes that, in its comments dated 26 August 2009, the ITUC indicates in this respect that, while the right to collective bargaining exists, it is limited to a single agreement that has to be negotiated at the national level and obtain the approval of the Government representatives and of trade unions and employers. The ITUC adds that the agreement establishes the national wage standards for all employees in the formal sector. The Committee notes the Government's emphasis in its report that employers' and workers' organizations negotiate freely their conditions of work without any interference by the public authorities and that, in addition to the tripartite protocol agreement referred to by the ITUC, several collective agreements have been concluded in the various sectors. The Committee notes the Government's indication that certain of these agreements were renegotiated by the social partners in 2008 and 2009, in fields such as banking, insurance, telecommunications and the oil sector, and that collective agreements are also currently being negotiated in sectors which are not yet covered by them, such as lay and religious private teaching, private health institutions and the mining industry. The Committee also notes the Government's indication in its report that the renegotiation by the social partners of the inter-occupational collective agreement (dating from the 1970s), with the support of the United Nations Development Programme (UNDP) was also planned in July 2010. The Committee recalls that the right to negotiate freely with employers concerning conditions of work is an essential element of freedom of association and that the promotion of collective bargaining is applicable in both the private sector and in nationalized enterprises and public institutions. **The Committee requests the Government to provide information in its next report concerning:**

- **the number of collective agreements concluded, their coverage and the action taken as a result;**
- **the exercise of collective bargaining in practice (the number of workers and sectors covered, including the public service); and**
- **the measures taken by the authorities to promote collective bargaining (publications, seminars and other activities).**

**In particular, the Committee requests the Government to provide information with its next report on the renegotiation, with the support of the UNDP of the inter-occupational collective agreement dating from the 1970s.**

*Section 260 of the Labour Code.* In a previous direct request, the Committee noted that, under the terms of section 260 of the Labour Code, in the event of persistent disagreement between the parties to collective bargaining on certain points in a collective dispute, the Minister of Labour may submit the matter to an arbitration board following the failure of conciliation and that, according to the Government, this consists of purely judicial arbitration that is envisaged following the exhaustion of all other means. The Committee wishes to draw the Government's attention to the fact that section 260 of the Labour Code, which provides for arbitration imposed by the authorities, without the parties to the dispute requesting it, is contrary to the principle of the autonomy of the parties and the principle of free and voluntary negotiation envisaged in the Convention. **The Committee therefore requests the Government to take measures to amend the legislation with a view to providing that compulsory arbitration is only possible at the request of the two parties to the dispute or in the context of disputes relating to essential services in the strict sense of the term or, in the public service, in the case of public servants exercising authority in the name of the State.**

## Trinidad and Tobago

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1963)**

The Committee has been referring for a number of years to the need to amend various sections of the Industrial Relations Act (IRA), as amended, so as to: (i) enable a simple majority of the workers in a bargaining unit (excluding those workers not taking part in the vote) to call a strike (section 59(4)(a)); (ii) ensure that any recourse to the courts by the Ministry of Labour, or by one party only, to end a strike is limited to cases of strikes in essential services in the strict sense of the term (sections 61 and 65); (iii) ensure that prohibition of industrial action in essential services is limited to cases of strikes in essential services in the strict sense of the term (section 67); and (iv) repeal the prohibition of industrial action, under penalty of 18 months' imprisonment, for the teaching service and employees of the Central Bank (section 69).

The Committee had noted that the Government had indicated that the Ministry of Labour and Small and Micro-Enterprise Development has engaged in an exercise of strategic planning to achieve the goals of the country's "Developmental plan, vision 2020" which recognizes that decent work is central for the social and economic development of the country. In this regard, matters related to freedom of association and the right of workers to organize are accorded high priority. Diverse mechanisms and measures to promote and protect the freedom of association and the right to organize have been adopted, in particular: (i) integration of labour issues in policies and programmes at national, sectoral, enterprise and industry levels; (ii) review of labour legislation; and (iii) effective dialogue with social partners. With respect to the amendment of the IRA, the Government further indicated that the Standing Tripartite Committee on Labour Matters, which consults and advises on proposed labour legislation, has not been reconstituted since its term expired in

December 2006. The Committee notes that the Government indicates in its report that from and since the last report, there have not been any amendments to the IRA. However, the IRA has been included in the Ministry of Labour and Small and Micro Enterprise Development's Legislative Review Programme for the period 2010–11 and it is anticipated that amendments to the sections listed by the Committee will be addressed within this programme.

***In these circumstances, the Committee hopes that concrete measures will be taken in the near future to amend the legislation so as to bring it into conformity with the Convention. The Committee expects the Government to communicate progress on these issues in its next report and recalls that it can avail itself of the technical assistance of the Office.***

*ITUC comments.* The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 24 August 2010 which refer to issues already raised by the Committee, as well as: (i) acts of repression against demonstrators and the detention of a trade union leader; and (ii) the exclusion of the right to legally join trade unions to certain categories of workers under the law (e.g. domestic workers, drivers, gardeners). ***The Committee requests the Government to provide its observation thereon as well as on the comments submitted by ITUC in 2008.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)**

The Committee notes that the Government's report has not been received. The Committee hopes that the Government's report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous observation, which read as follows:

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee has been referring for a number of years to the need to amend section 24(3) of the Civil Service Act that affords a privileged position to already registered associations, without providing objective and pre-established criteria for determining the most representative association in the civil service. The Committee had noted that the Government indicates in its report that the Civil Service Act review has been in progress but is not yet complete. However, after consultation with the employers' and workers' representative organizations, the Government considers that the amendment of section 24(3) is not possible at this time because the presence of more than one association representing the seven existing classes in the civil service for the purposes of consultations and negotiation could place the employer in a difficult position. The Committee had recalled, however, that where there exists a trade union which enjoys preferential or exclusive bargaining rights, as in the current system, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria instead of simply giving priority to the one which was registered earlier in time, so as to avoid any opportunities for partiality or abuse. ***The Committee expresses the firm hope that the legislation will be modified in the near future, including section 24(3), so as to bring it into conformity with the principles of the Convention, and requests the Government to indicate any developments thereon.***

*Promotion of collective bargaining.* In its previous comments, the Committee referred to the need to amend section 34 of the Industrial Relations Act in order to ensure that, in cases in which no trade union represents the majority of workers, the minority unions can negotiate jointly a collective agreement applicable in the negotiating unit, or at least conclude a collective agreement on behalf of their own members. The Committee had noted that the Government reiterates that the Standing Tripartite Committee on Labour Matters (a consultative body) has not been reconstituted after the expiration of its term in December 2006. ***The Committee expresses the hope that concrete measures will be taken in the near future to amend the legislation so as to allow minority unions in the unit to bargain collectively, at least on behalf of their own members when there is no union that represents the majority of the workers. The Committee trusts that the Government will communicate progress on these issues in its next report and recalls that it can avail itself of the technical assistance of the Office.***

*ITUC comments.* The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 24 August 2010 indicating that: (i) although the law states that workers can form and join trade unions, in practice, everyone working in "essential services", which include domestic workers, drivers, gardeners and others, are not recognized as workers under the law and therefore cannot legally join trade unions; (ii) many unions had their collective bargaining blocked by employers' delaying tactics; and (iii) the state authorities have repeatedly refused to negotiate collective agreements with the public sector unions. ***The Committee requests the Government to provide its observation thereon.***

## **Tunisia**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1957)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee noted the observations concerning harassment and intimidation of members of the Tunisian Magistrates' Association (AMT). The Committee noted that the Government had not provided information concerning the situation of the AMT. It recalls that the standards set out in the Convention apply to magistrates, who should be able to establish organizations of their own choosing to further and defend the interests of their members. ***The Committee requests the Government to provide information on the manner in which it ensures that magistrates enjoy the guarantees afforded by the Convention.***

With regard to the observations concerning the recognition of a union of university teaching staff, the Government indicates that it has always given priority to dialogue and adds that certain unions covering higher education personnel have encountered internal organizational problems, and refers in this respect to the establishment of a General Federation of Higher Education and Scientific Research (FGESRS), which was challenged in the courts by first-level unions, which in turn founded an independent union. The Committee further notes that, in its reply in November 2008, the Government denies any discrimination

against teaching personnel on grounds of their trade union membership and activities. Finally, the Government indicated that the FGESRS had been constantly present in the delegation of the UGTT for the negotiation of its claims with the Government in 2007 and 2008. The Committee further noted the conclusions and recommendations of the Committee of Freedom of Association concerning a complaint presented by the above Federation (see Case No. 2592, 350th Report). **The Committee requests the Government to indicate in its next report any development relating to the determination of the representativeness of trade union organizations in the higher education sector.**

With regard to the refusal to recognize a new trade union confederation, namely the Tunisian General Confederation of Labour (CGTT), the Committee noted the Government's reply, in which it confined itself to recalling that the formalities of depositing the statutes of a trade union organization are carried out without the intervention of the Ministry of the Interior and accordingly rebuts the ITUC's comments. **The Committee trusts that, in so far as the formalities required by the law are fulfilled, there will be a favourable and expeditious response to the request for the registration of the CGTT.**

*Legislative changes.* The Committee recalled that for many years it has been making comments concerning provisions of the Labour Code that are not in conformity with the Convention. The Committee noted in this respect that, in its brief report, the Government indicated that the possibility is being examined of bringing the provisions upon which the Committee had commented into conformity. The Committee recalls that these provisions relate to the following points.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing. Section 242 of the Labour Code.* The Committee recalls that the minimum age for joining a trade union should be the same as the age for admission to employment as determined in the Labour Code (16 years in accordance with section 53 of the Labour Code) and that there should be no requirement for authorization by parents or guardians. **It requests the Government to amend section 242 of the Labour Code to that effect.**

*Article 3. Right of organizations to elect their representatives in full freedom. Section 251 of the Labour Code.* With regard to this provision, under which foreign nationals may have access to administrative or executive posts in a trade union provided that they have obtained the approval of the Secretary of State for Youth, Sport and Social Affairs, the Committee recalls that the imposition of such conditions on foreign nationals amounts to interference by the public authorities in the internal affairs of a trade union, which is inconsistent with Article 3 of the Convention. **The Committee requests the Government to amend section 251 of the Labour Code so as to ensure that workers' organizations have the right to elect their representatives in full freedom, including from among foreign workers, at least after a reasonable period of residence in the country.**

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes in full freedom. (a) Section 376bis(2) of the Labour Code.* The Committee has been recalling for many years that the requirement for a first-level union to obtain the approval of the central workers' confederation before declaring a strike, under the terms of section 376bis(2) of the Labour Code, is inconsistent with the Convention. The Committee emphasizes that a legislative provision which requires the prior approval of the trade union confederation for a strike is an impediment to the freedom of choice of first-level organizations to exercise the right to strike. Such a restriction could only be envisaged if it is included voluntarily in the statutes of the trade unions concerned, and not imposed by law. **The Committee requests the Government to repeal subsection 2 of section 376bis of the Labour Code so as to guarantee that workers' organizations, irrespective of their level, can organize their activities in full freedom with a view to furthering and defending the interests of their members, in accordance with Article 3 of the Convention.**

*(b) Section 376ter of the Labour Code.* **With regard to this provision, which requires the strike notification to provide an indication of the duration of the strike, the Committee requests the Government to amend section 376ter of the Labour Code so as to remove any legal requirement to specify the duration of a strike and to guarantee that workers' organizations can call a strike of unlimited duration if they so wish.**

*(c) Section 381ter of the Labour Code.* **With regard to essential services, the list of which is determined by decree under the terms of section 381ter of the Labour Code, the Committee requests the Government to indicate whether the decree in question has been adopted and, if so, to provide the list of essential services as determined.**

*(d) Sections 387 and 388 of the Labour Code.* In its previous observations, the Committee criticized the following provisions: (a) the imposition of the penalties established by section 388 of the Labour Code, under which any person who has participated in an unlawful strike is liable to a sentence of imprisonment of from three to eight months and a fine of from 100 to 500 dinars, depends on the assessment by the criminal court of the gravity of the offences concerned; (b) section 387 of the Labour Code, according to which any strike called in breach of the provisions on conciliation and mediation, notice and mandatory approval by the central organization (this point relating to section 376bis of the Labour Code is also the subject of comments by the Committee) shall be deemed unlawful; and (c) section 53 of the Penal Code, under which the courts can impose a lesser penalty than the minimum established in section 388, or commute a prison sentence to a fine. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and, therefore, measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. **The Committee requests the Government to amend sections 387–388 of the Labour Code taking into account the abovementioned principle.**

**Recalling that its comments have been made for many years, the Committee trusts that the Government's next report will indicate significant progress in bringing the Labour Code into conformity with the requirements of the Convention. It also recalls that the Government can request the Office's technical assistance on these matters.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

Finally, the Committee notes the comments of the ITUC, dated 24 August 2010, concerning the application of the Convention, in particular, serious allegations of anti-union attacks. The Committee recalls that freedom of association can only be exercised in conditions in which fundamental human rights are truly respected and guaranteed. **The Committee regrets that the Government has not responded to these allegations despite the seriousness and requests the Government to provide its observations in this respect.**

## Turkey

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1993)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, by the Confederation of Public Employees' Trade Unions (KESK) in a communication dated 28 August 2010 and by Education International (EI) in a communication dated 30 August 2010 and the Independent Confederation of Public Servants' Trade Unions (BASK) in a communication dated 11 October 2010. ***The Committee requests the Government to provide its observations thereon in its next report.***

The Committee notes the discussion that took place in the 2010 Conference Committee on the Application of Standards. It further notes that an ILO high-level bipartite mission visited the country in March 2010 pursuant to a request by the Conference Committee in 2009.

#### **Civil liberties**

The Committee notes the Government's reply to the comments previously made by the ITUC on the excessive force used by the police during public demonstrations. The Government indicates, in particular, that measures were put into effect in 2009 to prevent the use of excessive force by the police. Police officers responsible for the security of public marches and demonstrations began to receive training on the proportional use of force. About 17,000 police officers will be trained annually. The Government further indicates that, after the promulgation of May Day as Labour and Solidarity Day in 2008 and official holiday in 2009, May Day was celebrated in 2010 in Taksim square in Istanbul for the first time since its closure for meetings and demonstrations three decades ago. According to the Government, the demonstration was peaceful due to the constructive collaboration between trade unions and the security forces.

With regard to the 2007 ITUC allegation that trade unions must allow the police to attend their meetings and record the proceedings, the Government points out that, according to the Associations Act, the security forces are not authorized to enter trade union premises unless a court order is obtained on the grounds of the need to maintain public order and prevent the occurrence of criminal incidences. It further points out that a distinction between public meetings and meetings at trade union premises should be made and that any attendance at trade union public meetings by the police is entirely related to the need to maintain public order.

Regarding the setting on fire of the premises of Egitim-Sen's branch office, the Government indicates that the security forces and the fire brigades intervened on time, three suspects were arrested and one of them was sentenced to three years of imprisonment. No trade union member was harmed.

While taking due note of the information provided by the Government on the steps taken to avoid police violence and undue interference, the Committee observes with ***concern*** the allegations of important restrictions placed on freedom of speech and assembly of trade unionists, contained in the above-noted communications from the ITUC, KESK and EI. ***The Committee, like the Conference Committee on the Application of Standards, urges the Government to continue to take all the necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention. The Committee also urges the Government to review, in full consultation with the social partners, any legislation that might have been applied in practice in a manner contrary to this fundamental principle and to consider any necessary amendments or abrogation. It requests the Government to indicate in its next report all measures taken in this respect. The Committee also requests the Government to carry out an investigation on the allegations concerning all the cases of use of violence during police or other security force interventions and to provide information on the outcome with its next report.***

#### **Legislative issues**

The Committee recalls that for a number of years it has been commenting on several provisions of Act No. 2821 on trade unions, Act No. 2822 on collective labour agreements, strikes and lockouts and Act No. 4688 on public employees' trade unions.

The Committee notes the Government's indication that Law No. 5982 amending the Constitution of the Republic of Turkey, enacted by the Grand National Assembly on 7 May 2010, entered into force after being approved by the electorate in the referendum held on 12 September 2010. The Committee notes with ***interest*** that, pursuant to this Law, the following provisions of the Constitution were repealed:

- article 51(4) prohibiting membership in more than one trade union;
- article 54(3) providing for trade union liability for any material damage caused during a strike; and
- article 54(7) prohibiting "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction".

Regarding Act No. 4688 on public servants' trade unions, the Committee further notes the Government's explanation provided to the Conference Committee that the constitutional amendment would be followed by the relevant legislative amendments.

With regard to Acts Nos 2821 and 2822, the Committee notes the Government's indication that a draft Law on trade unions, amending both Acts, has been prepared by a "scientific committee" appointed by the Ministry in 2009. It further notes that this draft was communicated to the ILO High-level bipartite mission, as well as to the social partners in March 2010, in the framework of the Tripartite Consultation Board. The Committee notes that the provisions of the draft Law appear to address a number of the Committee's previous concerns. The Committee notes, in general, that the draft provisions concerning internal functioning of unions and their activities appear to be less detailed than corresponding provisions of Acts Nos 2821 and 2822, which previously gave rise to repeated interference by the authorities. Among other improvements, the Committee notes, in particular, that:

- the procedure for establishment of a trade union appears to be simplified (section 7);
- the notary requirement for becoming a trade union member is lifted (section 16);
- the establishment of workplace and occupation unions is allowed (section 3);
- a check-off facility is made available to all trade unions and the amount of trade union dues is to be determined by the organizations themselves (section 17);
- the citizenship requirement, as well as the requirement of being actively employed in the relevant branch of activity previously imposed on trade union founders, is abolished (section 6);
- the possibility for the Governor to appoint an observer at the general congress of a trade union is removed;
- the draft no longer provides for sanctions of imprisonment for violation of the legislation (section 35); and
- responsibility for suspending a strike lies with the court and not with the Council of Ministers (section 42).

The Committee notes, however, that the draft does not deal with all issues previously raised by the Committee and that no amendments to Act No. 4688 have been proposed further to those already considered by the Committee at its last session. ***It therefore once again draws the Government's attention to the need to amend its legislation so as to ensure compliance with the following Articles of the Convention.***

#### **Article 2 of the Convention**

- The need to ensure that self-employed workers, homeworkers and apprentices enjoy the right to organize. In this respect, the Committee notes that section 2 of the draft Law refers to the definition of "worker" provided for in the Labour Law (No. 4857), according to which, an "employee is a real person working under an employment contract" and recalls that section 18 of Act No. 3308 (Apprenticeship and vocational training) leads to the exclusion either explicitly or in practice of these categories of workers.
- The need to guarantee the right to organize to public employees, such as senior public employees, magistrates, civilian personnel in military institutions and prison guards (section 15 of Act No. 4688).
- The need to ensure that persons who have been unemployed for over one year or those retired can retain their trade union membership, subject only to the by-laws of the relevant trade union (section 18 of the draft Law on trade unions).

#### **Article 3. Election of representatives**

- The need to ensure that the decision regarding the suspension of a trade union officer's mandate in cases where he/she becomes a candidate in local or general elections and its termination in case of election belongs to the relevant trade union (sections 22(3) and 27(3) of the draft Law on trade unions).
- The need to repeal section 10(8) of Act No. 4688, which provides for the removal of union executive bodies in case of non-respect of requirements concerning meetings and decisions of general assemblies set out in the law.
- The need to repeal section 16 of Act No. 4688 providing for a mandatory termination of trade union membership and duties by reason of resignation and exclusion from the public services or transfer to another branch of activity, so as to ensure the right of organizations to elect their representatives in full freedom.
- The need to ensure that procedures and principles related to the acquisition and termination of membership are regulated by trade unions' internal regulations or by-laws and not by the authorities (section 18(10) of the draft Law on trade unions).

#### **Limitations on the right to strike**

- The need to ensure that cases in which strikes may be restricted or even prohibited are limited to those involving: (i) public servants exercising authority in the name of the State; and (ii) essential services in the strict sense of the term, namely those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. With regard to the public service, the Committee recalls that section 35 of Act No. 4688, which provides for the determination and settlement of disputes by the conciliation board, makes no mention of the circumstances in which strike action may be exercised in the public service. With regard to other services, the Committee notes that, on the one hand, the draft Law on trade unions proposes to repeal sections 29–34 of Act No. 2822, which impose important limitations on the right to strike, including banning strikes in specified categories of services and, on the other, it proposes to add section 29, pursuant to which strikes may be fully or partially,

permanently or temporarily prohibited by a ruling of the competent court if the strike is deemed contrary to public order or public health (section 42 of the draft Law on trade unions). The Committee considers that the term “public order” is too broad to fall within a strict definition of what may constitute an essential service.

- The need to amend section 52 of Act No. 2822, which provides for compulsory arbitration by the High Court of Arbitration at the request of one party in disputes concerning activities and establishments where strike is prohibited and where parties have failed to come to an agreement. The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is only acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, that is in the case of disputes in essential services in the strict sense of the term.
- The need to reduce the excessively long waiting period before a strike can be called (section 27 – referring to section 23 – and section 35 of Act No. 2822).
- The need to ensure that workers’ and employers’ associations are involved in the determination of minimum services and, in cases of disagreement, the question should be settled by an independent body (section 40 of Act No. 2822).
- The need to repeal severe limitations on picketing (section 48 of Act No. 2822).
- The need to ensure that no penal sanction could be imposed against a worker for having carried out a peaceful strike and that on no account measures of imprisonment could be imposed, except in cases where during a strike, violence against persons or property or other serious infringements of rights have been committed (sections 70, 71, 72, 73 (except for paragraph 3 repealed by the Constitutional Court), 77 and 79 of Act No. 2822, imposing heavy sanctions, including imprisonment for participating in unlawful strikes).

#### ***Supervision of organizations’ accounts (Associations Act No. 5253)***

The Committee had previously observed that section 35 of the Associations Act of 4 November 2004 provides that certain specific sections of this Act apply to trade unions, employers’ organizations, as well as federations and confederations, if there are no specific provisions in special laws concerning these organizations. In this respect, section 19 enables the Minister of Internal Affairs or the civil administration authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time, with 24 hours’ notice. Once again, the Committee recalls that the supervision of accounts should be limited to the obligation of submitting periodic financial reports or to cases where serious grounds exist for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention), or if there is a need to investigate a complaint by a certain percentage of the members of the employers’ or workers’ organizations; both the substance and the procedure of such verifications should be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 125). ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated to amend sections 19 and 35 of Act No. 5253 of 2004 so as to exclude workers’ and employers’ organizations from the scope of application of these provisions or ensure that verification of trade union accounts beyond the submission of periodic financial reports takes place only where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention) or in order to investigate a complaint by a certain percentage of members.***

While noting the Government’s indication that consultations with the social partners on the amendments to trade union legislation will continue until consensus is reached, the Committee ***regrets*** to observe that the Government has not provided any information with respect to the elaboration of the plan of action with clear time lines (requested by the Committee on the Application of Standards) that would allow the Committee to note significant progress in bringing the law and practice into full conformity with the provisions of the Convention. ***The Committee urges the Government to engage in ongoing assistance with the ILO in order to ensure the rapid adoption of the necessary amendments to Acts Nos 2821, 2822, 4688 and 5253 and expresses the hope that the final texts will take fully into account its comments above.***

#### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1952)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, by the Confederation of Public Employees’ Trade Unions (KESK) in communications dated 20 August 2009 and 28 August 2010, and by the Turkish Public Workers Labour Union (TÜRKIYE KAMU-SEN) in a communication dated 15 September 2009. ***The Committee requests the Government to provide its observations thereon in its next report.***

While the Committee notes the observations provided by the Government on the comments made by the ITUC in a communication dated 29 August 2008, it ***regrets*** that no observations have been provided by the Government on the comments previously made by KESK in a communication dated 1 September 2008, and by DISK in a communication dated 2 September 2008. ***The Committee once again requests the Government to provide its observations thereon.***

The Committee notes that the Government’s report on the application of the Convention has not been received.

The Committee notes that an ILO high-level bipartite mission visited the country in March 2010 pursuant to a request by the Conference Committee on the Application of Standards in 2009. The Committee further notes the draft Law on Trade Unions amending Acts Nos 2821 and 2822, prepared by a “scientific committee” appointed by the Ministry in 2009.

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* The Committee recalls that in its previous observation, while taking due note of legislative provisions introducing dissuasive sanctions against acts of anti-union discrimination (sections 118 and 135 of the Penal Code No. 5237, and section 18(2) of Act No. 4688), it observed that the ITUC referred to the widespread incidences of acts of anti-union discrimination in the public and private sectors, such as transfers of public employees who are trade union members or officers, interference in the activities of public sector trade unions by the Government as employer, and blacklisting and pressure to quit the union in the private sector. The Committee notes with *concern* that similar allegations were submitted by KESK in its communications. ***In view of the absence of the Government’s reply thereon or any other information provided by the Government in this respect, the Committee once again requests the Government to indicate in its next report the procedure that applies for the examination of complaints of anti-union discrimination in the public sector and to provide statistical data showing progress made in addressing effectively allegations of acts of anti-union discrimination and interference both in the public and private sectors (number of cases brought to the competent bodies, average duration of proceedings and remedies imposed). The Committee expresses the firm hope that the Government will take all necessary measures to ensure that the provisions of the Convention in this regard are applied both in law and in practice.***

The Committee had previously requested the Government to update the sanctions provided for under sections 59(2) (non-reinstatement of trade union officers) and 59(3) (anti-union discrimination at the time of recruitment) of Act No. 2821 and to ensure that the compensation afforded to a trade union officer who wishes to return to his/her post and is not reinstated for anti-union reasons has a dissuasive effect. The Committee notes in this respect that section 24 of the draft Law on Trade Unions would appear to address the issue previously raised by the Committee with regard to adequate compensation for acts of anti-union discrimination as it proposes to provide, in addition to the compensation provided for under the Labour Law (No. 4857), for a compensation of not less than the worker’s annual wage. With regard to the non-reinstatement of a trade union officer who wishes to return to his/her post, section 22 of the draft merely indicates that, while calculating the compensation, the employment period in the workplace shall be taken into consideration, as well as the wage and other rights enjoyed by the worker prior to termination. The Committee considers that compensation established solely pursuant to this criterion would not constitute a sufficiently dissuasive sanction against an employer. ***The Committee therefore requests the Government to review the draft Law on Trade Unions so as to further amend the relevant sections of Act No. 2821.***

*Article 4. Free and voluntary collective bargaining.* The Committee recalls that it has previously expressed the hope that the Government would take the necessary measures to amend section 12 of Act No. 2822 so as to ensure that, where no union meets the 50 per cent membership criterion, the existing unions at the workplace or enterprise may bargain at least on behalf of their own members regardless of whether they are affiliated to a confederation or not. The Committee notes that, while section 39 of the new draft Law on Trade Unions, amending section 12 of Act No. 2822, proposes to abolish the requirement of affiliation to a major confederation in order for a union to be able to engage in collective bargaining at the workplace level, the proposed amendment maintains the requirement that unions should represent the majority of workers in a workplace (50 per cent plus one) in order to enter into negotiations with the employer with a view to concluding a collective agreement. The Committee once again recalls that in such systems, if no single union covers more than 50 per cent of the workers, collective bargaining rights should be granted to the existing unions in the workplace, at least on behalf of their own members. ***The Committee therefore requests the Government to review the draft Law on Trade Unions so as to further amend section 12 of Act No. 2822.***

*Collective bargaining in the public service.* The Committee recalls that for a number of years it has been raising the issue of collective bargaining in the public service covered by the Public Servants Trade Unions Act, No. 4688. The Committee notes that Law No. 5982 amending the Constitution, enacted by the Grand National Assembly on 7 May 2010, entered into force after being approved by the electorate in the referendum held on 12 September 2010. The Committee notes with *satisfaction* that pursuant to this Law, the following provisions of the Constitution were amended:

- article 53 further amended so as to add the following paragraph: “public servants and other public employees have the right to conclude collective agreements. The parties may apply to Reconciliation Board if a dispute arises during the process of collective agreement. The decisions of the Reconciliation Board shall be final and have the force of a collective agreement. The scope of and the exceptions to the right of collective agreement, the persons to benefit from and the form, procedure and entry into force of collective agreement and the extension of the provisions of collective agreement, as well as the organization and operating procedures and principles of the Reconciliation Board and other matters shall be laid down in law”;
- article 53 so as to repeal paragraph 3 which restricted autonomy of the parties in collective bargaining; and
- article 128(2) so as to provide that “the qualifications of public servants and other public employees, procedures governing their appointments, duties and powers, their rights and responsibilities, salaries and allowances, and other manners related to their status shall be regulated by law, without prejudice to provisions on collective agreement concerning financial and social rights”.

Regarding Act No. 4688, the Committee notes the Government's explanation provided to the June 2010 Conference Committee that the constitutional amendment would be followed by the relevant legislative amendments. The Committee notes that the above-noted constitutional amendments appear to address some of the issues it had previously raised in respect of Act No. 4688 and, in particular, with regard to section 28, which limited the scope of negotiations to financial questions, and section 34, which allowed the possibility of modification of collective agreements signed by the parties, by the authorities.

*The Committee takes note of the Government's indication concerning the forthcoming legislative amendment of Act No. 4688 and trusts that this Act will be soon amended so as to ensure that public servants enjoy full collective bargaining rights and not just the right to hold "collective consultative talks" as currently established. The Committee trusts that the amended legislation would further address the following points it had previously raised: (i) if the legislation is to provide for the direct employer to participate in genuine negotiations with trade unions representing public servants not engaged in the administration of the State, the need to ensure that a significant role is left to collective bargaining between the parties; (ii) the need to guarantee clearly within the legislation that negotiations cover not only financial questions but also other conditions of employment; (iii) the need to clearly guarantee that the legislation does not give the authorities, in particular the Council of Ministers, the power to modify or reject collective agreements in the public sector; and (iv) the need for the parties to be able to hold full and meaningful negotiations over a period of time longer than that currently provided for (currently 15 days under section 34).*

The Committee further once again recalls that an additional issue to be overcome in order to allow for free and voluntary collective bargaining in the public sector is the recognition of the right to organize to a large number of categories of public employees not engaged in the administration of the State who are excluded from this right and, therefore, from the right to be represented in negotiations (as addressed in the comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)).

*The Committee urges the Government to engage in ongoing assistance with the ILO in order to ensure the rapid adoption of the necessary amendments to Acts Nos 2821, 2822 and 4688, and expresses the hope that the final texts will take fully into account its comments above. It requests the Government to transmit the relevant legislative texts or proposed drafts thereof with its next report.*

## Uganda

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that, according to the comments submitted by the International Trade Union Confederation (ITUC), collective bargaining in the public service sector is not allowed by the legislation. *The Committee requests the Government to take measures in order to recognize the right to collective bargaining to all public employees and public servants not engaged in the administration of the State, in accordance with Article 6 of the Convention.*

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee noted that section 7 of the Labour Unions Act (LUA) sets forth the lawful purposes for which trade union federations may be established. The said purposes include, inter alia: the formulation of policy relating to the proper management of labour unions and the general welfare of employees; the planning and administration of workers' education programmes; and consulting on all matters relating to labour union affairs. Noting that the lawful purposes delineated under section 7 of the LUA does not include collective bargaining, the Committee recalls that the right to collective bargaining should also be granted to federations and confederations of trade unions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 249). *In this connection, the Committee requests the Government to confirm whether the right of trade union federations to engage in collective bargaining is assured, in the LUA or in other legislation.*

*Compulsory arbitration.* The Committee noted that, under section 5(3) of the Labour Disputes (Arbitration and Settlement) Act of 2006, in cases where a labour dispute reported to a labour officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties to the dispute may refer the dispute to the Industrial Court. Section 27 of the Act, the Committee further notes, empowers the minister to refer disputes to the Industrial Court where one or both parties to a dispute refuse to comply with the recommendations of the report issued by a board of inquiry. In this connection, the Committee recalls that recourse to compulsory arbitration is acceptable only for; (1) workers in essential services, in the strict sense of the term; and (2) public employees engaged in the administration of the State. Otherwise, provisions that permit the authorities to impose compulsory arbitration, or allow one party unilaterally to submit a dispute to the authorities for arbitration, run counter to the principle of the voluntary negotiation of collective agreements enshrined in *Article 4* of the Convention. *The Committee requests the Government to amend the above legislation so as to bring it into conformity with the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*



## Ukraine

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1956)**

The Committee notes a communication dated 24 August 2010 from the International Trade Union Confederation (ITUC) submitting its comments on the application of the Convention and alleging, in particular, restrictions on the right to strike and a concerted campaign against the Federation of Trade Unions of Ukraine and its affiliates. The Committee takes note of the Government's observations thereon.

The Committee notes with *regret* that once again, the Government's report contains no information on the measures it had previously requested the Government to take so as to ensure that national legislation is in conformity with the following Articles of the Convention.

*Article 2 of the Convention.* The Committee had requested the Government to take the necessary measures to:

- ensure the right of judges to establish organizations of their own choosing to further and defend the interests of their members;
- amend section 87 of the Civil Code (2003), according to which, an organization acquires its rights of legal personality from the moment of its registration, so as to eliminate the contradiction with section 16 of the Trade Unions Act, as amended in June 2003, providing that a trade union acquires the rights of a legal person from the moment of the approval of its statute and that a legalizing authority confirms the status of a trade union and no longer has a discretionary power to refuse to legalize a trade union.

*Article 3.* The Committee had further requested the Government to take the necessary measures to:

- repeal section 31 of the Law on employers' organizations, which provides that the bodies of the State authority shall exercise control over economic activities of employers' organizations and their associations;
- amend section 19 of the Act on the procedure for settlement of collective labour disputes, which provides that a decision to call a strike has to be supported by a majority of the workers or two-thirds of the delegates of a conference;
- indicate categories of public servants whose right to strike is restricted or prohibited; and
- provide information on the practical application of article 293 of the Penal Code, according to which, organized group actions that seriously disturb public order, or significantly disrupt operations of public transport, any enterprise, institution or organization and active participation therein, are punishable by a fine of up to 50 minimum wages or imprisonment for a term of up to six months and, in particular, in respect of an industrial action.

*The Committee expresses the hope that the Government will take the necessary measures to address the issues raised by the Committee and that its next report will contain information on the progress achieved in this respect.*

The Committee recalls that in its previous observation it had requested the Government to provide its observations on the comments submitted by the Confederation of Free Trade Unions of Ukraine (KVPU) on a new draft Labour Code. The KVPU considered that such legislation, if adopted, would have a negative impact on trade union activities and referred in particular to the issue of representativity. The Committee notes that the National Forum of Trade Unions of Ukraine and the KVPU submitted the same in communications dated 30 April and 8 July 2010, respectively. The Committee notes the Government's reply thereon. According to the Government, by its decision of 20 May 2008, the Supreme Rada of Ukraine instructed the Committee on Labour and Social Policy to develop further the draft in cooperation with representatives of the Cabinet of the Ministers, All-Ukrainian trade unions and All-Ukrainian employers' organizations. To that end, a working group was established on 4 June 2008. The Government also points out that as rights of trade unions are governed by the Law on Trade Unions, the draft Labour Code does not reproduce provisions on that matter. With regard to the right of agricultural workers, the Government indicates that the draft Code would regulate labour relations, including of members of agricultural farms; Law on agricultural farms regulates rights of association and other specific issues. The Committee further notes the Government's indication in its latest report that a new version of the Code was drafted taking into account ILO advice, which had been discussed by the Committee on labour and social policy and the social partners. *The Committee requests the Government to provide the latest version of the draft Labour Code and encourages it to continue its cooperation with the Office in this respect and requests it to provide information on all progress made with regard to the adoption of the Labour Code.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1956)**

The Committee notes a communication dated 24 August 2010 from the International Trade Union Confederation (ITUC) submitting its comments on the application of the Convention and alleging, in particular, acts of anti-union discrimination and interference, as well as poor enforcement of court decisions examining cases of violations of trade union rights. The Committee also notes the Government's observations thereon.

The Committee had previously noted the Government's indication that work on drafting of the new Labour Code was ongoing and requested the Government to provide information on developments in this respect. The Committee notes that the National Forum of Trade Unions of Ukraine (NFTU) and the Confederation of Free Trade Unions of Ukraine (KVPU) submitted, in communications dated 30 April and 8 July 2010, respectively, that such legislation, if adopted, would have a negative impact on trade union rights and activities. The Committee notes, in particular, the concerns raised by the KVPU with regard to the issue of representativity and collective bargaining rights. The Committee notes the Government's reply thereon. According to the Government, by its decision of 20 May 2008, the Supreme Rada of Ukraine instructed the Committee on Labour and Social Policy to develop further the draft Labour Code in cooperation with representatives of the Cabinet of the Ministers, All-Ukrainian trade unions and All-Ukrainian employers' organizations. To that end, a working group was established on 4 June 2008. The Committee notes the Government's indication in its latest report, that a new version of the Code was drafted, taking into account the ILO's advice, which had been discussed by the Committee on Labour and Social Policy and the social partners. The Government further points out that the representativity thresholds were established by the unions after several consultations. ***The Committee requests the Government to provide the latest version of the draft Labour Code and encourages it to continue its cooperation with the social partners and the ILO in this respect and requests it to provide information on all progress made with regard to the adoption of the Labour Code.***

*Article 4 of the Convention.* The Committee notes that, in its communication, the ITUC refers to the 2004 Model Statutes and Internal Rules for public limited companies, which, according to the ITUC, stipulates that works councils have a mandate for collective bargaining; however, the legislation does not provide for the establishment of such councils. ***The Committee requests the Government to provide its observations thereon.***

## United Kingdom

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)***

The Committee takes note of the Government's report. It further notes the detailed comments and information provided by the Trades Union Congress (TUC) in a communication dated 28 October 2010, which raised a number of issues on the application of the Convention in law and in practice that have been the subject of the Committee's comments for many years now. ***The Committee requests the Government to reply to these comments in its next report.***

*Article 3 of the Convention. Right of workers' organizations to draw up their constitutions and rules without interference by the public authorities.* The Committee's previous comments concerned the right of trade unions to draw up their rules and formulate their programmes without interference from the authorities, particularly as regards the exclusion or expulsion of individuals on account of membership in an extremist political party with principles and policies wholly repugnant to the trade union. Following the judgment of the European Court of Human Rights (ECHR) reached in the case of *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (27 May 2007), which found that section 174 of the Trade Unions and Labour Relations (Consolidation) Act, 1992 (TULRA) violated Article 11 of the European Convention on Human Rights on freedom of association in that it did not strike a proper balance between the rights of individual members and those of the trade union, the Government had informed the Committee that relevant amendments contained in an Employment Bill were then before the Parliament.

The Committee had also noted the detailed comments made by the TUC which set out certain reservations in respect of the proposed amendment both as regards what it saw as a degree of legal uncertainty around its meaning and the perception of excessive complexity in the new legislation. The Committee takes due note of the detailed observations made by the Government in its latest report in reply to these concerns. In particular, the Government informs that section 19 of the Employment Act of 2008 has now amended section 174 of the 1992 Act and significantly extends the scope for trade unions to exclude and expel individuals on the grounds of their political party membership. The Government states that it attempted to balance competing human rights about freedom of belief and freedom of association in its drafting of these amendments. It therefore included safeguards concerning the essential elements of natural justice, due process and transparency which aim to ensure that: (a) membership of the political party concerned is contrary to a rule or objective of the union; (b) the union has taken the decision to exclude or expel in accordance with its rules; and (c) the union has followed fair procedures when taking that decision, and the individual does not lose his livelihood or suffer other exceptional hardship for loss of union membership. As regards this last point, the Government indicates that, since "closed shop" is already unlawful in the country, a loss of union membership is very unlikely to produce hardship on this scale. As regards the TUC allegation that the complexity would lead to unjustified and vexatious litigation, the Government states that there is no evidence to support that such mischievous litigation has been indulged in since the amendments came into force in April 2009. The Government adds in this respect that a compensatory award for unlawful exclusion would only apply where the trade union refused to admit or re-admit the individual and where membership of the political party is not contrary to a rule or objective of the trade union, whereas in the Government's understanding, the rules or objectives of British trade unions often specify that membership of certain political parties, or xenophobic or racist behaviours associated with such parties, are incompatible with union membership. The Government concludes that these amendments

do not breach the Convention and are necessary in a democratic society for the protection of the rights and freedom of others.

***The Committee requests the Government to reply to the further concerns expressed by the TUC in its latest comments and to provide any available information on the practical application of the amendments to section 174 of the TULRA.***

*Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the TULRA).* In its previous comments, the Committee had noted that according to the TUC, due to the decentralized nature of the industrial relations system, it was essential for workers to be able to take action against employers who are easily able to undermine union action by complex corporate structures, transferring work, or hiving off companies. The Committee generally raised the need to protect the right of workers to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute, and to participate in sympathy strikes provided the initial strike they are supporting is itself lawful. The Committee takes note of the Government's reiteration that it has no plans to change the law in this area. The Committee emphasizes that the globalization of the economy and the delocalization of work centres may have a severe impact on the right of workers' organizations to organize their activities in a manner as to defend effectively their members' interests should lawful industrial action be too restrictively defined. ***The Committee therefore recalls that workers should be able to participate in sympathy strikes, provided the initial strike they are supporting is lawful, and to take industrial action in relation to social and economic matters which affect them and requests the Government to review sections 223 and 224 of the TULRA, in full consultation with the social partners, and to provide further information in its next report on the progress made in ensuring respect for this principle.***

The Committee further recalls that, when reviewing the comments made by the British Airline Pilots' Association (BALPA), the International Transport Federation (ITF) and Unite the Union, the Committee had observed with serious concern the practical limitations on the effective exercise of the right to strike of the BALPA workers in the case at hand. The Committee observed that the omnipresent threat of an action for damages that could bankrupt the union, possible in the light of the *Viking* and *Laval* judgments issued by the European Court of Justice (ECJ), created a situation where the rights under the Convention could not be exercised. While noting the Government's statement that the impact of the ECJ judgments was limited, the Committee referred to the likelihood of such issues becoming more frequent within the current context of globalization, particularly in certain sectors of employment, like the airline sector and considered that the doctrine being articulated in these ECJ judgments was likely to have a significant restrictive effect on the exercise of the right to strike in practice in a manner contrary to the Convention.

In its latest report, the Government points out that, even if there were an international dimension to a United Kingdom trade dispute, it was far from clear that the industrial action involved would fail to meet the legitimacy and proportionality requirements laid down in the ECJ case law. In any event, the Government indicated that in so far as the proportionality tests might apply to United Kingdom industrial action, these tests were derived from EU treaties, to which the Government is obliged to give effect. The Government therefore considers that amendment of the TULRA would not have any impact on the proportionality tests set out in these judgments. As regards the threat of unlimited damages, the Government observes that it has not been proven that these ECJ judgments would have the effect of nullifying the limits on damages for unlawful industrial action that are set out in the TULRA, but even if they did, the Government maintains that it could not change this impact through any unilateral action on its part. The Government concludes that the effect of the ECJ judgments on United Kingdom industrial action has not been established as no United Kingdom court has decided a case in this area and, in any event, any effect would probably be limited to the small minority of disputes which have the necessary international dimension. For these reasons, the Government considers that it is not necessary to review the TULRA or take other national measures.

The Committee wishes once again to recall the ***serious concern*** it raised as to the circumstances surrounding the BALPA proposed industrial action, for which the courts granted an injunction on the basis of the *Viking* and *Laval* case law and where the company indicated that, should the work stoppage take place, it would claim damages estimated at £100 million per day. The Committee recalls in this regard that it has been raising the need to ensure fuller protection of the right of workers to exercise legitimate industrial action in practice and considers that adequate safeguards and immunities from civil liability are necessary to ensure respect for this fundamental right, which is an intrinsic corollary of the right to organize. While taking due note of the Government's observations in relation to its obligations under EU law, the Committee considers that protection of industrial action in the country within the context of the unknown impact of the ECJ judgments referred to by the Government (which gave rise to significant legal uncertainty in the BALPA case), could indeed be bolstered by ensuring effective limitations on actions for damages so that unions are not faced with threats of bankruptcy for carrying out legitimate industrial action. The Committee further considers that a full review of the issues at hand with the social partners to determine possible action to address the concerns raised would assist in demonstrating the importance attached to ensuring respect for this fundamental right. ***The Committee therefore once again requests the Government to review the TULRA, in full consultation with the workers' and employers' organizations concerned, with a view to ensuring that the protection of the right of workers to exercise legitimate industrial action in practice is fully effective, and to indicate any further measures taken in this regard.***

*Reinstatement of workers having participated in lawful industrial action.* In its previous comments, the Committee recalled that for the right to strike to be effectively guaranteed, the workers who stage a lawful strike should be able to return to their posts after the end of the industrial action. Making the return to work conditional on time limits and on the employer's consent constituted, in the Committee's view, obstacles to the effective exercise of this right, which constitutes an essential means for workers to promote and defend the interests of their members. The Committee therefore requested the Government to indicate any measures taken or contemplated with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action.

The Committee notes that the Government reiterates that those participating in lawfully organized, official industrial action are protected against dismissal for action which lasts 12 weeks or less. Dismissing a worker for taking industrial action during this period is considered to be automatically unfair. Virtually all industrial action in the United Kingdom lasts less than 12 weeks and therefore this protection extends to virtually all workers who stage official and lawfully organized strikes. In addition, regardless of the duration of the industrial action, an employer cannot dismiss a worker for taking industrial action if the employer has failed to take reasonable procedural steps to resolve the dispute with the trade union (i.e. agreed procedures for dispute resolution). The Government however maintains that it is not appropriate to support the view that an employer must never dismiss employees under any circumstances when they take protected industrial action. In any event, the sacking of strikers is very rare in the United Kingdom.

The Committee recalls the importance it attaches to the maintenance of the employment relationship as a normal legal consequence of the recognition of the right to strike (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 139). While provisions that enable employers to dismiss workers during or at the conclusion of an industrial action on the grounds of illegitimate or unlawful action may be in conformity with the provisions of the Convention, it considers that restricting the right to maintain the employment relationship to industrial action of twelve weeks or less places an arbitrary limit on the effective protection of the right to strike in a manner contrary to the Convention. ***The Committee therefore once again requests the Government to review the TULRA, in full consultation with workers' and employers' organizations concerned, with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action and to provide information on the steps taken in this regard.***

*Notice requirements for industrial action.* In its previous comments, the Committee had taken note of comments made by the TUC to the effect that the notice requirements for an industrial action to be protected by immunity were unjustifiably burdensome. The Committee notes from the Government's report that it held discussions with the TUC about these issues during the reporting period, but that no agreement was reached. ***The Committee requests the Government to continue to provide information on developments in this regard, as well as any relevant statistics or reports on the practical application and effect of these requirements.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1950)***

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) a communication dated 24 August 2010 and by the Trades Union Congress (TUC) in a communication dated 28 October 2010. ***The Committee requests the Government to provide its observations thereon.***

*Articles 1, 2 and 3 of the Convention. Protection against anti-union discrimination and acts of interference.* The Committee recalls that in its previous observation it had noted detailed information provided by the Government on the relevant legislative provisions protecting individuals from dismissal or other detriment in relation to their right to belong to a trade union, participate in trade union activities and use of its services. The Committee had further noted the allegations submitted by the TUC (addressed below) and requested the Government to provide additional information, including judicial decisions, on the protection provided against acts of anti-union discrimination, including those in which the employer's main purpose is not discriminatory, and against acts of interference.

The Committee notes that the Government reiterates the view it had previously expressed that there exists significant protection of the right of individuals to belong to a trade union, to participate in its activities and use its services, including the right not to be dismissed or suffer other detriment on these grounds. The Government once again refers to sections 145A, 146 and 152 of the Trade Union and Labour Relations (Consolidation) Act 1992, as strengthened by the Employment Relations Act 2004, which, among other things, made it unlawful for employers to offer inducements to workers not to belong to a trade union, not to participate in a union's activities at an appropriate time and not to use a union's services at an appropriate time. The Committee further notes the Government's indication that since the last reporting period there have been no significant judicial decisions in this area.

With regard to the specific points previously raised by the TUC, the Committee notes the following information provided by the Government:

- (i) With regard to the allegation that the above-noted protection applies only where the "sole or main purpose" of the employer's action or failure to act was to discriminate against the trade unionists in question or to discourage them from having their terms and conditions of employment set by collective bargaining, the Government indicates that,

in its view, it is extremely important that employers remain free to take the legitimate decisions they believe are needed to run their businesses effectively. The Government points out that, while such decisions would be illegitimate if they infringe Article 11 or other rights under the European Convention on Human Rights, nothing in the judgment of the European Court of Human Rights (ECHR) in the *Wilson et al. v. the United Kingdom* case was intended to or does prevent employers from taking decisions to reward particular employees more highly than others when the motivation for doing so is to reward such employees in the interests of the business. The Government therefore considers the use of a purpose test to be essential and points out that, under the 1992 Act, it is for the employer to show what his sole or main purpose was. In the Government's opinion, the use of a sole or main purpose test, coupled with a provision ensuring that the burden is on the employer to show what his sole or main purpose was, achieves the most satisfactory balance and is consistent with the judgment of the Court. The Government points out that Employment Tribunals are accustomed under a number of their current jurisdictions to determining what the employer's sole or main reason for, or purpose in, doing certain acts is. The Government is confident that tribunals can apply the test sensibly to distinguish between cases where offers are made for the purpose of achieving de-recognition of a union and cases where they are made for the purpose of retaining or rewarding valuable staff.

- (ii) With regard to the TUC's assertion that the rights provided for in section 145B of the 1992 Act are deficient because they are limited to situations where a trade union is recognized or is seeking recognition, but do not apply where a trade union has been de-recognized, the Government recalls that the *Wilson* case concerned the situation where offers were made to union members for the purpose of securing that their terms and conditions of employment would cease to be determined by collective agreement. The Government points out that, in the situation dealt with by the ECHR, the employer sought to induce trade union members to give up their existing right to have their terms determined by collective agreement; the employer was seeking to change the status quo and using inducements directed at union members to achieve his purpose. The Government further points out that section 145B is designed to address this situation and stresses that Schedule A1 to the 1992 Act contains a procedure by which a union can obtain recognition for the purpose of negotiations relating to pay, hours and holidays. The existence of this statutory procedure means that offers of the kind in question made to members of a union that is not recognized are ultimately ineffective in achieving their purpose since they cannot fetter the right of the union to request recognition and, if it is refused, to apply for a declaration of recognition under the Schedule. Nor can the making of such offers, even if accepted, affect the rights of union members under the Schedule to support their union's claim for recognition and vote in favour of it. The effect of paragraphs 156 and 161 of the Schedule is that employees and workers are protected against dismissal and other detrimental acts done by an employer on the ground, among others, that a worker acted with a view to obtaining recognition, indicated support for recognition or acted to secure bargaining arrangements under the Schedule. Furthermore, the Employment Relations Act 2004 amended the Schedule to provide for remedies against an employer or union if either of them does certain things during the period of a recognition ballot with a view to influencing the result of the ballot. These include the making of offers to a worker entitled to vote in return for his/her agreement to vote in a particular way (for example, against recognition) or to abstain from voting.
- (iii) With regards to the TUC's assertion that the right to complain about infringement of these rights is limited to individual workers and that trade unions cannot complain in their own right, the Government considers that the judgment of the ECHR does not require the creation of such a right. While the Government accepts that the Court held that the rights of the applicant unions had been infringed as well as the rights of the applicant members, it is of the opinion that the infringement of the rights of the applicant unions simply resulted from and was consequential upon the infringement of the rights of their members, rather than an infringement of a free-standing right of the unions. In the Government's view, it is not necessary to give trade unions a separate remedy in order for the law of the United Kingdom to be compatible with the judgment. The Government therefore considers it sufficient to confer the remedy for acts of the kind that the Court held to infringe Article 11 of the European Convention of Human Rights on those in relation to whom the acts complained of would be done, that is the members of trade unions.

The Committee recalls that it had also noted in its previous comments the TUC assertion that, where the incumbent trade union is non-independent, a request for de-recognition can only be made by an individual worker and not by an independent trade union; and that the independent trade union has no right of access to the workplace and no right to communicate with the workforce while de-recognition procedures are taking place, while the non-independent union has a statutory right to communicate with the workers during the de-recognition process. The Committee also notes that the ITUC refers to various unfair practices and anti-union tactics in the framework of the statutory recognition scheme. ***The Committee once again requests the Government to provide its observations thereon.***

The Committee notes with *satisfaction* that, in order to try to combat the practice of some employers and employment agencies of using "blacklists", the Employment Relations Act 1999 (Blacklists) Regulations 2010 were introduced by the Government and came into force on 2 March 2010. ***The Committee requests the Government to provide in its next report any relevant information on the application of the Regulations in practice.***

*Shipping sector.* The Committee had previously requested the Government to provide its observations on the TUC's allegation that contracts of employment had been found to expressly forbid individuals from contacting a

recognized trade union so as to favour the conclusion of “workforce agreements” with workers’ representatives rather than collective agreements with trade unions, thereby lowering the terms and conditions of employment in the shipping sector. The Committee notes the Government’s indication that it enforces the issues relating to employment contracts in the shipping sector through the Maritime and Coastguard Agency (MCA), entitled to examine contracts of employment. The Government indicates that, in conjunction with trade unions in the shipping sector, it has acted to ensure that the MCA surveyors can readily identify clauses which prevent workers from exercising their rights under the Convention. A training course was undertaken in conjunction with NUMAST (now Nautilus International) to help MCA surveyors identify any illegal elements in contracts of employment including evidence of terms which expressly forbid individuals from contacting a recognized trade union. Section 3.3.3 of MCA Operations Advice Note number OAN 378 also addresses this issue. The Government indicates that responsible officials are fully aware of the issue and the appropriate course of action when a violation is identified. It therefore considers that no legislative action needs to be taken at this time. ***The Committee requests the Government to indicate in its next report the number of violations identified within the reporting period and to specify the sanctions applied against the persons responsible for such violations.***

*Article 4. Statutory recognition procedure.* The Committee had previously requested the Government to indicate the measures taken or envisaged to review, in consultation with the social partners, the Trade Union and Labour Relations Act (TULRA), so as to ensure that the provisions on trade union recognition for collective bargaining purposes do not prevent trade unions in workplaces where no union meets the percentage requirements for recognition (40 per cent) from engaging in collective bargaining on behalf of their own members on a voluntary basis. The Committee notes the Government’s indication that the vast majority of collective bargaining in the United Kingdom is undertaken by voluntary agreement between the parties. The Government believes that voluntary collective bargaining, which by definition is acceptable to both parties and shaped by them, is preferable to arrangements imposed by law. The statutory procedure was established as a fall-back to deal with those situations where voluntary agreement cannot be reached and was designed to encourage the voluntary resolution of questions which arise during the recognition process. The Government reiterates that, under the statutory procedure, trade unions may seek recognition for collective bargaining purposes on behalf of workers in a particular bargaining unit. A bargaining unit may or may not be a workplace (and all the workers therein), but it may also be defined in other ways, such as all the workers of a particular type across some or all of the employer’s workplaces, or just some workers in one occupational category at one workplace. A trade union specifies the bargaining unit for which it seeks recognition when making an application to the Central Arbitration Committee. The Government points out that, under the statutory procedure, two or more trade unions may make a joint application for recognition. Thus, the statutory procedure in effect encourages minority trade unions, where they exist, to collaborate with each other, enabling them to obtain recognition through combination, where none would otherwise achieve it individually. The Government points out that, where no union meets the 40 per cent statutory requirement, unions are still free to seek and reach a voluntary recognition agreement with an employer in the usual way. The Government explains that the current recognition procedure has become an established feature of the United Kingdom’s industrial relations system and does not need to be reviewed.

*Collective bargaining in small businesses.* The Committee’s previous comments concerned the TUC’s indication that businesses employing less than 21 workers are excluded from the statutory procedure for union recognition, the effect of which has been to deny employees of small businesses the right to be represented by a trade union (Schedule 1A, paragraph 7(1), of TULRA). The Committee had noted the Government’s opinion that it would be inappropriate to subject very small organizations to the detailed legal requirements of the statutory recognition procedure. It further noted the Government’s indication that trade unions were recognized by some very small employers through voluntary agreement and that such recognized trade unions could operate very effectively in micro-businesses. The Committee had noted the TUC’s proposal to have a simplified statutory procedure for small businesses which would reconcile the fundamental right of workers with the circumstances of the business and invited the Government to examine this matter with the social partners. It had further requested the Government to furnish statistical data on the number and coverage of collective agreements, particularly in small businesses. The Committee notes the Government’s explanation that the statutory recognition procedure is not the only method whereby collective bargaining can be established in the United Kingdom: the dominant method being for bargaining arrangements to be established voluntarily and by agreement between the parties and that there are no legal provisions or other measures to discourage smaller businesses from entering such voluntary agreements. It is therefore a matter for trade unions to use the freedom they possess to organize a workforce and persuade employers to recognize them.

With regard to the number and coverage of collective agreements, the Government points out that, historically, the incidence of union membership and collective bargaining in very small organizations is relatively low. It further points out that, as collective agreements and collective bargaining arrangements are not registered with a public authority, there are no reliable figures on the number of such agreements, though the expectation is that the figure would run into very many thousands. The extent of collective bargaining is measured by periodic surveys (such as the large-scale Workplace Employment Relations Survey – WERS), or by the more regular household survey (principally, the Labour Force Survey – the LFS). The last WERS was undertaken in 2004 and another is planned to take place in 2011. The latest LFS data for 2009 indicates that 32.7 per cent of all employees, and 73.7 per cent of trade union members, had their pay affected by collective agreements. Workplaces with more than 50 employees had higher collective bargaining coverage at 45.4 per cent than those workplaces with fewer than 50 employees (19 per cent). The Government acknowledges that recognized

trade unions can operate very effectively in micro-businesses. The Government reiterates that its Strategic Partnership Fund helped finance an innovative research project with three trade unions with membership in small organizations – Amicus (GPMU section), the Knitwear, Footwear and Allied Trade Union and Community – to identify the positive effects recognized trade unions can bring to small enterprises. This work was completed in April 2007. The report can be used by trade unions and employers to better understand the role of trade unions in very small organizations. This report is the property of the unions concerned and is therefore disseminated by them. Finally, the Government considers that recognition arrangements in the United Kingdom are in full compliance with the provisions of the Convention. It therefore has no plans to review the statutory recognition procedure with regard to its application in small business.

## Bermuda

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Protection against employer interference.* In its previous comments, the Committee requested the Government to indicate any measures taken or envisaged to further protect against any possible employer intimidation or interference in respect of union certification or decertification. **The Committee requests the Government to provide information, in its next report, in this regard and to consider other ways of ensuring protection against acts of interference.**

*Coverage of management personnel.* In its previous comments, the Committee requested the Government to indicate any measures taken or envisaged to include management personnel within the scope of the Trade Union Act so as to guarantee them the rights established by the Convention. The Government had indicated that the Labour Advisory Council is in the process of finalizing a process of consideration of specific amendments to the Act which will help to protect employees generally and, specifically, will include management personnel within the scope of the Trade Union Act. **The Committee requests the Government to transmit, with its next report, the amended Trade Union Act.**

*The Committee hoped that it would soon be able to note progress on these two issues.*

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Jersey

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**

The Committee notes that the Government indicates in its report that consultation on a number of the issues raised by the Committee in its previous observation is pending and a review of the Employment Relation Law (ERL) and its codes of practice will be undertaken as soon as resources allow it. **The Committee hopes that the Government will be in a position to indicate in its next report progress made with regard to reviewing the provisions of the ERL and the accompanying draft codes of practice and trusts that in this process due account will be taken of its previous comments concerning the ERL and its codes of practice, which read as follows.**

*Article 3 of the Convention. Right of organizations to organize their activities and formulate their programmes.* The Committee had noted that under article 19 of the ERL, a strike is immune from tort only if it takes place in the framework of an “employment dispute”; according to article 20(3) of the ERL, immunity is lost if the conduct of a trade union does not conform to the definition of “reasonable conduct” when done in contemplation or furtherance of a dispute; the definition of “reasonable conduct” is found in code 2 which provides that it would be unreasonable conduct for a union to call upon employees to take part in secondary action. The Committee had recalled that a general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action where the initial strike they are supporting is itself lawful (General Survey of 1994 on freedom of association and collective bargaining, paragraph 168). The Committee also noted that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement and that workers' organizations should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by members and on workers in general, in particular as regards employment, social protection and the standard of living. **The Committee therefore requests the Government to indicate in its next report the measures taken or contemplated to ensure that secondary action and social and economic protest action are protected under the law.**

The Committee had furthermore noted that code 2 provides that there is no immunity from tort for picketing or calling upon employees to picket a place of work other than that of the employees, as well as for interference (e.g. because of noise or crowds) in the rights of neighbouring properties (i.e. private nuisance) and for trespassing on private property. The Committee is of the view that picketing in support of secondary action should be possible and that restrictions on strike pickets should be limited to cases where the action ceases to be peaceful (General Survey, op. cit., paragraph 174). **The Committee therefore requests the Government to indicate the measures taken or contemplated to ensure that pickets in support of secondary action is possible and that limitations on strike pickets apply only where the action ceases to be peaceful.**

The Committee had noted that an “employment dispute” can be according to article 1(1) of the ERL, either individual or collective; a collective employment dispute is defined in article 5 of the ERL as one taking place where a

collective agreement already exists. According to Unite, this provision allows the employer to deny union immunity for industrial action simply by terminating the collective agreement; furthermore, in case of a recognition dispute where no collective agreement exists, the conditions allowing for strikes to be staged are met under article 5 of the ERL only where the employer employs more than 21 employees; thus, according to comments made by Unite, industrial action to further a recognition claim in small establishments is not immune from action in tort. ***The Committee requests the Government to provide its observations on the comments made by Unite and to indicate in its next report the measures taken to ensure that the conditions for protected industrial action are not such as to render such action virtually impossible, especially in relation to recognition disputes in small establishments.***

The Committee had observed that articles 22 and 24 of the ERL provide that in the absence of the parties' consent to the terms of a binding award, the Jersey Employment Tribunal (JET) can issue a declaration which is de facto and de jure integrated in individual contracts of employment and is therefore tantamount to binding arbitration. Code 3 contains similar provisions. The Committee had recalled that compulsory arbitration seriously limits the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and to formulate their programmes and is not compatible with *Article 3* of Convention No. 87 (General Survey, op. cit., paragraph 153). ***The Committee requests the Government to indicate the measures taken or contemplated to ensure that compulsory arbitration is only possible in the case of essential services in the strict sense of the term, public servants exercising authority in the name of the State or where both parties agree to binding arbitration.***

The Committee had noted that code 2 provides that "a small island community such as Jersey may have services which are considered essential to society which are different to those in the mainland United Kingdom, for example, a stoppage in transport links services would cause greater difficulties and inconveniences that are detrimental to the population". The Committee had recalled that transportation is not an essential service in the strict sense of the term where strikes may be prohibited; however, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, the authorities could establish a system of negotiated minimum service in services which are of public utility rather than impose an outright ban on strikes (General Survey, op. cit., paragraph 160). ***The Committee therefore requests the Government to indicate the measures taken or contemplated to amend code 2 so as to ensure that transportation is not included among essential services, taking account of the possibility of introducing a negotiated minimum service.***

The Committee had noted that article 3 of the ERL and code 2 contain a requirement of notice prior to industrial action; the notice should contain such information as to help the employer make plans to enable it to advise its customers of the possibility of disruption, so that they can make alternative arrangements or to take steps to ensure the health and safety of the employees, or the public, or to safeguard equipment which might otherwise suffer damage from being shut down or left without supervision. While noting that the obligation to give prior notice before calling a strike is in line with the Convention, the Committee also noted the comments by Unite according to which in one English case, an injunction was granted by the court to stop an industrial action because the union had failed to identify the specific site where each lecturer on strike had their desk, despite the fact that the union had specified the exact number of lecturers, the grade of every lecturer, and the department or sub-department in which they worked; Unite emphasized that there is no explicit provision to ensure that there is no obligation to name employees who participate in a strike and to confine the information to be provided only to that which is in the union's possession. ***The Committee requests the Government to provide its observations on the comments made by Unite and to indicate any judicial decisions relevant to the application by the courts of articles 3 and 20(2) of the ERL as well as code 3.***

The Committee finally recalls the conclusions and recommendations reached on the ERL and its accompanying codes by the Committee on Freedom of Association in Case No. 2473 (349th Report, paragraphs 261–278).

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**

The Committee notes from the Government's report that the Employment (Amendment No. 4) (Jersey) Law came into force on 30 June 2009. The Committee further notes that in respect of the other comments made by the Committee in its last observation, the authorities indicate that the review of the employment relations legislation, including the Employment Relation Law (ERL) and its codes of practice, has been delayed due to the global economic downturn and the need to introduce new legislation to give statutory protection to workers in redundancy and insolvency situation. The Committee also notes the conclusions and recommendations reached on the ERL and its accompanying codes by the Committee on Freedom of Association in Case No. 2473 (349th Report, paragraphs 261–278) concerning notably the protection against acts of interference and the promotion of collective bargaining.

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* In its previous observation, the Committee had noted from the Government's report that the Employment (Jersey) Law, 2003 (EL), provides that a dismissal is automatically unfair, from day one of employment, where an employee claims to have been dismissed on grounds relating to: being or proposing to become a trade union member; taking part in, or proposing to take part in, trade union activities at an appropriate time; not being a trade union member, or refusing to become (or remain) a member; and selection for redundancy on grounds relating to union membership or activities. In this respect, the Committee notes with **interest** that the Employment (Amendment No. 4) (Jersey) Law, 2009, has amended the ERL so that under articles 77B and 77C, a tribunal can now issue an order of reinstatement or re-engagement in cases of unfair dismissals (i.e. re-



employment under terms which, as far as possible, are as favourable as if the employee had been reinstated, unless the employee was partly to blame for the dismissal).

In its previous comments, the Committee had also noted, however, that according to articles 77B and 77C, the Tribunal does not have the power to compensate an employee for financial losses such as arrears of pay for the period between the dismissal and the order for reinstatement or re-employment. ***In these circumstances, the Committee requests the Government to take the necessary measures in order to guarantee, in cases of anti-union dismissals: (1) the payment of arrears of pay, for the period between the dismissal and the order for reinstatement or re-employment; and (2) a compensation for the prejudice suffered.***

***Articles 2 and 4. Protection against acts of interference and promotion of collective bargaining.*** In its previous comments, the Committee had noted from the Government's report that there are currently no specific provisions protecting against acts of interference in the EL or the ERL, but that it was the Minister's intention to introduce via the ERL a positive duty to prohibit employers from "buying out" employees' rights in respect of union activities by inducing employees not to join a workers' organization, or to relinquish membership of such an organization. The Committee notes the Government's indication that the authorities are still working on those provisions and intend that the relevant provision will have been prepared in advance of the next reporting period. ***The Committee requests the Government to provide information on any development in this regard.***

***Draft code 1 on the recognition of trade unions (code 1).*** In this regard, the Committee had noted that according to the comments made by the Unite trade union (Unite), code 1 sets out two criteria which it regards as key to recognition: (i) the bargaining unit; and (ii) the wishes of the employees.

***(i) The bargaining unit:*** So far as the bargaining unit is concerned, the code states that, where no agreement has been reached, this criterion will only be taken to have been met if there are no employees in the bargaining unit in respect of whom the employer already recognizes one or more trade unions for the purposes of collective bargaining. According to Unite, such provisions enable the employer to recognize any union in respect of any employees even if the union is not representative, thereby preventing a representative union from accessing the statutory recognition procedure; moreover, the code does not specify that the union so recognized should be independent, which could lead to acts of interference by employers.

In its previous report, the Committee had further noted that the abovementioned criteria concerning the establishment and recognition of a bargaining unit also runs contrary to the principle in the ERL and the codes themselves that unions should be representative of workers. For example, article 1 of the ERL prevents agreements from qualifying as "collective agreements" within the law, unless concluded between an employer and a trade union representing a "substantial proportion of the employees engaged in the trade or industry concerned". The Committee recalls that the right to collective bargaining of the most representative organization of the bargaining unit should be guaranteed. ***The Committee hopes that code 1 will be amended in this connection.***

***(ii) The wishes of the employees:*** In its previous report, the Committee had noted that according to code 1, the second criteria that is key for trade union recognition is the wish of the majority of employees, and therefore an employer should only be required to recognize a trade union where it can be clearly demonstrated that the majority of the employees within the bargaining unit want the trade union to be recognized by the employer. The Committee had recalled that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all unions in a unit, at least on behalf of their own members. ***The Committee once again requests the Government to provide in its next report information on the measures taken or contemplated so as to ensure that where no union represents the majority of employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members.***

***The Committee hopes that the Government will be in a position to indicate in its next report progress made with regard to reviewing the provisions of the ERL and the accompanying draft codes of practice so as to ensure that trade unions enjoy the full guarantee of the rights available under the Convention.***

## Uruguay

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1954)**

The Committee takes note of the Government's detailed reply to the comments of 2008 by the International Trade Union Confederation (ITUC). It also notes the comments of 30 August 2010 by the International Organization of Employers (IOE), the Uruguayan Chamber of Industries (CIU) and the National Chamber of Commerce and Services of Uruguay (CNCS), objecting in particular to certain provisions of Act No. 18566 on collective bargaining.

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2699, in which the complainants alleged that the abovementioned Act was inconsistent with the Convention.

***Article 4 of the Convention.*** In its previous comments the Committee noted that, according to the Government, the national legislation lacks a single comprehensive text regulating collective bargaining and, consequently, part of the

doctrine holds that there are two models of collective bargaining in the country: the typical model and the model that has grown out of the convening of wages councils. The Committee pointed out in this connection that decisions fixing minimum wages may be taken by tripartite bodies, but emphasized that according to the principles of free and voluntary collective bargaining between parties, laid down in *Article 4* of the Convention, other conditions of work should be set by workers' and employers' organizations without interference from public authorities.

The Committee notes that in its report the Government states that with the adoption of Act No. 18566 of September 2009, the limitation mentioned in its last report has been resolved and the promotion requirement set in the Convention has now been met.

The Committee notes in this connection that the Committee on Freedom of Association drew up the following conclusions regarding Act No. 18566 [see 356th Report, Case No. 2699, para. 1389]:

- I. with respect to the exchange of information necessary to allow the normal conduct of the process of collective bargaining and that in the case of confidential information, its communication carries the implicit obligation of secrecy, and breach thereof would give rise to civil liability of those who are in breach (article 4), the Committee considers that all the parties to the negotiation, whether or not they have legal personality, must be liable for any breaches of the right to secrecy of the information which they receive in the framework of collective bargaining. The Committee requests the Government to ensure that this principle is respected;
- II. as regards the composition of the Higher Tripartite Council (article 8), the Committee considers that an equal number of members could be taken into account for each of the three sectors, and also the appointment of an independent chairperson, preferably nominated by the workers' and employers' organizations jointly, who could break the deadlock in the event of a vote. The Committee requests the Government to hold discussions with the social partners on the modification of the law so as to arrive at a negotiated solution to the number of members of the Council;
- III. with respect to the powers of the Higher Tripartite Council and in particular considering and pronouncing on questions related to the tripartite and bipartite bargaining levels (article 10, paragraph (d)), the Committee has emphasized on many occasions that "the determination of the bargaining level is essentially a matter to be left to the discretion of the parties". [See *Digest of the decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, para. 989.] The Committee requests the Government to take the necessary measures including the amendment of existing legislation to ensure that the bargaining level is established by the parties and is not subject to voting in a tripartite body;
- IV. as regards the possibility of wages councils establishing conditions of work for each case to be agreed by the employers' and workers' delegates in the respective wage group (article 12), the Committee recalls, firstly, that under ILO standards, the fixing of minimum wages may be subject to decisions by tripartite bodies. On the other hand, recalling that it is up to the legislative authority to determine the legal minimum standards for conditions of work and that Article 4 of Convention No. 98 seeks to promote bipartite bargaining to fix conditions of work, the Committee hopes that in application of those principles, any collective agreement on fixing of conditions of employment will be the result of an agreement between the parties, as the article in question appears to envisage;

The Committee notes in this connection the Government's statement in its report that the competence of the wages councils is aligned with the provisions of section 83 of Act No. 16002 of 25 November 1988, covering conditions of work, but extends to the latter only where there is agreement between the social partners, which means that a tripartite body may not vote on matters pertaining to conditions of work, but does have a vote when it comes to determining minimum wages by category.

The conclusions of the committee continue as follows:

- V. with respect to the subject of bipartite collective bargaining and, in particular, that in company collective bargaining where there is no workers' organization, bargaining authority should pass to the representative higher level organization (article 14, last sentence), the Committee observes that the complainant organizations consider that the absence of a trade union does not mean the absence of collective relations in the company. The Committee considers, on the one hand, that bargaining with the most representative higher trade union level organization should only take place if it had a number of members in the company in accordance with the national legislation of each country. The Committee recalls, on the other hand, that the Collective Agreements Recommendation, 1951 (No. 91), gives pre-eminence to workers' organizations as one of the parties to collective bargaining, and refers to representatives of non-organized workers only in the case of absence of such organizations. In these circumstances, the Committee requests the Government to take the necessary measures to ensure that future legislation takes these principles fully into account;
- VI. as regards the effects of the collective agreement and, in particular, that the collective agreement by sector of activity concluded by the most representative organizations is of mandatory application to all employers and workers at the respective bargaining level once it has been registered and published by the Executive Power (article 16), the Committee, taking into account the concern expressed by the complainant organizations, requests the Government to ensure that the process of registration and publication of the collective agreement only involves checks on compliance with the legal minima and questions of form, such as, for example, the determination of the parties and the beneficiaries of the agreement with sufficient precision and the duration of the agreement;
- VII. as regards the duration of collective agreements and, in particular, the maintenance in force of all the clauses of the agreement which has expired until a new agreement replaces it, unless the parties have agreed otherwise (article 17, second paragraph), the Committee recalls that the duration of collective agreements is primarily a matter for the parties involved, but if government action is being considered any legislation should reflect tripartite agreement [see *Digest, op.cit.*, para. 1047]. In these circumstances, taking into account that the complainant organizations have expressed disagreement with the whole idea of automatic continuing effect of collective agreements, the Committee invites the Government to discuss with the social partners on amendments to the legislation in order to find a solution acceptable to both parties.

The Committee notes the Government's statement that contacts and consultations are being sought with workers' and employers' organizations with a view to examining the recommendations made by the Committee on Freedom of Association regarding the law and that a tripartite body is to meet shortly to deal with the recommendations in depth. *The*

*Committee expresses the firm hope that, in consultation with the social partners, the legislation will be brought fully into conformity with the Convention, and requests the Government to provide any information on this matter in its next report. The Committee underlines in this regard, the information provided by the Government regarding the beginning of the tripartite discussions.*

*Public sector.* In its previous observation the Committee took note of the information supplied by the Government on the preparation of a bill on collective bargaining in the public sector and asked the Government to report on progress towards its enactment. The Committee notes with *satisfaction* that, according to the Government, Act No. 18508 on collective bargaining in the context of industrial relations in the public sector has been adopted and is in keeping with the Framework Agreement on collective bargaining in the public sector concluded on 22 July 2005 by the Executive and the Inter-Union Assembly of Workers – National Convention of Workers (PIT–CNT).

## Uzbekistan

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1992)

*Article 4 of the Convention. Collective bargaining.* The Committee recalls that it had previously requested the Government to amend certain provisions of the Labour Code, in particular sections 21(1), 23(1), 31, 35, 36, 48, 49 and 59 so as to ensure that the legislation makes it clear that, only in the absence of trade unions at the enterprise, branch or territory, the authorization to bargain collectively can be conferred to other representative bodies elected by workers. The Committee notes with *regret* that in its report, the Government provides no indication on measures taken or envisaged in this respect. The Committee once again recalls that direct negotiation between the undertaking and its employees, bypassing sufficiently representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. *The Committee therefore once again requests the Government to amend the abovementioned sections so as to ensure that it is clear that only in the event where there are no trade unions at the enterprise, branch or the territory, an authorization to bargain collectively can be conferred to other representative bodies. The Committee requests the Government to indicate measures taken or envisaged in this respect.*

The Committee had previously requested the Government to provide the relevant legislative texts establishing the procedure for settlement of collective labour disputes, as referred to in sections 33 and 281 of the Labour Code. *Noting that the Government provides no information in this regard, the Committee reiterates its previous request.*

*Articles 5 and 6.* In its previous comments, the Committee had requested the Government to provide detailed information on trade union and collective bargaining rights of public servants and to list the categories of workers excluded from the application of the Convention. The Committee notes with *regret* that the Government provides no specific information in this regard and reiterates instead, as it did in its previous report that the application of Convention does not extend to public servants and shall in no way be interpreted as depriving them of their rights or status. The Committee recalls that the only exceptions that may be allowed to the guarantees laid down in the Convention concern armed forces, police and public servants who are engaged in the administration of the State. The Committee recalls that while *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages. *The Committee therefore once again requests the Government to provide detailed information on trade union and collective bargaining rights of public servants and to list the categories of workers excluded from the application of the Convention and therefore not enjoying the rights enshrined therein.*

## Bolivarian Republic of Venezuela

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** (ratification: 1982)

The Committee notes the comments of the International Trade Union Confederation (ITUC) of 24 August 2010, the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), dated 31 August 2010, the Confederation of Workers of Venezuela (CTV), dated 3 June 2010, and the International Organisation of Employers (IOE), dated 8 November 2010 (the Government replied to the latter comments a few days later). The Committee also notes the comments of the Single National Union of Public Employees of the Venezuelan Corporation of Guayana (SUNEP–CVG), dated 10 November 2009, and of the Independent Trade Union Alliance (ASI), dated 31 August 2010. The Committee notes the conclusions of the Committee on Freedom of Association in the cases presented by national and international organizations of workers (Cases Nos 2422 and 2674) and employers (Case No. 2254) and observes that three more cases are currently under examination (Cases Nos 2711, 2727 and 2736). The Committee observes that Cases Nos 2254 and 2727 have been included by the Committee on Freedom of Association in the category of serious and urgent cases which it specially draws to the attention of the Governing Body of the ILO. The Committee notes the discussion in June 2010 on the application of the Convention in the Bolivarian Republic of Venezuela in the Committee on the Application of Standards of the International Labour Conference. The Committee of

Experts observe that the Conference Committee requested the Government to accept high-level technical assistance from the International Labour Standards Department and regrets that the Government has not responded to this request. *The Committee notes the Government's replies to the comments of the ITUC of 26 August 2009 and 24 August 2010, of the CTV of 3 June 2010, of the ASI and of FEDECAMARAS of 31 August 2010, and of the IOE of 8 November 2010, and requests it to send its observations on the communication from SUNEP-CVG and ASI.*

***Murders of trade union leaders and members and issues relating to compliance with the human rights of trade unionists and employers' leaders***

In its comments in 2009, the Committee noted that, according to the ITUC, four trade union leaders were murdered in December 2008 in the State of Aragua, for whom the names were supplied. Furthermore, according to the ITUC, the murders were also committed of 19 trade unionists and ten workers in the construction and petroleum sectors in the context of disputes relating to the negotiation and sale of jobs (according to the ITUC, there were 48 homicides in 2007, for which no investigations were conducted). According to the ITUC, new sections 357 and 360 of the reformed text of the Penal Code repress and punish with sanctions the right of peaceful demonstration and the right to strike, while the Special People's Defence Act against hoarding, speculation and boycotts restricts labour protest action and other forms of social mobilization. According to the ITUC, the authorities have made use on 70 occasions of sections 357 and 360 of the Penal Code and section 56 of the Basic Security Act in the context of strikes and demonstrations. The CTV indicated in its 2009 comments that hundreds of workers and trade union leaders were the victims of murders in the construction sector, without any arrests being made up to then. The CTV indicated that over 2,000 workers, including trade union leaders, had been brought before the criminal courts under a "probationary system" under which they have to report regularly to the judicial authorities. They are then released, but are prohibited from engaging in any protest activities. Eleven workers in the metropolitan town hall were detained for engaging in protests against the Special Act respecting municipal authorities. The Committee takes note of the Government's reply to the alleged detentions, which is examined below.

FEDECAMARAS, in its 2009 comments, indicated that employers who, in the context of their sectoral representative activities, protest against the kidnapping of their members or the fall in national production as a result of government policies are the victims of threats by the authorities (such as in the case of the President of FEDENAGA) and of the occupation and expropriation of land or interference with their enterprises and property. Various important enterprises have been the victims of harassment and fines, and the closure has been ordered of television enterprises which gave air time to employers. The food and agricultural sectors are subject to discretionary practices by the authorities. Furthermore, the investigations by the authorities into the attack on the premises of FEDECAMARAS on 26 May 2007 and the attempted bomb attack on 24 February 2008 (carried out by an inspector of the metropolitan police, whose explosive device blew up and killed him) on its headquarters have not produced any results (according to the Government, arrest warrants have however been issued against two persons).

In its previous comments, the Committee noted with concern the various provisions of the Penal Code and other legislation which tend to restrict the exercise of the right to demonstrate and the right to strike and which criminalize legitimate trade union activities, as well as the allegations that a climate of intimidation is being intensified towards workers' and employers' organizations and their leaders which do not support the Government.

In its comments prior to 2010, the SUNEP-CVG transcribes a series of procedural and penal provisions which in its view restrict trade union rights and it refers to restrictive measures and sentences of detention against trade unionists given by criminal courts as an automatic response to requests by the Office of the Public Prosecutor when they engage in demonstrations or protest action. The SUNEP-CVG indicates that demonstrators who are detained frequently end up under probation having to report regularly to the courts without knowing what they are charged with (certain workers also have cover long distances to report to the judicial authorities). Furthermore, the so-called basic state enterprises or essential services are defined in terms that are too broad and strike action in them can give rise to prison sentences under the Act respecting individual access to goods and services or under the provisions respecting boycotts, agro-food sovereignty or products of primary necessity or those subject to price controls, which may result in the imprisonment of strikers, as occurred for example in a private coffee factory. SUNEP-CVG requests the Committee to ask the Government to provide information on measures of detention or restricting freedom of movement applied to trade unionists for participating in demonstrations and strikes.

According to the ITUC, various institutions are expressing concern at the statements by the State Prosecutor of Miranda, Omaira Camacho, in which she threatened to take legal action against unions in the education sector which insisted on the stoppage of teaching as a measure of pressure to demand the pensions clause, in relation to the call by the Union of Education Workers (SINTRAENSEÑANZA) and the Union of Education Workers of the State of Miranda (SITREEM) to give effect to the collective agreement which establishes a period of 20 years of service to benefit from the retirement pension. According to the ITUC, 52 workers were also detained because of a 48-hour stoppage organized by the union SUTTIS.

In its 2010 comments, the CTV refers to the detention and physical aggression against nurses who are trade union members, on 25 May 2010, who were referred to the judicial authorities for the offence of "disregard for authority" for having exercised their right to demonstrate. The Committee notes the Government's statements that the Office of the

Prosecutor-General of the Republic has indicated in this respect that investigations were opened into a labour dispute in the Concepción Palacios maternity unit in which a violent protest erupted, resulting in two police officers being injured. The judicial authorities ordered the immediate release of the two nurses, who were freed on 27 May 2010.

In its communication of 31 August 2010, the Independent Trade Union Alliance (ASI) indicates that there currently exist high levels of violence affecting the trade union movement. The 46 murders are a cause for concern, added to the 29 murders during the previous period. Furthermore, 16 trade union leaders were attacked and five others received death threats. Even though those responsible are not state agents, and in general they consist of departures from the exercise of freedom of association, it is the duty of the State to safeguard the physical integrity of its citizens. Moreover, the question of impunity arises, as arrest warrants were only issued in nine cases, and only one person was brought to the courts. According to the ASI, over the most recent period, 473 persons have been dismissed for reasons of a trade union nature in both the public and private sectors.

FEDECAMARAS indicates in its 2010 communications that various of its representatives and former representatives (of whom it supplies the names) have been harassed, threatened or detained, prosecuted and sentenced to the probationary measure of having to report regularly to the judicial authorities. The President of FEDECAMARAS is being prosecuted for an interview. FEDECAMARAS indicates that it is the victim of insults and threats by the President of the Republic, who has repeatedly stated that FEDECAMARAS is the enemy of the people and of the country. Moreover, the authorities have closed important radio and television stations, including the CNB network, which belongs to the President of the Venezuelan Chamber of the Broadcasting Industry, which suffered theft, including the theft of computers. The television broadcaster Globovisión is threatened with closure and its president and his son were the victims of a detention order. All of these communication media were used by FEDECAMARAS. In its 2010 communication, the IOE alleges that during the night of 27 October 2010 a group of five armed and hooded men attacked with machine guns, kidnapped and ill-treated in Caracas the President of FEDECAMARAS, Noel Álvarez, the former President Ms Albis Muñoz, the Executive Director, Luis Villegas, and the Treasurer, Ernesto Villamil. The kidnappers also wounded Ms Albis Muñoz, Employer member of the Governing Body of the ILO, with three bullets to her body. After losing blood, the attackers pulled her out of the vehicle in which they were travelling and left her abandoned near the Pérez Carreño hospital, where she was taken some time afterwards by a passing police patrol. The other three persons who had been abducted were freed two hours later, after the kidnappers had made a pretence at kidnapping and expressed the intention of demanding a ransom of bolívares 300 million, after first relieving them of their belongings. According to the IOE, in view of the form taken by the attack, everything would appear to indicate that its objective was to eject the employers' leaders of the Bolivarian Republic of Venezuela, even though the pretence was then made that it was a kidnapping. The IOE adds that the climate of aggression and hostility towards the private sector, and particularly towards FEDECAMARAS and its leaders, which is constantly displayed by the highest institutions of the State, and particularly by the President of the Republic himself, and the increasing situation of insecurity in the country, mean that the State is responsible for this new episode of violence against Venezuelan employers' leaders.

The Committee notes the Government's reply in which it condemns the attack against the persons referred to above, indicates that the competent authorities immediately launched investigations to bring those responsible to justice, and that two of them have been detained and three others identified. Moreover, one of the presumed authors has been fatally wounded after an assault with the public servants of the criminal scientific investigation services. It adds that they are all members of a gang engaged in robbery and abduction. The Government refutes the IOE's speculation that the attack was intended to remove the Venezuelan employers' leaders. The Government refutes the allegations against the public authorities made by the IOE, which it qualifies as political strategies. The Committee notes that the Government refutes the statements by employers' organizations concerning threats and alleged harassment, and the claims that there will be reprisals for the statements made by Employers' delegates to the International Labour Conference in 2010.

With reference to the assassinations of trade union leaders and members, the Government refers to the deep concern expressed by the Committee of Experts in its previous observation at, "particularly taking into account the high number of assassinations of trade union leaders and members, the apparent impunity of those responsible". The Government wishes to emphasize that there has not been a "high number of assassinations", but rather isolated cases, and specifically that the ILO has received denunciations of five cases (in Tigre and Anaucos), concerning which the Government has provided all the information requested by the various ILO supervisory bodies. All of these cases are under investigation and, where it has been possible to identify those responsible, they have been referred to the respective courts and detained by judicial order (one of those responsible died while committing another crime).

With regard to the murder of the trade union leaders Wilfredo Rafael Hernández, Jesús Argenis Guevara and Jesús Alberto Hernández, members of the Bolivarian Union of Construction Industry Workers, in Tigre, Anzoátegui State, on 24 June 2009, the Office of the Prosecutor-General of the Republic, with the assistance of the police, succeeded in determining the responsibility of Pedro Guillermo Rondón, who died while committing another crime.

With regard to the ITUC's allegation in 2009 that "the murders were also committed of 19 trade unionists and ten workers in the construction and petroleum sectors", the Government indicates that these are unfounded allegations and reports without any supporting evidence, and moreover that no formal complaints have been made concerning the alleged murders. The Government therefore does not have full and reliable information to provide in reply on this subject. The Government respectfully suggests that the ILO supervisory bodies, before issuing any judgement on a country, should

request complainants to provide evidence of their allegations. The Committee observes that in its 2010 comments the ITUC does not provide further details on the acts of anti-union violence alleged in 2009, but indicates that various trade union leaders were assassinated as a result of disputes in the construction and petroleum sectors. ***The Committee invites the ITUC and the ASI to provide further details on the cases of the murders of trade unionists to which they referred (names, offices held in the trade unions, date of the murder, criminal charges brought, etc.).***

The Government also categorically refutes indications by the Committee of apparent “impunity” which it understands to mean a denial of justice and a lack of the will to punish those responsible. The Venezuelan State, through its competent institutions, has undertaken the respective investigations and made the necessary efforts to find those responsible for criminal acts in the shortest possible time, in so doing seeking to comply with the provisions of the law and accordingly with the principles and values of a State governed by the rule of law and justice. It is therefore difficult to speak to impunity.

The Government adds that in May 2010 the Working Group was established on trade union violence in the construction sector, with the participation of the four existing workers’ federations (two of which are affiliated with the CTV) and two employers’ chambers (one affiliated to FEDECAMARAS), as well as representatives of all the competent authorities. Furthermore, at the request of the National Federation of Workers, a Special Commission was established with the Ministry of the Interior and Justice with a view to following up cases of violence in which the victims are trade union leaders and agreeing upon measures to prevent acts and crimes against the trade union movement. The Special Commission held meetings in each State of the country, reviewed cases of violence against trade union leaders, followed up the investigations conducted and the situation with regard to prosecutions and examined proposals to make protection for trade union activities more effective. ***The Committee welcomes this information and requests the Government to provide information on the outcome of the Working Group and Special Commission referred to above.***

With regard to situations of “hired murderers” and the alleged absence of the detention of those responsible and of the respective procedures, the Government indicates that in recent years groups have been captured whose objective and firm instructions were to destabilize the country, causing levels of violence and crime never before seen in the country. The victims of “hired murderers” have included not only workers in the construction industry, but also rural workers and trade union members, among others. The national Government, the trade unions, men and women workers, communities and social movements have engaged in determined measures to bring to an end this abhorrent practice and catch those responsible for these crimes. The crime of “hired assassination” is defined in section 12 of the Basic Act to combat organized crime, which provides that “any person who kills another individual under contract or in compliance with orders from an organized crime group, shall be liable to a sentence of imprisonment of between 25 and 30 years. The same penalty shall be applied to any person who takes out a contract for a murder, and the members of the organization which issued and applied the contract”. The Government adds that, on the grounds of his alleged involvement in the death of trade union member Manuel Felipe Araujo Fuenmayor (February 2009), the 22nd Office of the Public Prosecutor brought formal charges against the police officer from the State of Aragua, Víctor Salazar. It adds that Luis Serrano, Pablo Yépez, Eudis Inojosa, Noel Armas, Douglas Granadillo, Edison Santamaría and Rony Pacheco (trade union members) were also charged by the sixth Court of the State of Aragua and were placed under probation with the requirement to report to the court every 30 days. They were also prohibited from being in the vicinity of the place where the crime was committed and to be ready to respond to any request by the prosecutor or the court. On 27 February 2010, those allegedly responsible for the “hired killing” of the rural leader Nelson López Torrealba were detained by officers of the Forensic, Penal and Criminal Investigation Unit (CICPC), in accordance with the arrest warrants issued against them. At the request of the Office of the Public Prosecutor, three citizens were detained who were allegedly involved in the death of rural leader Nelson López Torrealba, which occurred on 12 February 2009. During the initial hearings, the 58th National Prosecutor’s Office, the 14th Office of the State of Yaracuy, and the auxiliary Prosecutor, charged Ángel Jesús Vargas, Rolando Arsenio Díaz and Alberto Ramón Mendoza with “hired killing” and unlawful association for the purpose of committing offences of organized crime. In addition, Rolando Arsenio Díaz was also charged with the concealment of a firearm and enrichment from goods resulting from the crime. The fifth Tribunal of the State of Yaracuy ordered the detention, as requested by the Office of the Public Prosecutor, and agreed that those charged should remain in custody. In February 2009, the alleged murderer was detained for the “hired killing” of Yuniór Hermoso, a member of the United Socialist Party of Venezuela, and was referred to the Office of the Public Prosecutor with a view to the corresponding procedure. The person who ordered the crime was also identified, although the competent bodies did not succeed in arresting him. In April 2009, the CICPC caught Deivis José Sabino Hernández, suspected of murdering Orangel Rafael Marchán Olivero, a trade union member in the construction industry. In April of this year, the Office of the Public Prosecutor approved the charges against Julio César Arguinzonez, the principal suspect of the murder of trade union leaders Richard Gallardo, Carlos Requena and Luis Hernández on 27 November 2008. During the preliminary hearing, the 22nd (E) Office of the Public Prosecutor of the State of Aragua approved the charges against that person for alleged involvement in the crimes of aggravated homicide and the concealment of a firearm and ammunition, as envisaged and penalized in the Penal Code and the Act respecting firearms and explosives. When the evidence had been assessed, the ninth Tribunal of the State of Aragua found the charges receivable and authorized oral public hearings. Accordingly, Julio César Arguinzonez remains in detention, as ordered by the above Court. The CICPC is investigating the murders of two trade union leaders (Keler Orangel Maneiro (Sutrabolívar) and Sergio Bladimir Devis (Sutic Municipio Piar)), committed in May 2009. In the same month, six persons allegedly involved in the murder of rural leader Juan Bautista Durán, who died on 3 December 2008 in

the State of Portuguesa, were detained. The third Office of the Public Prosecutor of this jurisdiction charged Aquilino Pontón and Santiago Hernández Pérez with ordering the murder, and Johan David Hernández Castillo with committing the crime of “hired killing”. The public prosecutor in the case also charged Gerardo José Noguera Valera, Gustavo Miguel Suárez Méndez, Jorge Alfonso Dueño and José Francisco Guevara with the alleged crime of being associates in homicide. The first Tribunal of the State of Portuguesa granted preventive custody as requested by the Office of the Public Prosecutor and ordered the detention of those charged. In the same month, in the State of Zulia, Isdelvy Parra was detained, and the case was referred to the fourth Tribunal of Merida, which ordered detention for the crimes of criminal association, “hired killing” and obstruction of freedom of trade. In June 2009, 24 police officers from Anzoátegui were prosecuted for their alleged responsibility for the murders (in January 2009) of workers José Javier Marcano and Pedro Suárez of the MMC Automotriz de Barcelona (Mitsubishi) and Macusa.

During the same month, at the request of the Office of the Public Prosecutor, seven members of the Construction Union of the State of Mérida (SINEITRACOM) were detained for their alleged involvement in the murders of three citizens in 2006 and 2008. The dead were identified as: José Luis Romero Castillo, Carlos Alberto Méndez and Jorge Coromoto Barreto Arellano. During the preliminary hearing, the 41st Office of the National Public Prosecutor, and the 2nd Office of the State of Mérida, charged Juan Carlos Mendoza, Giovanni Oviedo, Orlando Mendoza, Pablo Puentes, María Sosa, Jean Carlos Ramírez, Darwin Ortega, Gregorio Medina and Luis Guillén with the alleged crimes of criminal association, “hired killing” and obstruction of the freedom of trade, as envisaged and penalized by the Act to combat organized crime. The fourth Tribunal of the State of Merida ordered the detention of Juan Carlos Mendoza, Giovanni Oviedo, Orlando Mendoza, Pablo Puentes, María Sosa and Jean Carlos Ramírez. It placed on probation Darwin Ortega, Gregorio Medina y Luis Guillén. In October 2010, officials of the CICPC of the State of Yaracuy dismantled a criminal gang known as “*Los carasucias*”, devoted to “hired killings”.

The Government adds that all these are some of the results achieved in the incessant fight against criminality, and particularly against what is known as “hired killing”, by the Government and its institutions jointly with citizens, social organizations, rural inhabitants and men and women workers. Despite these major efforts, the Government is continuing to take the necessary measures to prevent this abhorrent practice being imposed in the country. The Committee appreciates the Government’s information on the detention and criminal prosecution of persons involved in acts of violence against trade union leaders and members. ***The Committee requests the Government to provide information on all the cases of anti-union violence in the country, the opening of investigations and criminal prosecutions against those responsible, the arrest warrants issued and the sentences applied.***

With regard to the attack against the headquarters of FEDECAMARAS in February 2008, the Government indicates that on 6 and 10 May 2010 the auxiliary judicial bodies detained the two persons charged with committing the alleged acts, who are currently in detention. With regard to the alleged acts that occurred in May and November 2007 (the attack against the headquarters of FEDECAMARAS) the corresponding authority, in this case the Office of the Prosecutor General of the Republic, informed the Labour and Social Security Office that it had not received any complaint or information to launch an investigation into any act that had occurred at the headquarters of the employers’ organization during the year 2007. ***The Committee invites FEDECAMARAS to bring criminal charges for the attack against its headquarters in 2007.***

With regard to the alleged “provisions of the Penal Code and other legislation which tend to restrict the exercise of the right to demonstrate and the right to strike and which criminalize legitimate trade union activities”, the Government affirms that the National Constitution and the law set forth the right of all men and women workers in the public and private sectors to strike in accordance with the conditions established by the law, which regulate the exercise thereof and protect workers against acts of anti-union discrimination (dismissals, etc.). The Basic Labour Act establishes the procedure to be followed to call and hold a strike, where applicable and when such stoppages do not give rise to irreversible damages to the population or to institutions (section 496).

With reference to the provisions of the Venezuelan Penal Code, and particularly sections 357 and 360, the Government indicates that these provisions govern illicit and unlawful conduct prejudicing the safety of the means of transport and communication of the Venezuelan population, thereby complying with the obligation of the State to protect the guarantees and rights of the citizens of the country. Accordingly, in no case do these provisions refer to the application of penalties or sanctions for demonstrations or peaceful activities, but on the contrary govern illicit and unlawful conduct. The types of conduct classified in these provisions as illicit are also considered to be crimes in the penal legislation in many countries at the global level, with the imposition of penalties and sanctions against those committing crimes against means of transport and communication. Consequently, the establishment of these crimes in the Penal Code, far from restricting the right to strike and to peaceful demonstration, protects public security and the guarantees of men and women citizens. For these reasons, the full exercise in the Bolivarian Republic of Venezuela of the right to strike and to peaceful demonstration is endorsed once again and in no case do there exist restrictions on these rights, nor in particular are legitimate trade union activities criminalized.

With reference to the laws that are criticized, the Government states that the Basic Act on Security and Defence provides that national security and defence are the competence and responsibility of the State and that the necessary measures for that purpose are of a permanent nature. Similarly, all Venezuelan individuals and associations, wherever they may be, are also responsible for the security and defence of the Republic. Furthermore, the very recent Act to defend the

access of persons to goods and services is intended for the defence, protection and safeguard of individual and collective rights relating to the access of persons to goods and services for the satisfaction of their needs.

The Government adds that the Special Peoples' Defence Act against hoarding, speculation, boycotts and any conduct which effects the consumption of food or products subject to price controls (LECAEB) is intended to restrict speculation by the enterprise sector, which increases the cost of food and other goods and services under pretexts which are not related to the current economic situation. Accordingly, the Act is intended to combat hoarding, speculation, boycotts and any other conduct which prejudices the food security of Venezuelan citizens. The principal objective of the Act consists of the establishment of mechanisms for the defence of the people against such illegal acts and against conduct which is prejudicial to the consumption of food and products subject to price controls, which are considered contrary to the food security and the social peace of the Venezuela people. Finally, in October 2000, various sections of the Venezuelan Penal Code were amended: sections 358–359 refer to the prohibition upon blocking and/or damaging thoroughfares and means of transport and establish the corresponding sentences and penalties for committing such crimes and violations of the legal provisions.

According to the Government, by virtue of the above considerations, it is clear that the spirit and objective of these provisions is far from criminalizing the claims of men and women workers and restricting the broad constitutional right to strike which exists in the country, and that they are intended to regulate and prohibit unlawful conduct, establishing the respective offences, procedures and penalties. All of this is intended to guarantee social peace, justice and the rights and guarantees of the Venezuelan people.

With regard to the detention of workers who were engaged in alleged protests against the Special Act respecting municipal authorities, the Government indicates that on 26 August 2009, a number of men and women workers from the metropolitan town hall engaged in protest action with the intention of lodging an appeal for *amparo* (the protection of constitutional rights) with the Supreme Court of Justice (TSJ) against the Special Act respecting municipal authorities at two levels of the metropolitan area, which was subsequently approved by the National Assembly. During the course of the protests, 11 of the workers were detained for causing, according to the investigations of the Office of the Public Prosecutor, "breaches of public order and injuries to a metropolitan police officer (PM)". The following were detained: Carlos Lozada Villegas, Abello Álvarez, Omar Rodríguez, Gustavo Aponte, Gerardo Jesús Gonzales, Xisto Antonio Gomez, Jaer Antonio Pulido, Yumar Oscar Figueroa, Alexander Ronald, Viña Figueroa and Lixido José Solarte. Subsequently, during the preliminary hearing, the 72nd Public Prosecutor's Office of the Metropolitan Area of Caracas ordered the 11 detained workers to be retained in custody, charging them, on the one hand, for certain of them, of the alleged crime of serious injury, resistance to authority and obstruction of the public thoroughfare, set out in the Venezuelan Penal Code, and for others, offences against systems based on information technology, under the Special Act on information technology crimes. The 50th Tribunal of the Metropolitan Area of Caracas found the prosecutor's charges receivable, approved the application for judicial custody and ordered the detention of those charged until the final prosecution within the time limits set out in the Basic Code on Penal Procedure. Finally, after the necessary procedures had been followed, on 29 October 2009, the 11 workers of the metropolitan town hall who had been detained for various alleged crimes set out in the national legislation were released. ***The Committee requests the Government to indicate whether the authorities definitively renounced the charges against these trade union members.***

With reference to the situation of certain radio and television stations and the procedure followed by the National Telecommunications Commission (CONATEL), the Government states that the radio-electric spectrum is the public property of the Bolivarian Republic of Venezuela, in accordance with the Constitution and the Basic Act on Telecommunications. The use of the spectrum is subject to the granting of the respective concession by CONATEL, an institution which grants a specific person a right (which cannot be ceded or transferred and is for a limited period of time) to use and exploit a specific portion of the spectrum, subject to compliance with the requirements set out in the Constitution and the Basic Act referred to above. Article 58 of the Constitution provides that communication is free and pluralistic, and involves the duties and responsibilities set out by law. Accordingly, everyone is entitled to appropriate, truthful and impartial information without censorship in accordance with the constitutional principles. The Basic Act on Telecommunications also sets out the principles governing telecommunications with a view to guaranteeing the right to communication of all citizens in the country. The Government adds that CONATEL is responsible for the administration, regulation, ordered use and supervision of the radio-electric spectrum and that its function is to make possible the effective, efficient and peaceful use of telecommunications resources, as well as ensuring compliance with the obligations deriving from this service. For this purpose, it makes use of the procedure of administrative authorization, which is granted for the establishment and exploitation of networks and for the provision of telecommunication services to those complying with the requirements and conditions established by CONATEL for such purposes. Accordingly, CONATEL is the institution which grants approval and concessions to engage in telecommunication activities which make use of the radio-electric spectrum. This all involves compliance with a series of essential requirements for the provision of an appropriate service and the proper establishment or exploitation of a network, including the obligation to apply to CONATEL for the corresponding administrative authorization. If this is not done, the penalties which may be applied for violations and offences set out in the Basic Act on Telecommunications are public warning, fines, withdrawal of administrative authorization (or a concession), the cessation of clandestine activities, prohibition of operation, the decommissioning of materials and equipment used for the activity or imprisonment, depending on the violation



committed, and in compliance with the procedure for the determination of such violations. Such procedures may be instigated automatically, upon denunciation or at the initiative of the institution, which is empowered to apply penalties in accordance with the principles of legality, impartiality, rationality and proportionality. It should also be emphasized that CONATEL launched a procedure for the review of 240 means of telecommunication and established a period for those operators of radio-electric media to bring their data up to date with the institution and/or to remedy various irregularities which had appeared. When the time period had elapsed and the procedure was completed, CONATEL proceeded to revoke, withdraw or not to renew broadcasting permits for certain radio and television channels, and more specifically for 34 media which either had not updated the data submitted to the institution or for which administrative irregularities had emerged such as: the death of the holder of the transmission licence, the renunciation of the previous licence holder, the operating permit was no longer valid or notification that the change in ownership of the licence was invalid, or they had committed various violations or breaches of the respective laws. Accordingly, the administrative procedures followed by the institution were a consequence of the failure to comply with the obligations and requirements set out in national law for the appropriate use of the national radio-electric spectrum and telecommunication services. According to the Government, the measures adopted by CONATEL, in addition to being in accordance with the law and the legally established procedures, are intended to guarantee the right of the Venezuelan people to appropriate, truthful and impartial information.

In general, the Committee *deplores* the high number of assassinations of trade union leaders and members and expresses its *deep concern* at this situation and at the fact that the figures on the number of alleged assassinations provided by trade union organizations differ considerably from those emerging from the information provided by the Government. The Committee takes due note of the Government's indication that those responsible are "hired killers" and are involved in organized crime. It also notes the identification and detention of a number of those responsible, and the establishment of a Working Group on violence in the construction sector and of a Special Commission at the request of the UNT. Nevertheless, the Committee is bound to emphasize that it is the responsibility of the Government to guarantee the life and safety of all trade union leaders. The overall situation described by the trade union organizations also includes allegations of the repression of demonstrations, detentions, death threats and many anti-union dismissals, as well as restrictions on the right to strike and individual liberty based on the application of a series of laws, ranging from the Penal Code to other laws which are intended to guarantee the right of persons to have access to goods and services, to combat hoarding, to defend agricultural and food sovereignty, and laws respecting products of primary necessity or those subject to price controls. The Committee observes that the comments of the trade union organizations also refer to a very high number of probationary measures involving the need to report regularly to the judicial authorities, which have an intimidating effect on the exercise of trade union rights.

The Committee also observes with *deep concern* that the principal employers' federation, FEDECAMARAS, has reported serious acts of violence against four of its leaders, including its President and a member of the Governing Body of the ILO, who was hit by several bullets (according to the Government, two of those presumed to be responsible have been detained, and three others have been identified, who are members of a criminal gang engaged in kidnapping), it has also reported acts of violence against its headquarters, including measures which, according to the allegations, are discriminatory against the property of certain of its leaders, including cases of arbitrary expropriation, and the closure of radio and television stations belonging to certain of them, or which were used by employers' organizations, and the criminal prosecution of employers' leaders. The Committee believes that there are sufficient elements to support the allegation of intimidation. *The Committee requests the Government to guarantee the right to life and safety of employers' leaders and the exercise of their civil liberties, including the right of expression, and to ensure that they are not the victims of discrimination in their property as a result of their status as employers' leaders or their activities as such.*

The Committee notes that the Government provides a detailed description of the legislation respecting the requirement to report regularly to the judicial authorities (probationary judicial measures) and the various laws which, according to the allegations are used for the detention of leaders or to restrict the right to demonstration and the right to strike. It also notes that, according to the Government, the high number of cases reported (of assassination or other matters, such as probationary judicial measures restricting their freedom) are unfounded and have not been documented by the trade union organizations.

The Committee considers that, in view of their gravity, it is the responsibility of the Government in respect of the matters referred to above, to provide detailed information on each and every assassination of trade union members (the numbers, victims, those responsible, prosecutions, the state of the investigations, the detention of those responsible and the sentences applied), the number of probationary judicial measures ordered restricting the freedom of trade unionists and employers' leaders, and the persons detained, with an explanation of the specific reasons for them, without prejudice to the consultation by the Government in this task of workers' and employers' organizations. In the view of the Committee, it is also necessary for these issues relating to fundamental human rights to be examined by the tripartite partners at the national level with the most representative organizations of workers and employers. In this respect, the Committee *regrets* that, despite the call that has been made for years for the establishment of a national tripartite committee with the most representative organizations for the examination of issues affecting them directly, the Government is denying the national social partners the opportunity to find solutions to the current problems through dialogue with the Government. *The*

***Committee urges the Government to create a national tripartite committee on situations of violence and the violation of the fundamental rights of trade unionists and employers' organizations and their leaders, including the review of the penal provisions (and their application) criticized by the trade union organizations, and to provide information in this respect.***

The Committee wishes to refer to the conclusions of the Committee on the Application of Standards of the International Labour Conference in 2010, which read as follows:

The Committee [on the Application of Standards] recalled that the rights of workers' and employers' organizations could only be enjoyed in a climate of absolute respect for human rights, without exception. Recalling that trade union rights and freedom of association could not exist in the absence of full guarantees of civil liberties, in particular of freedom of speech, assembly and movement, the Committee emphasized that respect for these rights implied that both workers' and employers' organizations had to be able to exercise their activities in a climate free of fear, threats and violence and that the ultimate responsibility in that regard lay with the Government. The Committee observed in that respect that the employers in FEDECAMARAS felt intimidated by the actions and verbal aggression of the authorities.

***The Committee requests the Government to ensure that the right to life and security of the person, the right to demonstrate and the right to freedom of expression are guaranteed, and to ensure that the probationary system referred to above is not used for the purpose of controlling and intimidating trade union and employers' leaders. The Committee further requests the Government to ensure that trade union rights, such as the right to strike, are not restricted through the use of ambiguous legal provisions claiming to defend other constitutional rights. The Committee requests the Government to evaluate with the most representative organizations of workers and employers the impact of such provisions on their rights and those of their leaders, and to provide information on this matter.***

### **Legislative issues**

The Committee recalls that it previously emphasized the need to adopt the Bill to amend the Basic Labour Act so as to eliminate the restrictions placed on the exercise of the rights granted by the Convention to workers' and employers' organizations. On this issue, the Committee previously made the following comments:

The Committee previously noted that a Bill to amend the Basic Labour Act took account of the requests for amendment that it had made on the following points: (1) it deletes sections 408 and 409 (over-detailed enumeration of the mandatory functions and purposes of workers' and employers' organizations); (2) it reduces from ten to five years the required period of residence before a foreign worker may hold office in an executive body of a trade union organization (it should be noted that the new Regulations of the Basic Labour Act establish that trade union statutes may provide for the election of foreign nationals as trade union leaders); (3) it reduces from 100 to 40 the number of workers required to establish a trade union of independent workers; (4) it reduces from ten to four the number of employers required to establish an employers' organization; (5) it provides that the technical cooperation and logistical support of the electoral authority (the National Electoral Council) for the organization of elections to executive bodies of trade unions shall be provided only where so requested by the trade union organizations in accordance with the provisions of their statutes, and that elections held without the participation of the CNE and which comply with the statutes of the trade unions concerned shall have full legal effect once the corresponding reports are submitted to the appropriate labour inspectorate (this is addressed further below). The Committee also noted that the Bill provided that "in accordance with the constitutional principle of democratic changeover, the executive board of a trade union organization shall discharge its functions during the period established by the statutes of the organization, but in no case may a period in excess of three years be established". Although the Government provided information indicating that trade union leaders are re-elected in practice, the Committee hoped that the legislative authority would include in the Bill a provision explicitly allowing the re-election of trade union leaders;

The Committee of Experts notes that the Conference Committee, after hearing the Government representative indicate that in May 2009 a new process of consultations had been commenced on the draft Basic Labour Act, adopted the following conclusion:

The Committee regretted the Government's apparent lack of political will to pursue the adoption of the Bill in question and the lack of progress despite visits by several ILO missions to the country.

With regard to the "need to adopt the Bill to amend the Basic Labour Act", the Government indicates that an intense process of consultation has been held on the reform of the Basic Labour Act and its most relevant aspects, with the holding of discussions and meetings with practically all the sectors of the national economy, including workers' and employers' organizations. The Integral Social Development Commission of the National Assembly is currently reviewing the observations and proposals made by public institutions and the social partners. The Bill to amend the Basic Labour Act is now ready for its second reading by the National Assembly in accordance with the legislative agenda. The Bill has been broadly discussed and debated, as part of the process of street-level parliamentarianism developed by the Venezuelan State through the National Assembly, through which it is intended that workers' and employers' and their representative organizations, as well as all men and women citizens and social institutions interested, can make proposals and raise issues to enrich this legislative initiative, which will constitute a major advance in social, labour and representative rights for the men and women workers in the country and which therefore needs to attain the highest possible level of consensus. The Government emphasizes that the provisions criticized by the ILO supervisory bodies relate to the Basic Labour Act which entered into force in 1991 and have been criticized by the International Labour Conference since 1992. The Government affirms that it fully agrees that the provisions criticized have to be amended on the occasion of the reform of the Basic Labour Act, and that there exists full consensus between the national Government, legislators and workers' and employers' organizations for the amendment of those provisions. Furthermore, none of those provisions are applied, nor have they resulted in any restriction on the exercise of freedom of association.

Under these circumstances, the Committee *regrets* that for over nine years the Bill to amend the Basic Labour Act has still not been adopted by the Legislative Assembly, despite enjoying tripartite consensus. ***Taking into account the significance of the restrictions which remain in the legislation in relation to freedom of association and the freedom to organize, the Committee once again urges the Government to take measures to accelerate the examination by the Legislative Assembly of the Bill to amend the Basic Labour Act.***

With regard to the Committee's comment on "the need for the National Electoral Council (CNE) ... to cease interfering in trade union elections and to no longer be empowered to annul them, and the need for the statute for the election of the executive bodies of national (trade union) organizations ... to be amended or repealed", the Government reiterates that in 2009, the standards of the CNE were amended to bring them into line with the recommendations of the Committee of Experts on the Application of Conventions and Recommendations. In accordance with the new standards of 2009, the role of the CNE was limited to: (i) receiving previously from the trade union organization the electoral timetable and the provisions governing it, in accordance with its statutes; (ii) offering those trade union organizations which voluntarily request it, and in full respect for their autonomy, technical advice on the holding of their elections; and (iii) examining cases of complaints concerning the internal electoral process by worker members, once the channels of recourse established by their statutes have been exhausted.

The Committee notes that, according to the Government, the CNE, for the purposes of offering technical advice and logistical support, where it is so requested, examines and determines "appeals lodged against acts, omissions and abstentions from the electoral board, respecting the electoral process of trade union organizations" (clause 9 of the standards on technical advice and logistical support in relation to trade union elections). The Government adds that the electoral board is the body in the trade union responsible for organizing and directing the process for the election of the representatives of the trade union organization and that the CNE only acts as a body to which the members of the trade union can turn if they have any complaint against the actions of the electoral board. The Government therefore emphasizes that the CNE does not interfere in trade union elections. Notwithstanding the above, the Government indicates that a communication was recently addressed to the President of the CNE informing it of the comments of the Committee of Experts in relation to the new standards on technical assistance and logistical support in relation to trade union elections.

The Committee observes that the Committee on Freedom of Association has continued to examine cases concerning interference by the CNE in trade union elections. The Committee of Experts observes that the 2009 standards of the CNE, although providing that the intervention of the CNE in trade union procedures in terms of technical assistance is voluntary, continue empowering this body, which is not a judicial body, to examine complaints and appeals by "members of the trade union" relating to trade union elections, thereby facilitating interference of all types to impede the validity of the trade union elections. ***It therefore requests the Government to take measures so that the standards in force provide that appeals respecting trade union elections are determined by the judicial authorities and for the standards in force not to require, as requested by one of the trade union organizations which has made comments, the publication in the Electoral Gazette of the results of trade union elections as a requirement for their recognition, nor the requirement to provide the electoral timetable to the CNE.*** The Committee also recalls that, when the new Constitution of the Republic was adopted, trade union organizations were required to amend their statutes so as to recognize the intervention of the CNE in their elections. ***The Committee requests the Government to indicate whether the organizations which at the time had to change their statutes to accept the participation of the CNE in the holding of their elections are obliged to submit to the CNE.***

### **Other legislative issues**

The Committee previously noted the Government's statements concerning certain legislative issues, and particularly the possibility of compulsory arbitration in certain public services that are not essential in the strict sense of the term (section 152 of the Regulations of the Basic Labour Act). The Committee previously requested the Government to supplement its statements by indicating the cases in which arbitration had been imposed.

With regard to the scope of the Regulations of the Basic Labour Act in relation to compulsory arbitration in basic and strategic services, the Government indicates that the right to strike is fully protected in Venezuelan law. Nevertheless, to prevent the exercise of the right to strike by workers causing irreparable damage to the population and to institutions, it is established that the indispensable minimum services that have to be maintained on the occasion of stoppages of activities by workers have to be determined beforehand. The determination of minimum services is an indispensable requirement for the exercise of the right to strike and has to be agreed between the parties, workers and employers, in accordance with the provisions of the national legislation. Nevertheless, the Government adds that it has been the reiterated practice of employers, when workers exercise their right to strike, to refuse to reach agreement on the minimum indispensable services in a conciliatory manner, with a view to delaying or preventing the calling of the strike by the workers. It is precisely to prevent this indispensable procedure becoming an obstacle to the exercise by workers of their right to strike that compulsory arbitration is provided for only in those cases in which all the possibilities of reaching agreement between the workers and employers have been exhausted. In such cases, the People's Ministry for Labour and Social Security undertakes a technical assessment of the enterprise or establishment in which the workers are to initiate the stoppage, reviews the claims made by workers and employers and, by ministerial decision, determines the indispensable minimum services which may not be stopped on the occasion of the strike. ***The Committee emphasizes that, in the case of disagreement between the parties, it should be an independent body that enjoys the confidence of the parties or the***

*judicial authorities which determine the minimum services, particularly in cases of strikes in public enterprises or institutions, and it requests the Government to take the necessary measures to amend the legislation in accordance with this principle, particularly in the public sector.*

Finally, with regard to the Committee's comment on the resolution of the Ministry of Labour of 3 February 2005 giving trade union organizations 30 days to provide information on their administration and the register of their members in a form that includes each worker's full identity, place of residence and signature (an issue criticized by the ITUC for years), the Committee previously emphasized that the confidentiality of trade union membership should be ensured. It recalls that it may be appropriate to develop a code of conduct with trade union organizations covering the conditions in which data on their members are to be provided, and making use of appropriate techniques for the use of personal data which guarantee absolute confidentiality. The Committee noted in its previous observation the Government's statement that it has guaranteed the privacy of data, has not been informed of the existence of cases of abuse and that there have not been any complaints.

The Committee notes the Government's statement in its report that the resolution referred to is based on section 430 of the Basic Labour Act, which establishes the obligation for organizations to provide to the competent body on an annual basis a report on its administration and the list of its members, all for the purpose of demonstrating the number of members of the trade union organization and accordingly its representative status. As there were trade union organizations which were not in compliance with the obligations set out by these provisions, the People's Ministry for Labour and Social Security drew attention to the need to give effect to these provisions guaranteeing trade union representativeness contained in the Basic Labour Act. This in turn enables the Ministry to provide the respective labour statistics annually to the various bodies of the public authorities, draw up its report and indicate the number of trade union organizations established and the number of men and women workers covered by the respective protection. *The Committee notes the Government's statement concerning its obligations in relation to statistics, but once again emphasizes that the obligation of trade unions to provide the list of their members to the Ministry of Labour must be accompanied by sufficient guarantees of confidentiality. It requests the Government to adopt measures in line with the indications in its previous observation.*

### *Shortcomings in social dialogue*

In successive observations in recent years, the Committee has identified considerable shortcomings in social dialogue. The ITUC, the CTV, the General Confederation of Venezuelan Workers (CGT) and FEDECAMARAS indicated that the authorities only hold formal consultations, without the intention of taking into account the views of the parties consulted, and that there is no authentic dialogue. The Committee observes that in its 2009 comments the ITUC indicated that the absence of dialogue between the Government and trade union organizations meant that workers had little or no participation in the nationalization of enterprises in the steel and cement sectors. According to the ITUC, the Government is promoting "parallel" trade unionism at all levels, with emphasis on the establishment of a new trade union confederation (the Bolivarian Socialist Workers Force) as a counterweight to organizations that are not close to the policies of the Ministry of Labour or which oppose the Government. This "parallelism" has given rise to a high number of trade unions with a low number of workers covered by collective agreements, with the result that the proportion of workers covered by collective bargaining has continued to decline in relation to previous years. The lack of social dialogue and tripartite meetings in the public sector is a recurrent practice, and 243 collective contracts in the sector have not been signed.

The CTV indicated in 2009 that the national executive authorities do not recognize trade union organizations which are not close to them and disregard federations in the health and education sectors, thereby creating an obstacle to collective bargaining or interfering with it.

FEDECAMARAS emphasized in 2009 the absence of social dialogue and of bipartite or tripartite consultations by the Government and the adoption without previous consultation of important laws which affect the interests of workers and employers, despite the principle of participatory democracy enshrined in the law. In its view, this is giving rise to numerous controls, legal barriers for the productive sector and new taxes which are endangering the productive sector and employers' organizations. It adds that the Government has still not convened the National Tripartite Commission envisaged in the Basic Labour Act for the determination of minimum wages, which are established by the Government without due consultation with any sector. With reference to the Employers' delegation to the Conference, FEDECAMARAS affirms that the Government is promoting the parallelism of employers' organizations by encouraging and financing those which are close to it, and that it imposed the inclusion as Employers' technical advisers of representatives of CONFAGAN, the Venezuelan Federation of Small, Medium and Artisanal Industries (FEDEINDUSTRIA) and EMPREVEN, which follow government policy and are not representative, despite the reports of the Credentials Committee of the International Labour Conference on objections concerning the nomination of the Employers' delegation of the Bolivarian Republic of Venezuela.

In its 2010 comments, the ITUC reiterates the absence of social dialogue and the refusal of the authorities to establish tripartite dialogue machinery.

The Committee previously noted the Government's indications in 2009 that: (i) social dialogue has been broad and inclusive; the national, regional and local governments have held innumerable meetings and discussions with the

participation of various members and leaders of the different employers' and workers' organizations which form part of the life in the country; the confederations and federations of employers and workers of the Bolivarian Republic of Venezuela have been convened to national dialogue round tables and their comments and observations have been sought on different types of subjects, which has given rise to an inclusive, participative and productive exchange with all the social actors; (ii) the various types of action undertaken by the Government have shown its interest, unequivocal action and will to promote dialogue and seek agreement with employers, workers and the productive sectors of the population, without the exclusion of or discrimination against any organization or sectoral association, through dialogue that has been broad and inclusive; (iii) in addition, the Government has maintained and continues to maintain dialogue and negotiations with the sectors of small and medium-sized enterprises, which have traditionally been excluded from political, economic and social decisions, which were previously undertaken only by a group of employers or organizations within a highly monopolistic and oligarchic structure subordinated to transnational interests; (iv) emphasis needs to be placed on the innumerable attempts by the national, regional and local executive authorities to establish discussion round tables for economic and social decision-making, which have been repeatedly rejected in view of the lack of readiness and will of certain employers' sectors; (v) as a result of this social dialogue, in the first half of 2009, a total of 255 collective labour agreements were approved, covering 537,332 workers in various sectors; (vi) similarly, in 2008, over 600 new trade union organizations were established freely and democratically, while in the first half of 2009 a total of 152 have been established, thereby rebutting any argument claiming to insinuate violations of freedom of association in the context of Convention No. 87 (these figures have been revised upwards in the Government's information provided in 2010 in the context of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)); (vii) the existence of isolated cases, which have been presented as generalized and inappropriate conduct by the Government, of alleged violations of freedom of association are fabrications presented out of context, and fail to take a comprehensive view of all the respective information; (viii) it is necessary to reiterate that the Venezuelan State guarantees, respects and protects the exercise of freedom of association at both the individual and collective levels, and consequently guarantees political and ideological freedom; (ix) the national Government, on 26 May 2009, following the recommendations of the ILO supervisory bodies in relation to the determination of objective and verifiable criteria with regard to representativeness, convened a meeting which was attended by representatives of FEDECAMARAS, EMPREVEN, CONFAGAN and FEDEINDUSTRIA, with a view to the adoption of positive measures to determine the level of representativeness and the membership of employers' organizations, chambers of commerce, industry, agriculture and any other branch; (x) subsequently, on 30 June 2009, a second meeting was held with the representatives of the Ministry and of the employers' organizations referred to above with a view to continuing the discussions of aspects relating to the determination of criteria of representativeness; no representative of FEDECAMARAS attended this meeting; and (xi) the People's Ministry for Labour and Social Security is currently engaged in a process of broad consultation with a view to the amendment of section 11 of the Social Security Act, with a view to extending maternity and paternity benefits, and invitations were sent to the employers' organizations referred to above with a view to their commenting on the leave provisions of the above Act; during these meetings, the organizations referred to above engaged in an open dialogue.

The Committee notes the 2010 comments of FEDECAMARAS concerning social dialogue, indicating that the situation described in 2009 has worsened, particularly through the adoption of numerous laws without consultation which, among other matters, promote forms of "social ownership", the compulsory purchase of properties by the State, forced expropriation, the forced cession of urban and rural properties, the violation of the separation of powers in the administration of justice, the nationalization of enterprises, including in the oil sector, discriminatory public contracts, restrictions on banking through greater state control, the promotion of the communal economic system and other laws in relation to employment guarantees. These laws, on which FEDECAMARAS was not consulted, seriously affect the interests of employers, apply a more ideological approach, increase control of civil society and establish greater centralization.

The Committee notes that, in its 2010 comments, the ITUC reiterates its views concerning the absence of social dialogue and the refusal of the authorities to establish tripartite dialogue machinery.

The Committee notes the Government's statement in its present report that, in addition to meetings with the employers' organizations of the country, including FEDECAMARAS, concerning the determination of criteria of representativeness and respecting the Social Security Act, various meetings were also held prior to the 99th session of the International Labour Conference, in which the participants in the discussion included representatives of the national Government and various employers' organizations, such as EMPREVEN, FEDEINDUSTRIA, CONFAGAN, COBOIEM and FEDECAMARAS. Meetings have also been held between the national executive authorities and employers on various subjects of national interest, such as the cost and production of foodstuffs and the consumption of electricity, as well as various meetings with a view to developing relations of confidence between the Government and the private sector and hearing the proposals of employers and producers in the country. The Government adds that tripartite dialogue exists in the occupational safety and health sector, including a tripartite body.

The Government adds that, with a view to achieving the sovereignty of the country in the fields of agricultural and food production, industry and sustainable development, and moreover in accordance with the recommendations and guidance of international bodies, solidarity financing policies and programmes are being implemented, with low interest

rates, intended for enterprises, irrespective of the organization of which they are members, as well as for independent entrepreneurs and producers.

The Government also indicates that, through the establishment of the Bicentenary Fund, the national Government is encouraging strategies to make progress in the selective replacement of imports and the stimulation of the export sector in the country, through joint action with men and women workers, employers in the productive sector, and in close coordination with the leaders, mayors and communal governments of the people's authorities, with the firm intention of meeting the fundamental needs of the Venezuelan people.

The Government further notes that the socialist productive round tables initiated by the national executive authorities in January 2010 included the participation of representatives of all productive sectors, social production enterprises, cooperatives, micro-, small, medium and large enterprises, many of which are members of FEDECAMARAS, which confirms the participation of this employers' organization in the inclusive, constructive and productive social dialogue promoted by the national Government. In January 2010, the People's Ministry for Labour and Social Security sent communications to employers' organizations, including FEDECAMARAS, and to workers' organizations, seeking views concerning the fixing of the national minimum wage for the current year of 2010. These organizations responded to the requests and sent their observations on the national minimum wage to the Office for Labour and Social Security. The national executive authorities, taking into the account the considerations of employers' and workers' organizations, and of the respective agencies, decreed the increase in the national minimum wage by 25 per cent for the year 2010. On various occasions, communications have been sent to workers' organizations, including the CTV, CODESA, CGT, CUTV and UNT, and employers' organizations, including FEDECAMARAS, EMPREVEN, FEDEINDUSTRIA and CONFAGAN, and to various national agencies, with a view to obtaining their views concerning the fixing of the national minimum wage. The Government also provides updated statistical data on the coverage of collective bargaining in the public and private sectors, which are reflected in detail in the observation on Convention No. 98.

The Government therefore expresses concern at the Committee's continued indication "that the Government has not promoted the conditions for social dialogue in the Bolivarian Republic of Venezuela with the most representative organization". This is, firstly, because the Government has indicated on innumerable occasions that there does not exist one single and exclusive most representative organization of employers, and secondly, because the national Government has made every relevant effort for the construction, promotion and development of much broader social dialogue, with the intervention of all the most representative organizations of employers and workers, and not a single organization, as it would appear that it is the intention to impose.

The national Government also indicates that it does not engage in acts of favouritism towards any organization or group in the country, as denounced without justification to the ILO. The Government favours the inclusion of all actors in the development of the socio-economic life of the country, in which there has always been an important trade union movement, of both employers and workers, alongside the two organizations which monopolized representation for decades. There are workers' organizations, such as the Single Central Organization of Workers of Venezuela (CUTV), which dates from the 1960s, and employers' organizations, such as FEDEINDUSTRIA, which was founded 38 years ago, and which are also representative in the country.

The Government emphasizes that it will not apply the criterion according to which a sole organization assumes exclusive representativeness, thereby conditioning the destiny and participation of all other organizations which are also representative in the various sectors of the economy in the country. Moreover, such a criterion does not correspond with the fundamental principles of the ILO, nor with social justice or the common good.

Furthermore, in its 2010 report, the Committee of Experts "deplores the fact that there has been no follow-up to the high-level mission of 2006". In this respect, the Government refers to a communication dated 8 September 2009 sent to the ILO with a detailed report of the action taken on each of the recommendations made by the mission in 2006.

The Committee concludes that, although the Government has held some consultations with FEDECAMARAS (or with member employers or organizations) or has invited it to meetings (concerning the determination of the criteria of representativeness, the Social Security Act, meetings for the determination of the composition of employers in the ILO Conference and on minimum wages) with employers or organizations affiliated to the above organization, the Government has not consulted it, or at least does not deny FEDECAMARAS' allegations, concerning a whole series of vital laws which directly affect the rights of employers and which pursue fundamental changes in the social and productive system and place limitations on the private sector. The Committee also observes that the comments of the trade union organizations do not share the Government's vision concerning the existence of true dialogue, and that it is not shared by FEDECAMARAS either. In particular, the Committee has not received information allowing it to note efforts by the authorities to achieve in so far as possible to joint solutions with the most representative workers' and employers' organizations on matters that directly affect them.

The Committee notes with *regret*, with reference to certain of its previous requests and those of the Conference Committee and the Committee on Freedom of Association, that the National Tripartite Commission on minimum wages envisaged in the Basic Labour Act has not been established and that a national forum for social dialogue has not been created in accordance with ILO principles with a tripartite composition and which respects in its membership the representative status of workers' organizations. The Committee further observes that the Government has repeatedly

disregarded the recommendations of the Committee on Freedom of Association in relation to the important problems encountered by employers and their organizations, in which it requested direct dialogue with this organization, and more specifically its recommendation urging the Government to establish in the country a high-level joint national commission (Government–FEDECAMARAS) assisted by the ILO to examine each and every one of the allegations and matters that are pending so that such problems can be resolved through direct dialogue. As it is not a complex or costly measure, the Committee concludes that the Government is still failing to promote the conditions for social dialogue in the Bolivarian Republic of Venezuela with the most representative organization of employers. The Committee emphasizes the conclusions of the Conference Committee in 2009 in which it observed that the Government was continuing to ignore its urgent calls to promote meaningful dialogue with the most representative social partners and it called on the Government to intensify social dialogue with the representative organizations of workers and employers, including FEDECAMARAS, and to ensure that this organization was not marginalized in respect of all matters of concern to it. In 2009, the Conference Committee requested follow-up action to the 2006 high-level mission to assist the Government and the social partners to improve social dialogue, including through the creation of a national tripartite committee, and to resolve all of the outstanding matters brought before the supervisory bodies. The Committee *deplores* the fact that this tripartite committee has not been established and that there has been no conclusive progress on the determination of the criteria of representativeness. *The Committee recalls that the Government may request ILO assistance for determining the criteria of representativeness in accordance with the principles of the Convention.*

*The Committee, noting that there are still no structured bodies for tripartite social dialogue, once again emphasizes the importance that should be attached to full and frank consultation without hindrance on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the independent and most representative workers' and employers' organizations. The Committee also requests the Government to ensure that any legislation adopted concerning labour, social and economic issues which affects workers, employers and their organizations should be the subject of real in-depth consultations with the independent and most representative employers' and workers' organizations, and that sufficient efforts are being made, in so far as possible, to reach joint solutions, since this is the cornerstone of dialogue.*

*The Committee once again invites the Government to request the technical assistance of the ILO for the establishment of the dialogue bodies mentioned above.* In this context, the Committee emphasizes once again that it is important, taking into account the allegations of discrimination against FEDECAMARAS, the CTV and their member organizations, including the establishment or promotion of organizations or enterprises close to the regime, that the Government is guided exclusively by criteria of representativeness in its dialogue and relations with workers' and employers' organizations, and that it refrains from any form of interference and complies with *Article 3* of the Convention. *The Committee requests the Government to indicate any developments in social dialogue and its outcome, and it strongly hopes that it will be in a position to note progress in the near future.*

The Committee notes that the Government denies the allegations concerning favouritism in relation to certain workers' and employers' organizations. The Committee indicated previously that it is also important, in relation to social dialogue, for an independent investigation to be conducted into the allegations concerning the promotion by the authorities of parallel organizations of workers and employers that are close to the Government, and of favouritism and partiality in relation to such organizations. *The Committee requests the Government to take steps necessary for this investigation to be conducted and to provide information on this matter.*

Furthermore, the Committee regretted previously that the former President of FEDECAMARAS, Carlos Fernández, is still covered by an arrest warrant which prevents his return to the country without fear of reprisals. The Committee notes the Government's extensive statements in its report, which basically reiterate those made previously. The Committee will not re-examine this issue in substance, which moreover has also been addressed by the Committee on Freedom of Association. *The Committee therefore reiterates its previous conclusions.*

*Finally, the Committee once again emphasizes the importance of the Government accepting the ILO mission requested by the Conference Committee on the Application of Standards and expresses the firm hope that the Government will be able to provide information on tangible and concrete progress on the issues that have been raised.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1968)

The Committee takes note of the observations submitted by the following trade union organizations: (1) the Confederation of Workers of Venezuela (CTV), dated 28 August 2009, referring to the Government's refusal to discuss collective labour agreements with the workers in certain sectors (health, courts, petroleum, cement, electricity, public sector, etc.); (2) the International Trade Union Confederation (ITUC), dated 24 August 2010, referring to practices that undermine collective bargaining, such as unwarranted delays in bargaining talks in both the public and the private sectors and collective bargaining violations in various enterprises and sectors in the country; (3) the Independent Trade Union Alliance (ASI), dated 31 August 2010, likewise referring to delays in the discussion of collective agreements and the absence of social dialogue, and to the failure to renew collective agreements, whose expiry dates back many years, a yearly decrease in the number of collective agreements in comparison to the increasing number of workers and trade

unions, the cancellation of one negotiated collective agreement to impose another in its stead, and the requirement that in order to initiate the collective bargaining process, trade union executive committees must be approved by the National Electoral Council (CNE); and (4) the Single National Union of Public Employees of the Venezuelan Corporation of Guayana (SUNEP-CVG), dated 10 November 2010. The Committee notes the Government's reply to the comments made by the CSI, the CTV and the ASI.

*Article 4 of the Convention. Right to collective bargaining.* In its previous comments, in view of the ITUC's observation that the collective bargaining processes in various sectors had been at a standstill since 2006 (pointing out that 243 collective agreement had not been signed and more than 3,500 had not been discussed), the Committee requested the Government to send its observations on the comments made by the ITUC on the situation of collective bargaining, and to provide information on the cases in which two trade union organizations claimed to be the most representative, and on the administrative decisions taken by the labour authority in accordance with the provisions on trade union referendums, and to send the texts of those provisions.

As regards the cases in which two trade union organizations claimed to be the most representative, the Committee notes the information supplied by the Government to the effect that in order to determine which of two trade union organizations or groups of trade union organizations really represents the majority of the workers for the purposes of collective bargaining, the workers concerned are consulted directly by means of a trade union referendum, which establishes which one has the majority support of the workers. The Committee further notes that the Government cites the occurrence at the Polar Brewery as an example, but has not sent the texts of the administrative decisions rendered by the labour authority pursuant to the provisions on trade union referendums. **Consequently, the Committee again requests the Government to provide the texts of the administrative decisions rendered by the labour authority in the last three years pursuant to the provisions on trade union referendums.**

With regard to the situation of collective bargaining, the Committee notes the observations sent by the Government responding to the comments by the CTV and the ITUC regarding delays in the talks on collective agreements in the public sector and the absence of social dialogue. The Committee further notes that according to the ITUC's comments of 2010: (1) the Government's failure to engage in social dialogue and the refusal to establish tripartite consultations on policies affecting workers' conditions and living standards led to numerous trade union protests; (2) in 2009, unjustified delays in collective bargaining talks were common practice in both the public and the private sectors; and (3) the delays resulted in the expiry of many collective agreements and the failure to renew them (by June 2009, 243 collective agreements were left unsigned in the public sector, adversely affecting 1.5 million public employees, and more than 3,500 agreements had not been discussed). The Committee notes that according to the ASI, in 2008, 562 collective agreements were approved, a drop as compared to the figure for 2007 (612). The ASI adds that, according to the press, as at November 2009 only 87,821 persons were covered by collective agreements. The Committee welcomes the information provided by the Government that a number of collective agreements have been concluded (including agreements with the education, underground transportation, electricity, telecommunications, health and petroleum sectors, and with public enterprises) and that there are two collective agreements being drafted for the court workers in the judicial sector. The Committee notes the Government's statement that between 1999 and 2009, 6,914 collective agreement were approved in the country, with an aggregate total of 6,399,909 workers covered (an average of 629 collective agreements signed per year and 581,810 workers covered); 692 agreements were concluded in 2008 (with 163,528 workers covered) and 484 in 2009 (with 603,920 workers covered). According to the Government, until June 2010, three collective agreements were approved in the public sector covering 42,014 workers; during the same period, in the private sector, four collective agreements were approved covering 803,276 workers, including, as regards the latter, the Industrial Building Rule which covers 800,000 workers in the building sector. The Government adds that far from suffering any delay, standstill or obstruction, collective bargaining has been encouraged and such processes have greatly increased. **In view of the considerable discrepancy in the figures supplied by the trade unions and those sent by the Government, the Committee requests the Government to continue to send information and statistics on collective agreements (number, categories covered, number of workers covered, etc.). In the Committee's view, it would be appropriate for the Government to examine, together with the trade unions, the information the number and coverage of existing collective agreements.**

Lastly, the Committee notes the ITUC's statement that on 8 May 2009 the Government called a meeting to which it invited only the union organizations that support the Government's policy – the *Fuerza Unitaria* National Union of the Teaching Profession (SINAFUM), the Venezuelan Federation of Teachers (FVM), and the Venezuelan Federation of Educators (FEV) – and signed a collective agreement with them, leaving aside six other federations (FETRAENZÑANZA, FETRAMAGISTERIO, FETRASINED, FENAPRODO, FESLEV and FENATEV) on the grounds that they had not met the requirements for holding trade union elections and presenting financial reports to the National Electoral Council (CNE). The Committee notes with *concern* that in addition, according to the CTV, several large organizations – such as the Single National Union of Public Employees, and Professional, Technical and Administrative Staff of the Ministry of Health and Social Development (SUNEP-SAS), the Federation of Health Workers (FETRASALUD), the Federation of Public Employees (FEDEUNEP) and the Venezuelan Medical Federation (FMV) – have been unable to bargain collectively for the renewal of their collective agreements because of “overdue elections” (they failed to hold elections upon expiry of their executive boards' terms of office), a situation which bars them by law from exercising the right to bargaining collectively. **Pointing out that certain instances of overdue elections have been**



linked to interference by the CNE, according to the reports issued by the Committee on Freedom of Association in recent years, the Committee requests the Government to ensure that these organizations are able to elect their bodies without any interference whatsoever from the CNE (which is not a judicial body and which may hear any claim from a small group of workers and hold up the endorsement of the elections), so that these major trade union organizations may exercise their right to bargain collectively and defend the interests of their members.

## Yemen

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1976)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in its communication dated 24 August 2010 referring mostly to issues already raised by the Committee as well as violations of trade union rights of foreign workers and the cancellation of the registration of a trade union in the transport sector. **The Committee requests the Government to provide its observations thereon.**

*Article 2 of the Convention. The Law on Trade Unions (2002).* In its previous comments, the Committee had indicated that the reference to the General Federation of Trade Unions of Yemen (GFTUY) made in sections 2 (definition of “General Federation”), 20 and 21, indicating that “All the general trade unions establish a General Federation entitled the General Federation of Trade Unions of Yemen” could result in making it impossible to establish a second federation to represent workers’ interests. The Committee notes that the Government indicates in its report that: (i) it has never imposed any prohibition on trade-union activities; (ii) the law does not stipulate that affiliation to GFTUY is obligatory and there are many other general trade unions which are not in this federation, such as the Trade Union of Doctors, Trade Union of Pharmacists, Education Professions’ Trade Unions, Journalists’ Trade Union and Lawyers’ Trade Union; (iii) there is no monopoly in representation since, in the framework of social dialogue, the interlocutor is the most representative trade union; and (iv) at the moment, the GFTUY is the most representative association of workers. While noting that the Government does not refer to the possibility of the general trade unions to form a federation different than the GFTUY, the Committee recalls that unification of the trade union movement imposed through state intervention by legislative means runs counter to the principle embodied in *Articles 2 and 11* of the Convention. **In these circumstances, the Committee once again requests the Government to take the necessary measures to amend the Law on Trade Union so as to repeal specific reference to the GFTUY, allowing workers and their organizations to establish and join the federation of their own choosing and to indicate the measures taken or envisaged in this regard in its next report.**

Furthermore, the Committee had noted the exclusion from the scope of the Law of employees of high-level public authorities and Cabinets of Ministers (section 4). The Committee had recalled that senior public officials should be entitled to establish their own organizations and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 57), and had requested the Government to indicate whether the categories of workers referred to in section 4 of the Law enjoy the right to establish and join trade unions. **In the absence of the Government’s reply thereon, the Committee must once again reiterate the abovementioned request.**

*Article 3.* In its previous comments, the Committee had noted that section 40(b) provides that a trade union organization can organize a strike in coordination with a trade union organization of the highest level. The Committee had recalled that a legislative provision which requires that a decision by the first-level trade union to call a strike at the local level should be approved by a higher level trade union body, is not in conformity with the right of trade unions to organize their activities and to formulate their programmes. The Committee had requested the Government to clarify whether, section 40(b) requires an authorization from the higher level trade union for a strike to be organized and if that is the case, to take the necessary measures in order to amend the legislation so as to bring it into conformity with the Convention. **In the absence of the Government’s reply thereon, the Committee must once again reiterate the abovementioned request.**

*The draft Labour Code.* The Committee recalls that in its previous observations it had noted that a draft Labour Code was under discussion and that several of its provisions were not in conformity with the Convention. The Committee notes the Government’s indication that with the active participation of the ILO, it is working on the enactment of the new Labour Code and that the draft Code has been referred to the Ministry of Legal Affairs, and will consequently be referred by the Ministry of Social Affairs and Labour to the Council of Ministers and afterwards to Parliament.

In this respect, the Committee must once again recall its comments concerning the draft Labour Code which read as follows:

*Article 2 of the Convention.* The Committee recalled that in its previous observation, it had requested the Government to ensure that domestic workers, the magistracy and the diplomatic corporations, excluded from the draft Labour Code (section 3B(2) and (4)), may fully benefit from the rights set out in the Convention and to transmit the texts of any legislation or regulations ensuring their right to organize. The Committee had further requested the Government to consider revising section 173(2) of the draft Code so to ensure that minors between the ages of 16 and 18 may join trade unions without parental authorization and noted with interest the Government’s intention to do so. The Committee had noted that the Government, in its previous report, indicated that the Committee’s observations with regard to sections 3B

and 173(2) of the draft Code have been taken into consideration. ***The Committee requests the Government to indicate any developments in this respect.***

In its previous comments, the Committee had noted the Government's indication that foreign persons holding diplomatic passports and those working in Yemen on the basis of political visas were excluded from the scope of the draft Code under section 3B(6) and that this category of workers was covered by the specific legislation, regulations and agreements on reciprocal treatment. The Committee had therefore requested the Government to indicate whether this category of foreign workers could in practice establish and join organizations of their own choosing. ***In the light that no new information was provided by the Government, the Committee reiterates its previous request.***

***Article 3.*** With regard to the Committee's previous request to provide a list of essential services referred to in section 219(3) of the draft Code, which empowers the Minister to submit disputes to compulsory arbitration, the Committee had noted the Government's indication that the Council of Ministers will issue such a list once the Labour Code is promulgated. The Committee requests the Government to indicate any developments in this respect.

Concerning section 211 of the draft Labour Code, which provides that strike notice must include an indication as to the duration of a strike, the Committee had noted that the Government reiterates that it is willing to take into account the previous observation of the Committee to the effect that such a requirement unduly restricts the effectiveness of an essential means for furthering and defending workers' occupational interests. ***It requests the Government to indicate any progress made in this regard.***

***Articles 5 and 6.*** The Committee had previously noted that section 172 of the draft Labour Code would appear to prohibit the right of workers' organizations to affiliate with international workers' organizations and that the Government had concurred that this section contradicted section 66 of the Law on Trade Unions, which ensures the right to affiliate with international organizations and the current practice. The Committee therefore expressed the hope that the Government would take the necessary measures to withdraw section 172 from the draft Labour Code. The Committee had noted the Government's indication referring to the Law on Trade Unions which allows workers' organizations to affiliate with the Arab, regional and international trade union federations and to contribute to their establishment. According to the Government, this Law leaves no room for any other text that might contradict its provisions. ***The Committee therefore once again expresses the firm hope that section 172 will be withdrawn from the draft Labour Code and requests the Government to keep it informed in this respect.***

***The Committee trusts that the present legislative reform will bring the national legislation into full conformity with the Convention, in accordance with the comments abovementioned, and once again requests the Government to indicate any development in this regard in its next report.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1969)***

The Committee notes that the Government's report has not been received.

***Comments of the International Trade Union Confederation (ITUC).*** The Committee notes the comments submitted by the ITUC in its communication dated 24 August 2010. ***The Committee requests the Government to communicate its observations thereon.***

***Articles 1, 2 and 3 of the Convention. Protection against anti-union practices.*** The Committee recalls that for a number of years it had been requesting the Government to ensure that effective and sufficiently dissuasive sanctions that guarantee the protection of workers' organizations against acts of interference by employers or their organizations in trade union activities are expressly provided for in the national legislation. In its last observation, the Committee had noted the Government's indication that: (i) the process of formulating the new draft legislative amendments to the Labour Code was under way and that it would endeavour to add provisions on penal responsibility of employers committing acts of anti-union discrimination and interference in trade union affairs in order to bring the legislation into conformity with the Convention; and (ii) the Committee's observation would be taken into account when making amendments to the Law on Trade Unions and supplementing the Penal Code. However, no information regarding the amendments to the Law on Trade Unions or Penal Code was provided in the Government's report. ***Therefore, the Committee once again requests the Government to indicate the progress made in this respect and to provide a copy of the amended legislative texts as soon as they have been adopted.***

***Article 4. Power granted to the Ministry of Labour to refuse registration of a collective agreement on the basis of consideration of "economic interests of the country".*** The Committee had previously requested the Government to amend sections 32(6) and 34(2) of the Labour Code so as to ensure that refusal to register a collective agreement is only possible due to a procedural flaw or because it does not conform to the minimum standards laid down by the labour legislation and not on the basis of consideration of "the economic interests of the country". The Committee had previously noted: (i) that the Government reiterates that it has adopted the Committee's proposal with regard to the amendment of the abovementioned section of the Labour Code; and (ii) that the Labour Code was being revised by the Ministry of Legal Affairs before being submitted to the Council of Ministers and to the Parliament. The Committee notes that the Government once again reiterates that the Labour Code is currently being revised by the Ministry of Legal Affairs before being submitted to the Council of Ministers and to the Parliament. ***The Committee trusts that the legislative amendments***

*requested in its previous observations will be fully reflected in the new legislation and once again requests the Government to provide a copy of the draft Labour Code as soon as the final version of it is available.*

*Collective bargaining in practice.* In its previous comments, the Committee had requested the Government to provide statistics on the number of workers covered by collective agreements in comparison with the total number of workers in the country and it had noted the Government's indication that the requested statistics on collective bargaining were available and would be sent in its subsequent reports. *While noting that according to the Government, trade unions exist in the public sector and that in the private sector, trade unions have been recently established in certain institutions, the Committee expresses the firm hope that the Government will provide the statistics requested together with its next report or at least the information available.*

Finally, the Committee notes that the Government denies the ITUC's assertion according to which the Ministry of Labour revokes collective agreements and that according to the Government, there is not the slightest evidence given for it.

## Zambia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)**

The Committee recalls that, for many years, it has been requesting the Government to take the necessary measures to amend several provisions of the Industrial and Labour Relations Act (ILRA) to bring it into conformity with the Convention. In its previous comments, the Committee had noted that a labour law review was on the agenda of the tripartite Consultative Labour Council. The Committee notes that the Industrial and Labour Relations (Amendment) Act No. 8 of 2008 has been adopted. The Committee, however, notes that most of the proposed amendments still remain unattended to and were not taken into account during the process of the labour law review. The Committee further notes that, according to the Government's report, the concerns expressed by trade unions and employers' associations, some of which were presented before the Parliamentary Committee on Economic, Social and Labour Affairs, have been referred to the Government for consideration. Finally, the Committee notes the Government's indication that its previous comments will be taken into account in the future review of the Industrial and Labour Relations Act.

In these circumstances, the Committee must once again recall its comments and in particular that measures should be taken to bring the following provisions of the Industrial and Labour Relations Act (as amended by the Industrial and Labour Relations (Amendment) Act, 2008) (ILRA), into conformity with the Convention:

#### **Article 2 of the Convention**

- Section 2(e), which excludes from the scope of the Act, and therefore from the guarantees afforded by the Convention, workers in the prison service, judges, registrars of the court, magistrates and local court justices, and section 2(2), which accords the Minister discretionary power to exclude certain categories of workers from the scope of the Act.
- Section 5(b) that provides that an employee can only become a member of “a trade union within the sector, trade, undertaking, establishment or industry in which the employee is engaged” since it limits trade union membership to workers in the same occupation or branch of activity. In this respect, the Committee recalls that such conditions may be applied to first-level organizations, on condition that these organizations are free to establish inter-professional organizations, and to join federations and confederations in the form and manner deemed most appropriate by the workers concerned.
- Section 9(3) in order to shorten the period of registration of a trade union which is currently at a maximum of six months, constituting a serious obstacle to the establishment of organizations and amounts to denial of the right of workers to establish organizations without previous authorizations.

#### **Article 3 of the Convention**

- Section 7(3) that allows a labour commissioner to prohibit a trade union officer from holding office in any trade union for a period of one year if, following the commissioner's refusal to register the union, this union is not dissolved within six months. In this respect, the Committee recalls that having committed an act, the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties, should not constitute grounds for disqualification from trade union office.
- Section 21(5)(6) which confers to the Commissioner the power to suspend and appoint an interim executive board of a trade union, as well as to dissolve the board and call for a fresh election. In this respect, the Committee recalls that any removal or suspension of trade union officers, which is not the result of an internal decision of the trade union, a vote by members or normal judicial proceedings, seriously interferes in the exercise of the trade union office to which the officers have been freely elected by the members of their trade unions. Provisions which permit the suspension and removal of trade union officers by the administrative authorities or under the provisions of legislation are incompatible with the Convention. Measures of this kind should be solely directed towards protecting

the members of organizations and should only be possible through judicial proceedings. The law should lay down sufficiently precise criteria to enable the judicial authority to determine whether a trade union officer has committed acts warranting his suspension or removal; provisions, which are too vague or fail to comply with the principles of the Convention, do not constitute an adequate guarantee. The persons concerned should also enjoy all the guarantees of normal judicial procedures (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 122 and 123).

- Sections 18(1)(b) and 43(1)(a), under which a person, having been an officer of an employers' or workers' organization whose certificate of registration has been cancelled, may be disqualified from being an officer of a trade union if that person fails to satisfy the commissioner that she or he did not contribute to the circumstances leading to such cancellation.
- Section 78(4), which limits the maximum duration of a strike to 14 days, after which, if the dispute remains unsolved, is referred to the court. The Committee considers that such a restriction would seriously limit the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and formulate their programmes and is not compatible with *Article 3* of the Convention.
- Section 78(6)–(8), under which a strike can be discontinued if it is found by the court not to be “in the public interest”.
- Section 78(1), under which, as interpreted by a decision of the Industrial Relations Court, either party may take an industrial dispute to court.
- Section 107, which prohibits strikes in essential services, defined too broadly, and empowers the Minister to add other services to the list of essential services, in consultation with the Tripartite Consultative Labour Council.
- Section 107, which empowers a police officer to arrest, without any possibility of bail, a person who is believed to be striking in an essential service and which imposes a fine and up to six months' imprisonment. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers.

***The Committee hopes that the future amendments will take into account the comments that it has been making for many years and that they will be adopted in the very near future following full and frank consultations with the social partners. The Committee requests the Government to provide information in its next report on any progress achieved in this respect and hopes that the amendments to the Act will be in full conformity with the provisions of the Convention.***

*ITUC comments.* Finally, the Committee notes the comments made by the International Trade Union Confederation (ITUC) in communications dated 24 August 2010 and 29 August 2008, on the application of the Convention and in particular concerning the intimidation of strikers through police intervention. ***The Committee requests the Government to provide its observation thereon.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)**

*Articles 1–4 of the Convention.* The Committee had previously noted that a labour law review was on the agenda of the tripartite Consultative Labour Council. The Committee notes that the Industrial and Labour Relations (Amendment) Act No. 8 of 2008 has been adopted. The Committee however notes that according to the Government's report, most of the amendments it has previously proposed, still remain unattended to, and were not taken into account during the process of the labour law review. The Committee further notes that according to the Government's report, the concerns expressed by trade unions and employers' associations, some of which were presented before the Parliamentary Committee on Economic, Social and Labour Affairs, have been referred to the Government for consideration, although since 1997, the said provisions have not been used against workers or employers. Finally, the Committee notes the Government's indication that its previous comments have been noted and will be taken into account in the future review of the Industrial and Labour Relations Act.

In these circumstances, the Committee must recall its comments concerning the Industrial and Labour Relations Act (as amended by the Industrial and Labour Relations (Amendment) Act, 2008) (ILRA), which read as follow:

- Section 78(1)(a) and (c) and (4) of the ILRA, as amended, allows, in certain cases, either party to refer the dispute to a court or arbitration. The Committee recalls that arbitration imposed by the legislation, or at the request of one party in the services which are neither essential in the strict sense of term, nor involving civil servants exercising authority in the name of the State, is contrary to the principle of the voluntary negotiation of collective agreements. ***The Committee therefore requests the Government to give consideration to redrafting the above provisions so as to ensure that arbitration in services other than those mentioned above, can take place only at the request of both parties involved in the dispute.***

- Section 85(3) of the ILRA, as amended, provides that the Court shall dispose of the matter before it (including disputes between an employer and an employee, as well as the matters affecting trade unions and collective bargaining rights) within a period of one year from the day on which the complaint or application is presented to it. The Committee understands that, under section 85, the Court has jurisdiction over the complaints of anti-union discrimination and trade union interference and recalls that when allegations of violation of trade union rights are concerned, both the administrative bodies and the competent judges should be empowered to give a ruling rapidly. *The Committee therefore requests the Government to shorten the maximum period within which a court should consider the matter and issue its ruling thereon.*

The Committee once again emphasizes the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights. *The Committee hopes that the envisaged amendments will be adopted in the very near future following full and frank consultations with the social partners. It requests the Government to provide information in its next report on any progress achieved in this respect and once again hopes that the amendments to the Act will be in full conformity with the provisions of the Convention and its comments above.*

*International Trade Union Confederation (ITUC) comments.* The Committee notes the comments made by ITUC in communications dated 29 August 2008 and 24 August 2010, stating that trade union rights are widely flouted, particularly in the mining sector, which is dominated by foreign owners who are often accused of intimidating behaviour. ITUC further indicates that the increasing number of sub-contractors in the mining industry makes it harder to organize, and when trade unions do succeed, they are faced with obstacles to bargain collectively. *The Committee requests the Government to provide its observations thereon.*

## Zimbabwe

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)**

*Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)*

The Committee recalls that a Commission of Inquiry was established at the 303rd Session of the Governing Body (November 2008) to examine a complaint presented under article 26 of the ILO Constitution alleging the failure of the Government to observe Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee observes that the Commission of Inquiry completed its work in December 2009 and that its report was submitted to the Governing Body at its 307th Session (March 2010).

The Committee takes note of the reply of the Government to the report of the Commission of Inquiry by virtue of article 29 of the ILO Constitution, which was noted by the Governing Body at its 308th Session (GB.308/6/2). The Government has indicated that the recommendations of the Commission of Inquiry will be implemented in the context of its current legislative and institutional reform programme and welcomed the guidance and support of the ILO in their implementation.

The Committee recalls that in commenting on the observance of the Convention by the Government, it has been raising many of the same points examined by the Commission of Inquiry. It notes that the Commission has confirmed and expanded upon the concerns that this Committee, as well as the Conference Committee on the Application of Standards, have been raising as to the application of this fundamental Convention.

The Committee notes, in particular, that the Commission recommended that: the relevant legislative texts be brought in line with Conventions Nos 87 and 98; all anti-union practices – arrests, detentions, violence, torture, intimidation and harassment, interference and anti-union discrimination – cease with immediate effect; national institutions continue the process the Commission had started whereby people can be heard, in particular referring to the Human Rights Commission and the Organ for National Healing and Reconciliation; training on freedom of association and collective bargaining, civil liberties and human rights be given to key personnel in the country; the rule of law and the role of the courts reinforced; social dialogue strengthened in recognition of its importance in the maintenance of democracy; and ILO technical assistance to the country continued.

The Committee notes the comments made by the International Confederation of Free Trade Unions (ITUC) and the Zimbabwe Congress of Trade Unions (ZCTU) on the application of the Convention in their communications dated 24 August 2010 and 27 September 2010, respectively. The Committee notes that the allegations submitted by the ZCTU relate to the forced exile of the General Secretary of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ) and instances of banning of trade union activities (workshop, commemoration events, processions and May Day celebration). *The Committee requests the Government to provide its observations on those serious allegations.*

The Committee notes with *interest* the launch, on 27 August 2010, of the ILO technical assistance package, which aims to support the Government and the social partners in implementing the recommendations so as to ensure full freedom of association in the country. The Committee further notes with *interest* the strong commitment expressed on that occasion by all stakeholders to implement the recommendations. The Committee further notes that in order to give practical effect to this commitment, the tripartite constituents identified seven priority activities to be carried out in the

period from September to December 2010 aimed, among others, at: finalizing a set of principles for the harmonization of labour laws and the amendment of the Labour Act; identifying and attempting to resolve outstanding cases of trade unionists arrested under the Public Order and Security Act (POSA); capacity building for provincial police, security forces, prosecutors and magistrates in relation to trade union rights; capacity building for judiciary, labour officers, conciliators and arbitrators in relation to trade union rights; and strengthening interface between social partners and national human rights institutions. Further activities to be carried out in 2011 are in the process of being developed in consultation with the social partners.

The Committee notes that the following activities have taken place already: (i) a seminar for government officials on international labour standards, human rights and social dialogue in the world of work; (ii) the launch of the Kadoma Declaration “Towards a shared economic and social vision” concluded by the Government and the social partners under the auspices of the Tripartite Negotiating Forum (TNF) in 2009; and (iii) an activity on the finalization of the principles of harmonization of labour laws and the amendment of the Labour Act.

The Committee notes the Government’s report on the outcome of the latter activity. The Government explains that the objective of this activity was to facilitate the amendment of the relevant legislation, and thereby give effect to the legislative recommendations of the Commission of Inquiry. The set of principles was to be finalized and adopted at a workshop involving the key actors: members of the Tripartite Advisory Council, the principals of labour and business, the Public Service Commission, the Health Service Board, and with the participation of the ministers of labour and public service. The Government regrets that due to the absence at the meeting of ZCTU representatives, the desired outcome was not achieved. Nevertheless, the meeting allowed discussion of some urgent issues and consolidation of the principles which will now be reconsidered by the Tripartite Advisory Council.

The Committee understands that outstanding cases of trade unionists arrested under POSA have been identified. ***The Committee requests the Government to indicate in its next report the steps taken to ensure that these cases are withdrawn.***

***The Committee further requests the Government to provide in its next report detailed information on the outcome of the activities carried out under the technical assistance package and on all other measures taken to implement the recommendations of the Commission of Inquiry.***

***Taking due note of the initiated labour law reform and harmonization process, the Committee expresses the firm hope that the relevant legislative texts will be brought in line with the Convention and recalls that the ILO supervisory bodies stressed the need to amend, in particular, the Labour Act and the Public Service Act, so as to ensure compliance with the following Articles of the Convention.***

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations without previous authorization*

- the need to ensure the right to establish and join trade unions of members of the public service and prison staff; and
- the need to ensure the right to organize of managers (currently, under section 2 of the Labour Act, managers are considered to be employers).

*Article 3. Right of workers’ organizations to elect their representatives in full freedom, organize their administration, and to formulate their programmes*

- the need to amend section 51 of the Labour Act, which concerns the supervision of election of officers of a trade union or employers’ organization so as to guarantee the right of employers’ and workers’ organizations to elect their representatives in full freedom and without interference from the authorities;
- the need to amend sections 28(2), 54(2) and (3) and 55 of the Labour Act which confers on the minister extensive powers to regulate trade union dues as well as to regulate such matters as staff that may be employed by trade unions, their salaries and allowances, as well as the equipment and property that may be purchased by trade unions, so as to ensure that freedom of employers’ and workers’ organizations to organize their administration and dispose of all their fixed and movable assets unhindered;
- the need to amend section 120(2) of the Labour Act, which confers on the minister the right to appoint an investigator who shall at all reasonable times and without prior notice, enter any premises (paragraph (a)); question any person employed on the premises (paragraph (b)); and inspect and make copies of and take extracts from any books, records or other documents on the premises (paragraph (c)), so as to ensure the right of the inviolability of trade union premises and to avoid any danger of excessive intervention in the internal administration of trade unions; and
- the need to effectively guarantee the right to strike through, among other measures: (i) simplifying the procedure for declaring a strike; (ii) amending section 102 of the Labour Act providing for the right of the minister to declare any service essential; (iii) ensuring that a strike can be restricted or banned only in essential services in the strict sense of the term, that is those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, so as to effectively ensure workers’ right to strike; and (iv) amending sections 107, 109 and 112 of the Labour Act providing for excessive sanctions in cases of unlawful collective action being organized.

Furthermore, referring to the conclusions of the Commission of Inquiry (paragraphs 558–562 of the report) and noting with concern the abovementioned recent ZCTU allegations, the Committee urges the Government to take the necessary measures in order to ensure, in law and in practice, the right of trade unions to organize and carry out meetings, assemblies, demonstrations and pickets without interference by the police and security forces. In particular, it urges the Government to take the necessary measures to ensure that the POSA is not used to infringe upon legitimate trade union rights, including the right of workers' organizations to express their views on the Government's economic and social policy.

Noting the commitment of the Government to identify and attempt to resolve outstanding cases of trade unionists arrested under the POSA, the Committee urges the Government to intensify its efforts in this respect and to provide information in this regard in its next report. The Committee expresses the firm hope that it will be in the position to note that no charges are pending against trade unionists under the POSA when it examines next the application of the Convention in Zimbabwe.

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)**

*Follow-up to the recommendations of the Commission of Inquiry  
(complaint made under article 26 of the Constitution of the ILO)*

The Committee takes note of the conclusions and recommendations of the Commission of Inquiry established to examine the observance by the Government of Zimbabwe of Conventions Nos 87 and 98 and the Government's reply thereon, as detailed in the comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee notes with *interest* the launch, on 27 August 2010, of the ILO technical assistance package, which aims to support the Government and the social partners in implementing the recommendations of the Commission so as to ensure full freedom of association in the country and the ensuing activities that have taken place, as well as the envisaged measures, as detailed in the comments on the application of Convention No. 87. **The Committee requests the Government to provide in its next report detailed information on the outcome of the activities carried out under the ILO technical assistance package and on all other measures taken to implement the recommendations of the Commission of Inquiry.**

*Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination.* The Committee notes that, having examined numerous allegations of anti-union discrimination (dismissals, transfers and even eviction from their homes), the Commission of Inquiry concluded that there was no adequate protection against anti-union discrimination in the country. The Committee concurs with the Commission which recalled that, by virtue of its ratification of Convention, the Government is responsible for preventing all acts of anti-union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be expeditious – so that the necessary remedies can be really effective – inexpensive and fully impartial, and considered as such by the parties concerned. In other words, where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention. In this regard, the Commission stressed that the remedy of reinstatement should be available to those who are victims of anti-union discrimination and, if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-trade union dismissals (see paragraph 586 of the Report of the Commission of Inquiry: Truth, reconciliation and justice in Zimbabwe). **The Committee requests the Government to indicate specific measures taken or envisaged to ensure that the above principle is enshrined in the national legislation, and applied and respected in practice.**

*Article 4. Collective bargaining.* The Committee recalls that in its previous comments, it had raised concern with regard to the following legislative provisions, also raised by the Commission of Inquiry in its report:

- section 17 of the Labour Act, which empower the Minister to issue regulations on an extensive list of matters, including conditions of employment;
- sections 78 and 79, which empower the Minister to direct the Registrar not to register an agreement “if any provision appears to the Minister to be inconsistent with legislation or unreasonable or unfair”;
- sections 25 and 81, pursuant to which, the Minister can “direct the parties to negotiate an amendment” to a registered collective agreement if it contains a provision “that is, or that has become, inconsistent with legislation in force or is unreasonable or unfair”. The Minister may then amend the agreement in accordance with the proposed amendment, or “in such other manner that is consistent with the considerations of legislative consistency, reasonableness and fairness”; and
- section 93(3-5), which provides that disputes of interest in the essential services that have not been settled within 30 days or such other period as agreed by the parties will be referred to compulsory arbitration.

*Article 6. Collective bargaining in the public service.* Noting that currently, public servants have no collective bargaining rights, the Committee, like the Commission of Inquiry, stresses that all workers, including public servants, should be entitled to bargain collectively to determine their conditions of work. Only public servants, who, by their

functions, are directly engaged in the administration of the State (that is, civil servants employed in government ministries and other comparable bodies), as well as officials acting as supporting elements in these activities can be excluded from the protection of Convention.

*Taking due note of the initiated labour law reform and harmonization process, the Committee expresses the firm hope that the relevant legislative texts, and in particular, the Labour Act and the Public Service Act, will be brought in line with the Convention, taking into account the recommendations of the Commission of Inquiry and the Committee's comments above. The Committee requests the Government to provide detailed information in its next report on all measures taken or envisaged in this respect, as well as to transmit texts of any relevant draft or adopted legislation, so that it may examine its conformity with the provisions of the Convention.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 11** (Kyrgyzstan, Uganda); **Convention No. 87** (Armenia, Burkina Faso, Burundi, Cambodia, Cape Verde, Congo, Croatia, Czech Republic, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Kuwait, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malawi, Mali, Mauritania, Mauritius, Mongolia, Montenegro, Namibia, Netherlands: Aruba, Netherlands: Netherlands Antilles, Nicaragua, Norway, Papua New Guinea, Peru, Philippines, Portugal, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Serbia, Sierra Leone, Suriname, Swaziland, Switzerland, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, United Kingdom, United Kingdom: Anguilla, Uruguay); **Convention No. 98** (Barbados, Cambodia, Congo, Democratic Republic of the Congo, Kuwait, Kyrgyzstan, Lebanon, Lithuania, Mauritania, Montenegro, Morocco, Mozambique, Namibia, Niger, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Singapore, Slovakia, South Africa, Suriname, Tajikistan, Togo, Tunisia, United Kingdom: Anguilla); **Convention No. 135** (Burundi, Democratic Republic of the Congo, Sao Tome and Principe, Sri Lanka); **Convention No. 151** (Sao Tome and Principe, Seychelles, Turkey); **Convention No. 154** (Kyrgyzstan, Sao Tome and Principe, Slovenia, Uganda, Uzbekistan).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 98** (France: New Caledonia); **Convention No. 135** (Turkey, Ukraine, Uzbekistan); **Convention No. 151** (Spain); **Convention No. 154** (Gabon, Netherlands).



## Forced labour

### Afghanistan

#### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)**

*Article 1(a) of the Convention.* Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been referring to the following provisions of the Penal Code, under which prison sentences involving an obligation to perform labour may be imposed:

- sections 184(3), 197(1)(a) and 240 concerning, among others, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods; and
- section 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization in the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or engages in propaganda to promote or attract members to such organization, by whatever means, or who joins such an organization or develops contacts personally or through a third party with such an organization or one of its branches.

The Committee pointed out, referring to paragraphs 154 and 163 of its 2007 General Survey on the eradication of forced labour, that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. Sanctions, however, involving compulsory labour fall within the scope of the Convention when they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. A similar situation arises when certain political views are prohibited, subject to penalties involving compulsory labour, as a consequence of the prohibition of political parties or associations.

*The Committee reiterates its hopes that these penal provisions will be re-examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a punishment for holding or expressing political or ideological views and that the Government will indicate, in its next report, the measures taken or envisaged to this end.*

### Algeria

#### **Forced Labour Convention, 1930 (No. 29) (ratification: 1962)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2(1) of the Convention.* *Civic service.* Since 1986, the Committee has been drawing the Government's attention to the incompatibility with the Convention of sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 on civic service, as amended and supplemented by Act No. 86-11 of 19 August 1986 and by Act No. 06-15 of 14 November 2006, under which it is possible to require persons who have completed a course of higher education or training to perform a period of civic service ranging from one to four years before being able to exercise an occupation or obtain employment.

The Government indicated that civic service is a statutory period of work performed for a public administration, body or enterprise in local communities by persons to whom such an obligation applies. It represents a contribution of such persons to the economic, social and cultural development of the country. According to the Government, persons liable to perform civic service have the same rights and obligations as the workers governed by the legislation respecting the general conditions of service of workers, including the right to receive remuneration from the employing entity in accordance with the law. Furthermore, the years of civic service performed are taken into account for purposes of seniority, promotion and retirement, and also in the contract period during which the person concerned is bound to a public body by a training contract. The Government further indicated that persons obliged to perform civic service are assigned exclusively to the specialized branch or discipline in which they were trained.

The Committee noted these explanations. However, it also pointed out that, under sections 32 and 38 of the Act, any refusal to perform civic service and the resignation of the person concerned without valid reason results in the prohibition on their exercising an activity on their own account, and that any infringement will incur the penalties laid down in section 243 of the Penal Code (imprisonment ranging from three months to two years and/or a fine of between 500 and 5,000 DA). Similarly, under sections 33 and 34 of the Act, all private employers are required to satisfy themselves before engaging any workers that applicants are not subject to civic service or can produce documentation proving that they have completed it. Furthermore, any private employer knowingly employing a citizen who has evaded civic service is liable to imprisonment and a fine. Hence, even though persons liable to civic service benefit from conditions of work (remuneration, seniority, promotion, retirement, etc.) similar to those of regular public sector workers, they discharge this service under threat because, in the event of any refusal, they are denied access to any self-employed occupational activity or employment in the private sector. This means that civic service falls within the concept of compulsory labour within the meaning of *Article 2(1)* of the Convention. Furthermore, since it consists of a contribution by the persons concerned to the economic development of the country, this compulsory service violates *Article 1(b)* of Convention No. 105, which has also been ratified by Algeria.

In its report of 2008, the Government explains that civic service currently in force in Algeria may be regarded as an opportunity, given in particular to persons who have completed higher education, to familiarize themselves with the world of

work and facilitate their integration into working life. *While noting the willingness expressed by the Government in its report to take account of the Committee's comments, until the removal of the ambiguities resulting from the application of the law has been achieved, the Committee reiterates the hope that the Government will take the necessary steps to repeal or amend the provisions concerned in the light of Conventions Nos 29 and 105 and that the Government will soon be in a position to report on the measures adopted in this respect.*

The Committee further noted that under section 2 of Ordinance No. 06-06 of 15 July 2006, civic service may be performed in private-sector health establishments in accordance with arrangements set forth by regulation. The Committee reminds the Government that, according to Paragraph 3(3) of the Special Youth Schemes Recommendation, 1970 (No. 136), the services of participants should not be used for the advantage of private persons or undertakings. *Since the Government has not supplied any information on this point, the Committee reaffirms the hope that the Government will take this into account and again requests it to indicate whether regulations have been adopted to specify arrangements under which civic service may be performed in private-sector health establishments and, if so, to provide a copy. It also again requests the Government to indicate whether, in practice, persons subject to the civic service obligation perform such service in private-sector health establishments, and to supply any other information allowing the extent of this practice to be assessed (number of persons and establishments concerned, length of service, etc.), together with information on the conditions of work of the persons concerned.*

*Article 2(2)(a). National service.* The Committee has been referring for a number of years to Ordinance No. 74-103 of 15 November 1974 issuing the National Service Code and the Order of 1 July 1987, under which conscripts are required to take part in the running of various sectors of the economy and administration. The Committee noted that they are further required to perform civic service for a period ranging from one to four years, as referred to above. The Committee recalled that, under the terms of *Article 2(2)(a)*, of the Convention, compulsory military service is excluded from the scope of the Convention only where conscripts are assigned to work of a purely military character.

The Government indicated in a previous report that the civic form of national service had not been used since 2001. The Government explained that this de facto suspension would be reflected in law as soon as the reform of the National Service Code was placed on the agenda. *As the Government has not provided any information on this point, the Committee again requests it to provide information on any developments in this matter showing that the national legislation has been aligned with practice and hence with the provisions of the Convention, and to provide copies of the relevant texts.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

In the communication received in November 2009, the Government indicates that, according to the national legislation, prison labour is a voluntary activity based on the prisoners' consent and performed in accordance with the prisoners' state of health and their physical and psychological abilities. According to the Government, a personal file shall be constituted in regard to each prisoner called on to perform prison work, which necessarily contains a medical certificate and a document confirming the prisoner's explicit acceptance to work. The Committee takes note of this information, but observes, however, that voluntary character of prison labour does not follow from the legislation, which stipulates that "prisoners shall be given useful work" (section 2 of Inter-Ministerial Order of 26 June 1983 on the modalities of the use of a prison workforce by the National Office of Educational Works) and that "a prisoner may be assigned useful work by the director of the penitentiary establishment" (section 96 of Act No. 05-04 of 6 February 2005 establishing the Code on Penal Institutions and Social Integration of Inmates).

*The Committee asks the Government to supply sample copies of personal files of prisoners called on to perform prison work, and in particular, copies of documents confirming the prisoner's explicit acceptance to work. The Committee also considers that, if in practice prison labour is voluntary, it would be appropriate to amend legislation accordingly, in order to avoid any legal ambiguity. It hopes that the Government will supply, in its next report, information on the progress made in this regard. The Committee also repeats its previous comments, to which the Government has not replied in its report.*

*Article 1(a) of the Convention. Penalties for expressing political views.* For many years the Committee has referred to Act No. 90-31 of 4 December 1990 concerning associations, certain provisions of which allow the imposition of prison sentences involving the obligation to work in circumstances which are covered by the Convention. The Committee previously noted that, under section 5 of the Act, an association's legal status is automatically invalidated if its objectives are contrary to the established institutional system or public order or offend morals or the laws and regulations in force. It further noted that, under section 45 of the Act, anyone who manages, administers or actively participates in an association that has not been approved or which has been suspended or dissolved, or facilitates meetings of the members of such an association, shall be liable to imprisonment ranging from three months to two years involving the obligation to work.

The Committee noted the information sent by the Government to the effect that the penalty laid down by section 45 of Act No. 90-31 of 4 December 1990 concerns persons breaching the legal provisions regarding the establishment of associations and not persons holding certain political views, which could be expressed in full freedom subject to the legislation in force. In its General Survey of 2007 on the eradication of forced labour, the Committee indicated that the range of activities which must be protected, under the present provisions of the Convention, from punishment involving forced or compulsory labour, includes the freedom to express political or ideological views, and also various other generally recognized rights. The latter include the rights of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and the adoption of policies and laws reflecting them, and which may also be affected by measures of political coercion (see paragraph 152 of the General Survey). The provisions imposing the penalty of imprisonment involving the obligation to work on any infringement of the rules governing the establishment, dissolution or approval of an association are therefore contrary to the Convention. *The Committee therefore again requests the Government to take the necessary steps to bring its legislation into conformity with the provisions of the Convention, either by amending section 45 of Act No. 90-31 of 4 December 1990 or by explicitly exempting the persons convicted under this section from the obligation to work.*

The Committee previously asked the Government to supply information on the practical application of section 87bis of the Penal Code (Ordinance No. 95-11 of 25 February 1995) on "terrorist or subversive acts", which permits imprisonment involving compulsory labour for anyone convicted of committing a number of very broadly defined acts. It noted the information sent by

the Government to the effect that section 87bis of the Penal Code deals with acts affecting the security of the State, territorial integrity, national unity, stability and the normal working of institutions, through use of violence. The Government indicated that acts having a peaceful objective do not come under the scope of section 87bis.

The Committee observed, however, that the very general terms of section 87bis of the Penal Code – obstructing traffic or freedom of movement on public thoroughfares and occupying public places with gatherings, damaging means of communication and transport, public and private property, taking possession thereof or unduly occupying it, obstructing the actions of the public authorities or the free exercise of worship or public freedoms and also the functioning of public service establishments, hindering the operation of public institutions – might enable peaceful acts to be penalized. The Committee underlines the fact that, although anti-terrorist legislation responds to the legitimate need to protect the safety of the population against the use of violence, it can still become a means of political coercion and of repression of the peaceful exercise of civil rights and liberties, such as freedom of expression and freedom of association. The Convention protects these rights and liberties against repression which is exercised by means of penalties involving an obligation to work, and the limits which the law may impose on them must be strictly defined.

***The Committee therefore hopes that the Government will soon take the necessary steps to limit the scope of section 87bis of the Penal Code so that persons who peacefully express ideological opposition to the established political, social or economic system cannot be sentenced to a term of imprisonment which includes the obligation to work.***

*Article 1(d). Penalties for participating in strikes.* For a number of years the Committee has referred to section 41 of Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike, which states that requisition orders may be issued pursuant to the legislation in force for workers on strike who hold posts in public institutions or administrations, or in enterprises, that are essential for the safety of persons, plant and property and for the continuity of public services which are essential to the vital needs of the country, or who carry on activities essential to supplying the public. Section 42 states that, without prejudice to the penalties laid down in the Penal Code, refusal to execute a requisition order constitutes serious professional misconduct.

The Committee previously noted that sections 37 and 38 of Act No. 90-02 establish a list of essential services in which the right to strike is limited and for which a compulsory minimum service must be organized. It observed that the list is very broad and includes services such as banking and radio/television services, which, according to the Committee on Freedom of Association, do not constitute essential services in the strict sense of the term (see *Digest of decisions and principles of the Freedom of Association Committee*, 2006, paragraph 587, and also the General Survey of 1994 on freedom of association and collective bargaining, paragraphs 159–160). The list in sections 37 and 38 of Act No. 90-02 also includes court registry services.

The Committee also referred to section 43 of Act No. 90-02 prohibiting strikes in certain sectors of public institutions and administrations, such as the judiciary and customs. Furthermore, section 55(1) of Act No. 90-02 provides that anyone who causes or seeks to cause, or maintains or seeks to maintain, a concerted collective stoppage of work in conflict with the provisions of this Act, but without violence or assault against persons or property, shall be liable to imprisonment ranging from eight days to two months and/or a fine.

The Committee noted the Government's information in a previous report that the imposition of any penalty on workers taking part in a strike is prohibited. It also noted the Government's statement that the organization of a minimum service provided for by Act No. 90-02 does not constitute forced labour, the objective being to ensure the functioning of public institutions. While noting these indications, the Committee recalled that penalizing participation in strikes through imprisonment including the obligation to work is contrary to the present provisions of the Convention. It also recalled that as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Surveys on freedom of association and collective bargaining, paragraph 159, and on the eradication of forced labour, paragraph 185). ***The Committee again requests the Government to take the necessary steps to ensure that no worker may be sentenced to imprisonment including the obligation to work for going on strike and also to supply information on the practical application of sections 41, 43 and 55(1) of Act No. 90-02, stating in particular the number of persons convicted and supplying copies of any court decisions issued.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Azerbaijan

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1992)***

*Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers in the construction sector.* The Committee notes the communication dated 1 September 2010 received from the International Trade Union Confederation (ITUC), which contains comments on the application of the Convention by Azerbaijan. It also notes the Government's reply to this communication received on 29 November 2010.

The Communication by the ITUC contains allegations concerning the situation of about 700 workers from Bosnia and Herzegovina, The former Yugoslav Republic of Macedonia and Serbia who were working on construction sites managed by the SerbAz Design and Construction Company in Azerbaijan. The ITUC refers in this connection to the reports received from the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) and from ASTRA (Anti-Trafficking Action), an NGO in Serbia. According to the allegations, workers had been recruited in Bosnia and Herzegovina and, once in Azerbaijan, were not provided with any legal work permits, but only with tourist visas, having also to hand over their passports to their employer. Without identification documents and residence permits, workers' freedom of movement was limited and their vulnerability was aggravated by the fact that they were obliged to live at the construction site, being strictly forbidden to leave, subject to threats of penalties, including physical punishment. The ITUC further alleged that workers had been living in appalling conditions, with insufficient food, water or proper medical services, which lead to two deaths.

The ITUC expressed the view that there have been indications of forced labour in this case, which include, inter alia, the use of threats and abuse of workers' vulnerability; coercion; deception regarding working and living conditions; physical punishment, high recruitment fees; withholding of wages; salary deductions; confiscation of documents; absence of work permits; limitations to freedom of movement; and absence of regular employment contracts.

The ITUC informs that the OSCE representative visited the construction sites and confirmed the poor living conditions and apparent threats to workers. The Azeri Parliament was also informed of the situation and debated the issue, coinciding with the submission of the annual report of the Azerbaijan National Anti-Trafficking Coordinator, which stated, however, that the situation of Serbian and Bosnian workers did not fall within Azerbaijan's jurisdiction, since the workers signed work agreements with SerbAz in their countries of origin. According to the above communication by the ITUC, some investigations have been initiated by national authorities in Bosnia and Herzegovina and Azerbaijan; in December 2009, investigations concerning 14 accused were in process in Bosnia and Herzegovina, and the case had been forwarded to the Public Prosecutor's Office. A petition to the Ombudsman in Azerbaijan had also been prepared, and about 500 workers in Bosnia and Herzegovina were preparing to submit a case to the court in Azerbaijan to claim unpaid wages and other violations of workers' rights.

Finally, the ITUC informs that, in April 2010, a cooperation agreement on mutual protection of migrant workers, prepared with the assistance of the Building and Wood Workers' International (BWI), had been signed by construction workers' unions from Bosnia and Herzegovina and from Azerbaijan.

In its reply to the comments submitted by the ITUC, the Government denies the allegations, indicating that no direct appeals from workers employed by SerbAz regarding labour violations have been submitted to the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan. It further indicates that the only information concerning workers' rights violations had been received from the NGO "Azerbaijan Migration Centre", and that an appropriate investigation has been subsequently conducted by the State Labour Inspectorate, which did not confirm the allegations against the SerbAz company. According to the investigation, "it was defined that some specialists from a number of foreign countries were on their business trip" for that company. Finally, the Government informs that no individual work permits for foreign citizens have been obtained by the SerbAz company.

*While noting the above information and considering the gravity of the allegations, the Committee expresses the firm hope that the Government will take the necessary measures to thoroughly investigate the alleged facts, and will provide information on measures taken or envisaged in order to strengthen the protection of migrant workers, so as to prevent the abuses of workers' rights and to exclude the exploitation of their vulnerable situation which might lead to the exaction of labour for which the workers have not offered themselves voluntarily. The Committee also requests the Government to provide, in its next report, information on the outcome of any legal proceedings which have been instituted regarding this case.*

## Bahamas

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(c) of the Convention. Disciplinary measures applicable to seafarers.* For many years, the Committee has been referring to certain provisions of the 1976 Merchant Shipping Act, under which various breaches of labour discipline are punishable with imprisonment (involving an obligation to work, under section 10 of the Prisons Act and rules 76 and 95 of the Prison Rules) and deserting seafarers from ships registered in another country may be forcibly conveyed on board the ship. The Committee has noted the Government's indications in its earlier reports that some amendments to the Merchant Shipping Act have been made. It notes, however, that under sections 129(b) and (c) and 131(a) and (b) of the updated text of the Merchant Shipping Act, which it has consulted on the Government's website, penalties of imprisonment may still be imposed for breaches of discipline such as disobedience to lawful command, neglect of duty, desertion and absence without leave, and section 135 of the Act still provides for the forcible conveyance of deserting seafarers to ships registered in another country, where it appears to the minister that reciprocal arrangements will be made in that country.

The Committee recalls that *Article 1(c)* expressly prohibits the use of any form of forced or compulsory labour as a means of labour discipline. As the Committee repeatedly pointed out, only acts which endanger the ship or the life or health of persons are excluded from the scope of the Convention (see, for example, paragraphs 179–181 of the General Survey of 2007 on the eradication of forced labour). *The Committee therefore reiterates its hope that the necessary measures will at last be taken with a view to amending the above provisions of the Merchant Shipping Act, either by repealing sanctions involving compulsory labour or by restricting their application to the situations where the ship or the life or health of persons are endangered (as is the case, e.g. in section 128 of the same Act). The Committee requests the Government to provide information on the progress made in this regard in its next report.*

*Article 1(d). Punishment for having participated in strikes.* Over a number of years, the Committee has been referring to section 73 of the 1970 Industrial Relations Act, as amended, under which the minister may refer a dispute in non-essential services to the tribunal for settlement, if he considers that a public interest so requires; the recourse to strike action in this situation is prohibited, violation being punishable with penalties of imprisonment (involving an obligation to perform labour, as explained above) under sections 74(3) and 77(2)(a) of the same Act. The Committee has further noted that, according to section 76(1), a strike which, in the opinion of the minister, affects or threatens the public interest, might also be referred to the tribunal for settlement, failure to discontinue the participation in such a strike being punishable with imprisonment under section 76(2)(b).

The Committee previously noted the Government's indications in its earlier report that the proposed Trade Unions and Industrial Relations Bill had been tabled in the House of Assembly, and that it contained no provisions imposing sanctions of imprisonment for breach of the legislation, which may be punished only with fines. The Committee also noted the Government's repeated statement that the above provisions of the Industrial Relations Act had never been applied in practice, and that the legislation would be amended when a consensus is achieved after further consultation with the social partners.

*While having noted these indications, the Committee reiterates the firm hope that the review of the Act announced by the Government for a number of years will soon result in the amendment of the above provisions, so that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike, in order to bring legislation into conformity with the Convention. Referring also to its comments made in 2007 under Convention No. 87, likewise ratified by the Bahamas, the Committee asks the Government to supply a copy of the new legislation, as soon as it is adopted.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Benin

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Article 2(2)(a) of the Convention.* *Work of a purely military character performed in virtue of compulsory military service laws.* In its previous comments the Committee drew the Government's attention to the provisions of section 35 of Act No. 63-5 of 26 June 1963 concerning recruitment, according to which the purpose of active military service is, first, to provide conscripts with military instruction and also education intended to develop their civic sense and, second, to further their training and employ them, inter alia, in specialized army units to participate in the work of national construction.

The Committee notes the concise information supplied in the Government's report to the effect that young persons receive training for working life in the context of military service and at the end of the training they are not subject to any commitment.

The Committee recalls that, under *Article 2(2)(a)* of the Convention, work or service exacted in virtue of compulsory military service laws is only excluded from the scope of the Convention on condition that it is of a purely military character. On the other hand, the Convention is not opposed to the performance of non-military work by career members of the armed forces on a voluntary basis (see paragraph 46 of the Committee's 2007 General Survey on the eradication of forced labour). However, under the provisions of Act No. 63-5, the work exacted from conscripts is not limited to work of a purely military character and can therefore be considered as forced or compulsory labour within the meaning of the Convention. *The Committee therefore requests the Government once again to take the necessary steps to bring the provisions of section 35 of Act No. 63-5 into conformity with those of the Convention.*

In its previous comments the Committee noted the adoption of Act No. 2007-27 of 23 October 2007 establishing military service in the national interest, pursuant to Act No. 63-5 of 26 June 1963 concerning recruitment, on which the Committee has commented (see above), and also the adoption of Decree No. 2007-486 of 31 October 2007 establishing general conditions for the organization and performance of military service in the national interest. It noted that, under the terms of sections 2 and 5 of Act No. 2007-27, military service in the national interest consists of compulsory service for 12 months, supplements active military service and is compulsory for all Beninese nationals of both sexes aged between 18 and 35 years. The Committee noted that, under section 3 of the Act, the purpose of military service in the national interest is the mobilization of citizens with a view to their participation in work for the development of the country. Section 4 states that, after an initial phase of instruction, recruits are then assigned to administrative units, production units, institutions and bodies with a view to participating in the performance of relevant work in the national interest which is of a social or economic nature. According to section 18 of Decree No. 2007-486, after two months of military, civic and moral training, recruits are engaged in socio-economic development work for nine months. The Committee noted that the provisions of Act No. 2007-27 and Decree No. 2007-486 do not satisfy the conditions of *Article 2(2)(a)* of the Convention, inasmuch as those conscripted for military service in the national interest are assigned to socio-economic development work which is not of a purely military character. *The Committee therefore requests the Government once again to take the necessary steps to amend or repeal Act No. 2007-27 and Decree No. 2007-486 in such a way as to ensure their conformity with the Convention.*

In its previous comments the Committee observed that Act No. 83-007 of 17 May 1983 governing civic, patriotic, ideological and military service conflicts with the Convention since persons subject to this compulsory civic and military service are assigned to a production unit in accordance with their occupational skills and may be compelled to perform work which is not of a purely military character. The Committee noted the Government's statement that this Act is no longer applied in practice. *It again requests the Government to indicate in its next report whether Act No. 83-007 of 17 May 1983 has actually been repealed and, if so, to provide a copy of the repealing legislation.*

The Committee is raising other points in a request addressed directly to the Government.

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

*Article 1(a) of the Convention.* *Imposition of prison sentences involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* For many years the Committee has been drawing the Government's attention to certain provisions of Act No. 60-12 of 30 June

1960 on the freedom of the press, under which various acts or activities relating to the exercise of freedom of expression are punishable by imprisonment, and that convicted prisoners may be assigned social rehabilitation work under the terms of section 67 of Decree No. 73-293 of 15 September 1973 issuing the prison regulations. The Committee referred more specifically to the following sections of the Act: section 8 (deposit of a publication with the authorities before its release to the public); section 12 (a ban on publications of foreign origin in French or the vernacular, printed within or outside the country); section 20 (incitement to commit an act classified as an offence); section 23 (causing offence to the Prime Minister); section 25 (publication of false reports); and sections 26 and 27 (slander and insults).

The Committee also referred to Act No. 97-010 of 20 August 1997 liberalizing audiovisual communication and establishing special penal provisions for offences relating to the press and audiovisual communications. While noting that the provisions of Act No. 97-010 prevail should they conflict with those of the Act on the freedom of the press, the Committee pointed out that the two Acts are different in scope, since Act No. 97-010 covers audiovisual communications and the Act on the freedom of the press covers printing, books and periodicals. This being the case, the Committee also drew the Government's attention to certain provisions of Act No. 97-010: section 79(3), under which "any seditious shouting or chanting against the lawfully established authorities in public places or meetings" is punishable by imprisonment of six months to two years; section 81, under which causing offence to the President of the Republic is punishable by imprisonment of one to five years; and section 80, which establishes the penalty of imprisonment of two to five years for any provocation against the public security forces aimed at distracting them from their duty of defending security or of obeying the orders given by their chiefs for the enforcement of military laws and regulations.

The Government indicates in its report that the four laws governing the press (Act No. 60-12 of 30 June 1962 on the freedom of the press; Act No. 97-010 of 20 August 1997 liberalizing audiovisual communications; Act No. 84-007 of 15 March 1984 on advertising posters; and Ordinance No. 69-22/PR/MJL of 4 July 1969 establishing penalties for certain acts likely to cause a breach of the peace and for the publication, dissemination and reproduction of false reports) have become outdated in relation to the requirements of this sector and must be amended to be brought into line with international conventions. The Government also indicates that these legislative texts have been grouped together in one law, the draft of which will soon be referred to Parliament for adoption, and also that the Committee's comments have been taken into account in this bill, so that the exercise of freedom of expression and the expression of views opposed to the established political, social or economic system will no longer incur the penalty of imprisonment.

*While noting these indications, the Committee hopes that the bill will be adopted in the near future and that the legislation governing the press and audiovisual communication sectors will be amended in such a way that no penalty including compulsory labour may be imposed as punishment for expressing political opinions or for peacefully expressing opposition to the established political, social or economic system. Pending this revision, the Committee requests the Government to continue to supply information on the application in practice of Acts Nos 60-12, 97-010, 84-007, 69-22 and Ordinance No. 69-22/PR/MJL by the national judicial authorities, including the penalties imposed.*

*Article 1(c). Imposition of forced labour as a means of labour discipline.* The Committee again notes the Government's statement that the Merchant Shipping Code has been submitted to the National Assembly for adoption and that sections 215, 235 and 238 of the Code of 1968 will be amended to take account of the Committee's comments. *While noting these indications, the Committee expresses the strong hope that the Merchant Shipping Code will be adopted in the very near future, and that it will not contain provisions allowing the imposition of prison sentences involving the obligation to work for breaches of labour discipline where they do not endanger the safety of the vessel or the life or health of persons. The Government is requested to send a copy of the new Merchant Shipping Code once it has been adopted.*

## Cameroon

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Article 2(2)(c) of the Convention. Hiring of prison labour to private entities.* In its previous comments the Committee noted that Decree No. 92-052 of 27 March 1992 issuing the prison regulations (sections 51-56) authorizes the hiring of prison labour to private entities and individuals. It noted that Order No. 213/A/MINAT/DAPEN of 28 July 1988 – which is still in force, according to the Government – establishes a number of conditions concerning the use of prison labour and fixes the rates for their hiring. Those rates include the cost of the daily allowance for a manual worker and a technician, and the surveillance costs. Noting that neither of these legislative texts requires informed, formal consent of the prisoner hired to private enterprises and/or individuals, the Committee has been asking the Government for several years to take the necessary steps to incorporate the requirement for consent into the legislation. The Committee further notes that the Government has already indicated its commitment to ensuring that the regulations implementing the 1992 Decree issuing the prison regulations establish the requirement for formal consent to be given by convicted prisoners before performing any work for private entities, even indicating in its 2009 report that the issue had been examined in conjunction with the Ministry of Territorial Administration and Decentralization at the last session of the National Labour Advisory Commission.

The Committee notes the Government's indication in its last report that the regulations implementing the Decree issuing the prison regulations have not been adopted, and it refers to an instruction from the Prime Minister for conducting discussions on the setting up of an agency for the operation of prisons which would take account of ILO concerns.

The Committee recalls once again that, in a setting of captivity, it is necessary to obtain the informed, formal consent of prisoners for work in cases where such work is performed for private individuals, enterprises or associations. The Committee further considers that certain factors are required in order to authenticate or confirm the giving of free and informed consent, and that the most reliable indicator of the voluntary nature of labour is that the work is performed under conditions which approximate to a free labour relationship. ***The Committee expresses its firm hope that the Government will take all the necessary steps in order to ensure, both in law and in practice, that free, formal and informed consent is given by convicts to work for private entities. To this end, it expects the Government to adopt, in the very near future, the regulations setting out the requirements for such consent and to ensure conditions which approximate a free labour relationship in terms of remuneration, hours of work and occupational safety and health.***

The Committee is raising other points in a request addressed directly to the Government.

## Central African Republic

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1(1) and 2(1) of the Convention. Idleness, active population and compulsory activities.* For many years, the Committee has been drawing the Government's attention to the need to formally repeal certain provisions of the national legislation which are contrary to the Convention inasmuch as they constitute a direct or indirect compulsion to work:

- Ordinance No. 66/004 of 8 January 1966 with respect to the suppression of idleness, as amended by Ordinance No. 72/083 of 18 October 1972, under which any able-bodied person aged between 18 and 55 years who cannot prove that she or he is engaged in a normal activity providing for her or his subsistence or that she or he is engaged in studies is considered to be idle and liable to a penalty of between one and three years of imprisonment;
- Ordinance No. 66/038 of June 1966 respecting the supervision of the active population, under which any person aged between 18 and 55 years who cannot justify belonging to one of the eight categories of the active population shall be called up to cultivate land designated by the administrative authorities and shall also be considered a vagabond if apprehended outside her or his *sous-préfecture* of origin and shall be liable to a sentence of imprisonment;
- Ordinance No. 75/005 of 5 January 1975 obliging all citizens to provide proof of the exercise of a commercial, agricultural or pastoral activity and making persons in violation of this provision liable to the most severe penalties; and
- section 28 of Act No. 60/109 of 27 June 1960 with respect to the development of the rural economy, under which minimum surfaces for cultivation are to be established for each rural community.

In its latest report, the Government indicates that it has decided to hold an inter-ministerial meeting with a view to sensitizing the ministers who initiated these texts about the necessity of repealing them. For practical reasons, this meeting could not be organized; nevertheless, the Labour Administration would spare no effort to bring about the repeal of the aforementioned texts. The Committee takes note of this information. ***This matter has been the subject of its comments for many years and the Committee expresses the firm hope that the inter-ministerial meeting to which the Government refers will very soon be held, and that it will lead to concrete proposals for the repeal of these texts, which are contrary to the Convention and which, although having fallen into disuse, remain in the national legislative scheme.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(a) of the Convention. Imposition of imprisonment involving an obligation to work as a sanction for expressing political views or views ideologically opposed to the established political, social and economic system.* 1. In its previous comments, the Committee recalled that the Convention prohibits to impose sanctions involving an obligation to perform labour, including compulsory prison labour, on persons who, without having recourse to violence, hold or express political views, or views ideologically opposed to the established political, social or economic system. Considering that section 62 of Order No. 2772, of 18 August 1955, regulating the functioning of penal institutions and the work of detainees, provides for the obligation to work in prison, prison sentences imposed on persons who express certain political opinions or their opposition to the established system will have an impact on the application of the Convention.

In this context, the Committee has been drawing for many years the Government's attention to the need to amend or repeal the provisions of Act No. 60/169 of 12 December 1960 (dissemination of prohibited publications liable to prejudice the development of the Central African nation) and Order No. 3-MI of 25 April 1969 (dissemination of periodicals or news of foreign origin not approved by the censorship authority), which provide for sentences of imprisonment that involve compulsory labour. The Committee notes that, according to the concluding observations of the United Nations Human Rights Committee on the Application of the International Covenant on Civil and Political Rights by Central African Republic, Order No. 05.002 of 22 February 2005, promulgating the Freedom of the Press and Communication (Organization) Act, is likely to decriminalize press offences. The Committee notes that the "Committee nevertheless observes with concern that many journalists have been subjected to pressure, intimidation or acts of aggression, and even imprisonment" (Document CCPR/C/CAF/CO/2 of 27 July 2006). ***The Committee asks the Government to provide a copy of Order No. 05.002 promulgating the Freedom of the Press and Communication (Organization) Act and to indicate whether this new legislation has repealed Act No. 60/169 of 12 December 1960 and Order No. 3-MI of 25 April 1969. If not, please indicate the progress made in the process of repealing of these texts,***

to which the Government has been referring for a long time. Finally, the Committee would be grateful if the Government would indicate the legal provisions under which journalists have been imprisoned and the charges.

2. In order to ascertain that no sentences involving the obligation to work are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system, the Committee needs to be able to assess the scope of the provisions mentioned below and to this end it would be grateful if the Government would provide copies of any court decisions handed down under these provisions:

- Section 77 of the Penal Code (dissemination of propaganda for certain purposes; acts jeopardizing public safety, etc.) and sections 130–135 and 137–139 of the Penal Code (offences against persons occupying various public offices), which provide for prison sentences involving the obligation to work.
- Section 3 of Act No. 61/233 governing associations in the Central African Republic read in conjunction with section 12. Under section 12, the “founders, directors, administrators or members of any association that is unlawfully maintained or reconstituted after the act of dissolution” shall be liable to imprisonment. Under section 3 of this Act, any association which is “of such a nature as to give rise to political disturbances or cast discredit on political institutions and their functioning” shall be null and void.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

## Chad

### Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2(2)(a) of the Convention.* Work in the general interest imposed in the context of compulsory military service. The Committee notes Ordinance No. 001/PCE/CEDNACVG/91 organizing the armed forces, that according to military service is compulsory for every citizen of Chad. Under section 14 of the Ordinance, conscripts who are fit for service are classified into two categories: the first, the size of which is determined each year by decree, is incorporated and compelled to perform active service; the second remains at the disposal of the military authorities for two years and may be called up to perform work in the general interest by order of the Government. The Committee notes that similar provisions were contained in Ordinance No. 2 of 1961 on the organization and recruitment of the armed forces of the Republic, on which it commented for many years. Indeed, such provisions are not compatible with *Article 2(2)(a)*, of the Convention, under which, to be excluded from the scope of the Convention, any work or service exacted in virtue of compulsory military service laws must be of a purely military character. **The Committee hopes that the Government will take the necessary measures to bring the provisions of section 14 of the Ordinance of 1991 reorganizing the armed forces and, as appropriate, any decrees issued thereunder, into conformity with the Convention.**

*Article 2(2)(c).* For many years, the Committee has been drawing the Government’s attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which persons convicted of penal offences involving prohibition of residence may be used for work in the public interest for a period, the duration of which is to be determined by order of the Prime Minister. This provision would allow the administrative authorities to impose work on persons subject to a prohibition of residence once they have completed their sentence. **The Committee hopes that the Government will take the necessary measures without further delay to amend or repeal section 2 of Act No. 14 of 13 November 1959 referred to above.**

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

## Congo

### Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with *regret* that the Government’s report has not been received. The Committee recalls that, in its previous comments, it drew attention to the need to amend or repeal a number of texts that were inconsistent with the Convention – some of which were fairly old and were deemed by the Government to be obsolete. **The Committee reminds the Government that it may call on the Office for technical assistance, and trusts that in its next report the Government will be in a position to inform that specific measures have been taken in response to the comments the Committee has been making for many years.**

*Article 2(2)(a) of the Convention.* 1. *Work exacted under compulsory military service laws.* The Committee has on several occasions stressed the need to amend Act No. 16 of 27 August 1981 establishing compulsory military service. According to section 1 of the Act, national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Committee drew the Government’s attention to the fact that work exacted from recruits as part of compulsory national service, including work related to national development, is not purely military in nature and is therefore contrary to *Article 2(2)(a)* of the Convention. **Noting the Government’s earlier statement that the practice of imposing on recruits work which is not purely military in nature has fallen into disuse and that it intended to repeal Act No. 16 of 1981 on compulsory national service, the Committee trusts that the necessary steps will be taken very shortly to amend or repeal this Act so as to bring the legislation into line with the Convention.**

2. *Youth brigades and workshops.* The Committee observes that the Government has never provided information on the practical effect given to Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and mass organizations were gradually to create all the conditions for the formation of youth brigades and the organization of youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.). However, the Government did



indicate earlier that since 1991 such practices had fallen into disuse. **The Committee points out that this Act has never been formally repealed and asks the Government to indicate the measures taken or envisaged to repeal it.**

*Article 2(2)(d). Requisitioning of persons to perform community work in instances other than emergencies.* In the comments it has been making for very many years, the Committee has pointed out that Act No. 24-60 of 11 May 1960 is inconsistent with the Convention in that it allows the requisitioning of persons to perform community work in instances other than the emergencies provided for under *Article 2(2)(d)* of the Convention, and provides that persons requisitioned who refuse to work are liable to a penalty of imprisonment of from one month to one year. **The Committee notes the Government's earlier statement that this Act has fallen into disuse, and once again urges the Government to take the necessary steps to have it repealed formally so as to avoid any uncertainty in law.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Democratic Republic of the Congo

### Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

*Articles 1(1) and 2(1) of the Convention. Forced labour and sexual slavery in the context of an armed conflict.*

The Committee notes the different reports of the Office of the United Nations High Commissioner for Human Rights and of the special rapporteurs on the situation in the Democratic Republic of the Congo. These reports highlight the gravity of the human rights situation in the country – both in the zones where hostilities have resumed and in areas that have not been affected by the conflict – and refer to violations committed by the state security forces and other armed groups, including cases of forced labour and sexual slavery. The Committee notes that in the second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, the experts noted that the mines in the Kivu continue to be exploited by armed groups, especially the Armed Forces of the Democratic Republic of the Congo (FARDC) and expressed their concern at “reports that civilians are still subjected to forced labour, extortion and illegal taxation, and that sexual exploitation of women and girls is rife in these mining areas”. The Committee also notes that, according to this report, “women and girls have been abducted and held as sexual slaves both by FARDC members and other armed actors, and have been subject to collective rapes for weeks and months, often accompanied by additional atrocities” (document A/HRC/13/63 of 8 March 2010). **Considering the gravity of the facts, the Committee expresses its deep concern and urges the Government to take all the urgent and necessary measures to bring an immediate end to these practices which constitute a most serious violation of the Convention, and to ensure that adequate sanctions are imposed on perpetrators.**

*Article 25. Penal sanctions.* In its previous comments, the Committee noted that, under section 323 of the Labour Code, any infringement of section 2.3, which prohibits the use of forced or compulsory labour, shall be punished by a maximum of six months' imprisonment plus a fine or by only one of these penalties, without prejudice to criminal legislation laying down more severe penalties. Emphasizing that the sanctions envisaged in the Labour Code are not very dissuasive, the Committee asked the Government to specify the penal provisions which prohibit and penalize recourse to forced labour. The Committee notes that the Government has not provided any information in this regard. It also notes that the 1940 Penal Code (as amended up to 2004) does not appear to include such provisions. **The Committee asks the Government to take the necessary measures to include in the penal legislation provisions establishing adequate sanctions for persons who exact forced labour, in accordance with Article 25 of the Convention. It also requests the Government to indicate how, in practice, the authorities institute legal proceedings and punish persons who exact forced labour.**

*Abrogation of legislation allowing for the exaction of work for national development purposes, as a means of levying taxes and by persons in preventive detention.* For several years, the Committee has been requesting the Government to amend or repeal the following legislative texts and regulations, which are contrary to the Convention:

- Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order, Departmental Order No. 00748/BCE/AGRI/76 of 11 June 1976 concerning the performance of civic tasks in the context of the national food production programme: these legal texts, which aim to increase productivity in all sectors of national life, require, subject to penal sanctions, every able-bodied adult person who is not already considered to be making his contribution by reason of his employment (political representatives, employed persons and apprentices, public servants, traders, members of the liberal professions, the clergy, students and pupils) to carry out agricultural and other development work as decided by the Government;
- Legislative Ordinance No. 71/087 of 14 September 1971 on the minimum personal contribution, sections 18 to 21 which provide for imprisonment involving compulsory labour, upon decision of the chief of the local community or the area commissioner, of taxpayers who have defaulted on their minimum personal contributions.

The Committee previously noted the Government's reiterated indications, first referring to draft amendments to these texts and then indicating that they have lapsed and have therefore been repealed in practice. In its report, the Government again indicates that these texts are no longer applied. In reply to the Committee's request to formally repeal these texts to provide guarantees of legal security, the Government indicates that legal security is ensured by both the 2006 Constitution and the 2002 Labour Code, which prohibit the use of forced labour, and by section 332 of the Labour Code,

which provides that all the previous conflicting provisions are repealed and replaced, and that only the institutions, procedures and regulations which do not conflict with the new Labour Code still remain in force. The Committee notes the Government's view, according to which legal security is not compromised by the absence of the formal repeal of these texts.

With reference to Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts, which allows work to be exacted from detainees who have not been convicted, the Government indicates that detainees who have not been convicted are only subject to the obligation to clean their cells and sanitary installations. *The Committee expresses the hope that during the next revision on the penal legislation or on the regulations on the prison system, the Government will take the necessary measures to repeal Ordinance No. 15/APAJ of 20 January 1938 which is not in the list of texts that have been repealed by Ordinance No. 344 of 15 September 1965 respecting prison labour.*

*[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]*

## Dominica

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1983)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1(1) and 2(1), (2)(a) and (d) of the Convention. National service obligations.* In its earlier comments, the Committee requested the Government to take the necessary measures with a view to repeal or amend the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)). The Committee observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service, which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Committee also referred to Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), likewise ratified by Dominica, which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development".

*While noting the Government's previous indication that the National Service Act, 1977, has been omitted from the Revised Laws of Dominica, 1990, as well as the Government's repeated indications in its previous reports that section 35(2) of the Act has not been applied in practice, the Committee expresses firm hope that appropriate measures will be taken in the near future in order to formally repeal the above Act so as to bring national legislation into conformity with Conventions Nos 29 and 105 and that the Government will provide, in its next report, information on the progress made in this regard.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Egypt

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1955)**

*Articles 1(1) and 2(1) of the Convention. Use of conscripts for non-military purposes.* For a number of years, the Committee has been drawing the Government's attention to the provisions of section 1 of Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service, under which young persons, male and female, who have completed their studies and who are surplus to the requirements of the armed forces, may be directed to work, such as the development of rural and urban societies, agricultural and consumers' cooperative associations and work in production units of factories. The Committee considered that these provisions were incompatible both with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which provides for the abolition of any form of compulsory labour as a means of mobilizing and using labour for purposes of economic development.

The Committee previously noted the Government's indication that a proposal had been submitted to the Committee on Law Revision at the Ministry of Social Solidarity to amend the Act on general (civic) service so as to provide for the voluntary nature of the service.

In its report, the Government once again indicates that general (civic) service is voluntary and that it does not include any compulsion or obligation, since the law does not provide for any penalty to be imposed on those who do not perform it. The Committee notes the statistics concerning the number of persons recruited for general (civic) service, as well as the number of persons exempted during the period from 2000 to 2009. It also notes the Government's indication in its report received in 2009 that the amendment of the Act is still under discussion.

*Noting that the Government's latest report contains no new information on the revision of the Act concerning general (civic) service, the Committee reiterates the firm hope that this Act will soon be revised by clearly providing that participation of young persons in the general (civic) service is voluntary, in order to ensure the observance of the forced labour Conventions. Pending the revision, the Committee requests the Government to continue to provide*

*information on the application of the above legislation in practice, including information on the number of persons who have applied for exemption from such service and the number of those whose applications have been refused.*

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)**

The Committee notes the Government's indication in its latest report that the information previously requested will be provided as soon as it is communicated by the competent authorities. *Noting that the Government's report contains no further information in response to its earlier comments, the Committee expresses the firm hope that the Government will provide, with its next report, detailed information as regards the following points:*

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views opposed to the established system.* In its previous comments, the Committee drew the Government's attention to certain provisions of the Penal Code, the Public Meetings Act of 1923, the Meetings Act of 1914 and Act No. 40 of 1977 respecting political parties, which provide for penal sanctions involving compulsory labour in circumstances falling within the scope of *Article 1(a)* of the Convention:

- sections 98(a)bis and (d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibit the following: advocacy, by any means, of opposition to the fundamental principles of the socialist system of the State; encouraging aversion or contempt for these principles; encouraging calls to oppose the union of the people's working forces; constituting or participating in any association or group pursuing any of the foregoing aims, or receiving any material assistance for the pursuit of such aims;
- sections 98(b), 98(b)bis and 174 of the Penal Code concerning advocacy of certain doctrines;
- the Public Meetings Act 1923, and the Meetings Act 1914, granting general powers to prohibit or dissolve meetings, even in private places;
- sections 4 and 26 of Act No. 40/1977 respecting political parties, as amended by Act No. 177/2005, which prohibit the creation of political parties whose objectives are in conflict with the requirement of preserving national unity, social peace or the democratic system.

In its 2009 report, the Government indicates that, according to sections 98(a)bis and 98(d) of the Penal Code, sentences of imprisonment involving compulsory labour only apply for the establishment or participation in an association or organization by any means, in opposition to the fundamental principles of the socialist system of the State, and not for the peaceful expression of political views opposed to the established political system. In this regard, the Committee recalls, referring to the explanations provided in paragraphs 154, 162 and 163 of its 2007 General Survey on the eradication of forced labour, that the opinions and views ideologically opposed to the established system are often expressed in different kinds of meetings or through political parties or associations. The Committee also notes that the above provisions of the Penal Code are not limited to the establishment or participation in such associations or groups, but are as well applied to acts such as the advocacy, by any means, of opposition to the fundamental principles of the socialist system of the State, encouraging aversion or contempt for these principles.

Concerning sections 98(b), 98(b)bis and 174 of the Penal Code as regards the advocacy of certain doctrines, the Government indicates in its 2009 report, that the sentences of imprisonment involving compulsory labour are only applicable against the advocacy of certain doctrines aimed at changing the fundamental principles of the Constitution or the social order, by the use of force or other unlawful means.

While noting this information, the Committee observes that the application of these provisions is not limited to acts of violence (or incitement to violence), armed resistance or uprising, but seems to allow punishment involving the obligation to work to be imposed for the peaceful expression of opinions contrary to the Government's policy and the established political system.

*The Committee therefore hopes that the necessary measures will be taken to bring these provisions into conformity with the Convention, e.g. by clearly limiting their application to acts of violence or incitement to violence. Pending the amendment, the Committee again requests the Government to provide information on the application of these provisions in practice, supplying sample copies of the relevant court decisions and indicating the penalties imposed.*

The Committee takes note of the Government's explanations in its 2009 report according to which Act No. 14 of 1923 (Public Meetings Act) and Act No. 10 of 1914 (Meetings Act) provide for sentences of imprisonment not exceeding six months in case of disruptive meetings conducted without prior authorization. *The Committee requests the Government to provide, in its next report, information on the application in practice of the above provisions, supplying copies of relevant court decisions and indicating the penalties imposed.*

Regarding the amendment of Act No. 40/1977 concerning political parties by Act No. 177/2005, the Committee notes that the new version of section 4, paragraph 2, prohibits the establishment of political parties in conflict with the requirements of preserving national unity, social peace and the democratic system, and that any act of this kind is subject to a sentence of imprisonment that could involve an obligation to work. *The Committee observes that this provision is defined in such general terms that it could be used as a means of punishing the expression of views and may raise questions about its compatibility with the Convention. It therefore requests the Government to provide information on the application of the above provision in practice that could define or illustrate its scope.*

*Article 1(b). Use of conscripts for purposes of economic development.* The Committee refers in this connection to its observation addressed to the Government under the Forced Labour Convention, 1930 (No. 29), likewise ratified by Egypt.

*Article 1(d). Penal sanctions involving compulsory labour as a punishment for participation in strikes.* The Committee also noted the Government's indications that sentences of imprisonment imposed under sections 124, 124A, 124C and 374 of the Penal Code on public employees participating in strikes could range from three months to one year, constituting a "simple imprisonment" which does not involve an obligation to work. The Committee also noted that according to article 20 of the Penal Code, the judge may pass a sentence of imprisonment with an obligation to work if the term of imprisonment is one year, which is the maximum term under section 124, paragraph 1. As regards the provision of section 124, paragraph 2, which provides for the possibility of doubling the term of imprisonment, this provision is not compatible with the Convention. The Committee recalls that the Convention lays down a generally worded prohibition to have recourse to any form of forced or compulsory labour "as a punishment for having participated in strikes". It points out however that the Convention does not prohibit the punishment of acts of violence, assault or destruction of property committed in connection with the strike. ***The Committee therefore reiterates the firm hope that the adequate measures will be taken to bring the above provisions into conformity with the Convention, by ensuring that no sanctions involving compulsory labour are imposed for the mere participation in a strike. The Committee hopes that, pending the amendment of the legislation, the Government will provide copies of court decisions passed under the abovementioned sections of the Penal Code, if and when such decisions become available.***

*Article 1(c) and (d). Sanctions involving compulsory labour applicable to seafarers.* In its earlier comments, the Committee referred to sections 13(5) and 14 of the Maintenance of Security, Order and Discipline (Merchant Navy) Act 1960, under which penalties of imprisonment (involving compulsory labour) may be imposed on seafarers who together commit repeated acts of insubordination. The Committee recalled in this connection that *Article 1(c) and (d)* of the Convention prohibits the exaction of forced or compulsory labour as a means of labour discipline or as punishment for having participated in strikes. The Committee observed that, in order to remain outside the scope of the Convention, punishment should be linked to acts that endanger or are likely to endanger the safety of the vessel or the life or health of persons.

The Committee previously noted the Government's indication in its report that the above Act was being amended. ***Since the Government's latest report contains no new information on this matter, the Committee trusts that, in the course of the revision, the provisions of the 1960 Act will be brought into conformity with the Convention and that the Government will supply a copy of the amended text, as soon as it is adopted.***

The Committee is raising other points in a request addressed directly to the Government.

## Ghana

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(a), (c) and (d) of the Convention.* 1. In comments made for a considerable number of years, the Committee has referred to provisions of the Criminal Code, the Newspaper Licensing Decree, 1973, the Merchant Shipping Act, 1963, the Protection of Property (Trade Disputes) Ordinance and the Industrial Relations Act, 1965, under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for non-observance of restrictions imposed by discretionary decision of the executive on the publication of newspapers and the carrying on of associations, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. Having requested the Government to adopt the necessary measures in regard to these provisions to ensure that no form of forced or compulsory labour (including compulsory prison labour) might be exacted in circumstances falling within *Article 1(a), (c) or (d)* of the Convention, the Committee noted the Government's statement that the National Advisory Committee on Labour was discussing the comments of the Committee of Experts and that it was the wish of the Government to bring the legislation concerned into conformity with the Convention. The Government also indicated in its report received in 1996 that the National Advisory Committee on Labour concluded discussions on the Committee of Experts' comments and submitted recommendations to the Minister in March 1994 designed to bring domestic legislation into conformity with ILO standards, and the comments of the Committee of Experts had been submitted to the Attorney-General for a closer study and expert comments.

The Government has previously indicated that the action of the Attorney-General to bring the legislation into conformity with the Convention in accordance with the recommendations of the National Advisory Committee on Labour has been halted in view of the proposed review and codification of the labour laws. It has also indicated that the tripartite National Forum that includes representatives of the Attorney-General's Office, the National Advisory Committee on Labour and the employers' and workers' organizations, would consider the comments made by the Committee of Experts regarding the application of the Convention.

2. The Government indicates in its latest report that the National Forum has already codified all the country's labour laws into a single labour bill, which is being considered by the Cabinet and will be forwarded to Parliament to be passed into law. ***The Committee expresses firm hope that the necessary action will at last be taken on the various points which are once again recalled in detail in a request addressed directly to the Government.***

The Committee previously noted the adoption of the Political Parties Law, 1992, the Emergency Powers Act, 1994, and the Public Order Act, 1994, which gave rise to a number of questions under the Convention that are also reiterated in the request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Guyana

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its earlier comments, the Committee referred to observations received from the International Trade Union Confederation (ITUC), which contained allegations that there was evidence of trafficking for forced prostitution and for child prostitution in cities and remote gold mining areas.

The Committee notes the adoption of the Combating of Trafficking in Persons Act, 2005, as well as the Government's indication in the report that 300 volunteers have been trained to identify cases of trafficking. *The Committee would appreciate it if the Government would provide information on the following matters:*

- *the activities of the task force to develop and implement a national plan for the prevention of trafficking in persons, to which reference is made in section 30 of the above Act, supplying copies of any relevant reports, studies and inquiries, as well as a copy of the National Plan;*
- *statistical data on trafficking which is collected and published by the Ministry of Home Affairs in virtue of section 31 of the Act;*
- *any legal proceedings which have been instituted as a consequence of the application of section 3(1) of the 2005 Act on penalties, supplying copies of the relevant court decisions and indicating the penalties imposed, as well as the information on measures taken to ensure that this provision is strictly enforced against perpetrators, as required by Article 25 of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Haiti

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1958)**

The Committee notes that the Government's report has not been received. In its previous comments, the Committee has examined the situation of children employed as domestic servants in conditions of forced labour. Considering that Haiti has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee refers to its comments under this later Convention. Regarding the issue of trafficking in persons, the Committee repeats its previous comments which read as follows:

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its previous comments, the Committee noted the report by the Research Mission of the General Secretariat of the Organization of American States (OAS) on the situation regarding the trafficking in persons in Haiti, dated September 2006, which emphasized a trend towards the systematic organization of trafficking in persons in Haiti, which can be explained by the deterioration of the socioeconomic and political situation in the country over recent years which precludes an effective response to the basic needs of the population and paves the way for an increase in all forms of human exploitation and unlawful economic activity.

In its latest report, the Government mentions the implementation of a plan which includes increasing the number of police officers at the border with the Dominican Republic with a view to preventing illegal crossings and at the same time reducing the trafficking of children and persons in general. The Government also mentions the drafting of two bills aimed at protecting the victims of trafficking, in particular children. The Government indicates that the National Migration Office assists Haitians who have been turned away at the border in returning to their community with the help of public aid. Finally, the Government indicates that the Ministry of Social Affairs and Labour, together with the Ministry of Foreign Affairs, is currently studying the problem of the exploitation of persons in the Dominican Republic on sugar cane plantations and the reduction of children to begging in that country and intends to hold bilateral talks aimed at solving this problem.

The Committee notes the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (see document CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 27) urging the Government "to intensify its efforts to combat all forms of trafficking in women and girls". It notes that the UN Committee also asks the Government "to expedite adoption of the draft bill on all forms of trafficking and to ensure that the new law allows prosecution and punishment of perpetrators, effective protection of victims and adequate redress". Finally, it notes that the UN Committee encourages the Government "to conduct research on the root causes of trafficking and to enhance bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic, to prevent trafficking and bring perpetrators to justice".

*The Committee requests the Government to provide information on the draft laws mentioned in the Government's report, in particular the draft law on trafficking. Please provide a copy of the texts concerned as soon as they have been adopted. In addition to the legislative measures taken, the Committee requests the Government to continue to provide information on other measures taken to combat the trafficking in persons, in particular: repressive measures (including statistics on the number of cases of trafficking examined by the authorities and the number of sentences imposed by the courts); public awareness raising, with a special emphasis on those most vulnerable; and assistance for victims. Please also provide information concerning the measures taken and results achieved with regard to bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Hungary

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1956)**

*Article 2(2)(c) of the Convention.* 1. *Work of prisoners for private companies.* In its earlier comments, the Committee referred to the national provisions allowing the law enforcement authorities to conclude agreements with private companies concerning the work of prisoners (section 101(3) of Order No. 6/1996 (VII 12) of the Ministry of Justice on the implementation of provisions concerning prison sentences and detention). The Committee noted the Government's indications in its reports that prisoners are in a legal relationship with a penitentiary institution and are not directly employed by a third party, and perform labour under the supervision and control of the law enforcement bodies. The Committee also noted that prisoners' conditions of work are governed by the general provisions of labour law (subject to certain deviations). Recalling that *Article 2(2)(c)* of the Convention expressly prohibits that convicted prisoners are hired to or placed at the disposal of private individuals, companies or associations, the Committee asked the Government to take the necessary measures to ensure observance of the Convention, such as, e.g., to provide that any prisoners working for private companies offer themselves voluntarily, without being subjected to pressure or the threat of any penalty, and subject to guarantees as to wages and other conditions of employment approximating a free employment relationship.

The Committee notes the Government's clarifications as regards the interpretation of section 33(1)(d) of Law-Decree No. 11 (1979) on the execution of prison sentences, according to which convicts have to carry out their work assignments given to them in accordance with their vocational qualifications and abilities. The Government indicates that, in practice, only those convicts who expressly ask for a job may be given work assignments, a number of job opportunities being always lower than the number of convicts applying for a job. In other words, convicts do not have an obligation to work, but work may be assigned to them according to their choice. In order to get a work assignment, convicts shall apply for a particular job by signing an application form, which should be examined by admission and employment committees of penitentiary institutions. The Government states that convicts are free to apply for work with private companies following the above procedure, without being forced to do so and without any threat of punishment for refusal. It also confirms its earlier indications that prisoners are guaranteed to work under conditions approximating a free employment relationship, as regards occupational safety and health, working time and rest periods, paid leave, etc. Regarding remuneration for work, the amount of wages payable to convicts may not be lower than one third of the minimum wage, if they have worked full time and have met the performance requirements up to 100 per cent (section 124(3) of Order No. 6/1996 (VII 12) of the Ministry of Justice referred to above). Convicts are also entitled to a wide range of health-care provisions and accident-related benefits within the scope of social security benefits (section 16(1)(n) of Act LXXX of 1997 on the eligibility for social security benefits). The Government further states that convicts are allowed to learn new skills and, as far as possible, perform work of the same type as they use to do before conviction.

***While noting this information, the Committee hopes that, in the course of the preparation of the comprehensive amendment of Law-Decree No. 11 of 1979 on the execution of prison sentences, referred to in the Government's earlier report, the necessary measures will be taken in order to include into the revised legislation a provision requiring free and informed consent for the work of prisoners for private companies, both inside and outside prison premises, so as to bring legislation into full conformity with the Convention and the indicated practice. The Committee requests the Government to provide, in its next report, information on the progress made in this regard.***

2. *"Public utility labour" performed by convicted persons placed at the disposal of private parties.* In its earlier comments, the Committee referred to the Penal Code provisions concerning "public utility labour", which shall be performed, as a penal sanction, without deprivation of a person's freedom and without remuneration, but may be replaced by confinement in prison, if the convicted person fails to fulfil his or her labour obligations (sections 49–50 of the Penal Code). The Committee noted the Government's indications that the work to be performed as "public utility labour" must be of public interest and that the employer (which may be a public institution, or a private business organization) shall observe the safety provisions and ensure the same working conditions as those enjoyed by workers employed on a basis of a contract.

The Committee notes the Government's indication in its report that the law does not contain any express provisions concerning the voluntary informed consent of the person concerned to perform community service, nor does it offer an opportunity to a convicted person to choose between community service and confinement in prison. The Government indicates that the penitentiary administrator and the probation service should keep a register of institutions and business organizations that need the work of persons sentenced to community service (Decree No. 9/2002 (IV.9) of the Ministry of Justice). The Committee notes the Government's indication in the report that, according to a 2008 study, probation officers approached municipal bodies or institutions to employ convicts in 60 per cent of cases, private business organizations in 10.9 per cent of cases and various non-public associations and foundations in 9.3 per cent of cases. The Government confirms that community service is performed in the public interest and not for profit.

While noting this information, and referring to point 1 of the present observation, the Committee recalls that *Article 2(2)(c)* of the Convention expressly prohibits that convicted persons are placed at the disposal of private individuals, companies or associations. ***Referring to the explanations contained in paragraphs 123–128 of its 2007 General Survey on the eradication of forced labour, the Committee hopes that, in the course of the revision of***

*penitentiary legislation, the necessary measures will be taken to introduce a requirement of the informed voluntary consent of convicted persons sentenced to community service to work for a private employer. It requests the Government to indicate, in its next report, the progress achieved in this regard. Pending the adoption of such measures, please continue to provide information on the practical implementation of special programmes for carrying out “public utility labour” including a list of authorized associations or institutions using such labour and giving examples of the type of work involved.*

## Jamaica

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1962)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1(1), 2(1) and (2)(c) of the Convention. Work of prisoners for private companies.* In its earlier comments, the Committee referred to section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, under which no inmate may be employed in the service of, or for the private benefit of, any person, except with the authority of the Commissioner or in pursuance of special rules. The Committee noted that, under section 60(b) of the Corrections Act, as amended by the Corrections (Amendment) Act, 1995, the Minister may establish programmes under which persons serving a sentence in a correctional institution may be directed by the superintendent to undertake work in any company or organization approved by the Commissioner, subject to such provisions as may be prescribed relating to their employment, discipline and control, and such work may be within the centre or institution or outside its limits. The Committee also noted the information concerning the functioning of the Correctional Services Production Company (COSPROD), as well as the Government’s repeated statement that, under this programme, some inmates had been working under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages.

The Committee notes the Government’s statement in its latest report that the Department of Correctional Services has not yet entered into any discussion regarding a change in a policy for the issues raised. The Government confirms its previous indication that there is no activity which is undertaken through forced labour and that participation of inmates in the work on farms managed by COSPROD is voluntary.

*The Committee expresses the firm hope, referring also to the explanations provided in paragraphs 59–60 and 114–120 of its General Survey of 2007 on the eradication of forced labour, that section 155(2) of the Correctional Institution (Adult Correction Centre) Rules, will be amended so as to ensure that no prisoners may work for private individuals, companies, etc., except where they do so voluntarily, with their free and formal consent and under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health, in order to bring this provision into conformity with the Convention and the indicated practice. The Committee again requests the Government to provide a copy of any special rules referred to in the above section 155(2) and to continue to provide information on its application in practice, pending the amendment.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers.* For a number of years, the Committee has been referring to the following provisions of the Jamaica Shipping Act, 1998, under which certain disciplinary offences are punishable with imprisonment (involving an obligation to perform labour under the Prisons Law):

- section 178(1)(b), (c) and (e), which provides for penalties of imprisonment, inter alia, for wilful disobedience or neglect of duty or combining with any of the crews to impede the progress of the voyage; an exemption from this liability applies only to seafarers participating in a lawful strike after the ship has arrived and has been secured in good safety to the satisfaction of the master at a port, and only at a port in Jamaica (section 178(2)); and
- section 179(a) and (b), which punishes, with similar penalties, the offences of desertion and absence without leave.

The Committee recalls, referring to paragraphs 179–181 of its 2007 General Survey on the eradication of forced labour, that provisions under which penalties of imprisonment (involving an obligation to perform labour) may be imposed for desertion, absence without leave or disobedience, are incompatible with the Convention. Only sanctions relating to acts that are likely to endanger the safety of the ship, or the life or health of persons (e.g. as provided for in section 177 of the 1998 Shipping Act) have no bearing on the Convention.

The Committee previously noted the Government’s indication that the Maritime Authority had given written instructions to the Attorney General’s department and the office of the Parliamentary Council to amend the above sections of the Shipping Act, 1998, in order to make its provisions compatible with the Convention. In its latest report, the Government confirms that an opinion has been received by the Attorney General’s chambers recommending that amendments be made to the Shipping Act to bring it into conformity with the Convention. The Government also states that the office of the Parliamentary Council is to be instructed to make the amendments to the relevant legislation accordingly.

*The Committee expresses the firm hope that the necessary measures will at last be taken to bring the legislation into conformity with the Convention, e.g. by limiting the scope of the relevant provisions of the Shipping Act, 1998, as indicated above, and that the Government will soon be in a position to report the progress made in this regard.*

## Japan

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1932)***

I. Referring to its earlier comments, the Committee notes the information provided by the Government in its reports received on 13 and 30 September 2010, as well as in the Government's communications received in November 2009 and November 2010.

In its earlier comments, the Committee examined the issues of wartime industrial forced labour and sexual slavery (so-called "comfort women") during the Second World War. It refers in this regard to its earlier considerations and conclusions concerning the limits of its mandate in respect of these historical breaches of the Convention. In its previous observation, the Committee expressed the hope that, in making further efforts to seek reconciliation with the victims, the Government would take measures in the immediate future to respond to the claims of the aged surviving victims. The Government was also requested to continue to provide information about recent judicial decisions and related developments.

The Committee notes communications received in 2009 and 2010 from the following workers' organizations:

- All-Japan Shipbuilding & Engineering Union (AJSEU) (dated 10 August 2009 and 20 August 2010);
- Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) (dated 26 August 2009 and 27 August 2010);
- Teachers' Union of Nagoya Municipal High School (dated 12 August 2009 and 20 August 2010);
- National Federation of Construction Engineering Workers' Unions for Japan (JCEW) (dated 18 August 2010);
- International Trade Union Confederation (ITUC) (dated 16 September 2009 and 1 September 2010);
- The Netherlands Trade Union Confederation (FNV) (dated 30 August 2010).

Copies of the above communications from workers' organizations were forwarded to the Government for any comments it might wish to make on the matters raised therein. The Committee notes the Government's response to these communications received on 13 September and 19 November 2010.

Some of the above communications of the workers' organizations referred, *inter alia*, to positive developments, such as settlement of certain forced labour cases. Thus, the Nishimatsu Construction Company, a private company profiting from industrial forced labour during the Second World War, reached an agreement with all 360 former victims of forced labour at the Yasuno Power Plant in Hiroshima Prefecture on 23 October 2009; it also reached an agreement with 183 Chinese victims of forced labour at a power plant in Niigata Prefecture on 26 April 2010. These settlements were reached after the decision of the Supreme Court of Japan of 27 April 2007, according to which Chinese plaintiffs had no legal right to seek compensation for the damages caused by forced labour exacted by the Nishimatsu Construction Company, but the Court suggested in conclusions that the parties involved (the Nishimatsu Company and the Government) take voluntary measures to relieve the pain of the victims. The settlement provides 250 million yen to 360 victims in the Hiroshima case and 128 million yen to 183 victims in the Niigata case.

The communications from the workers' organizations also referred to the issue of military sexual slavery as it continues to be taken up by the United Nations bodies, in particular, in the form of recommendations of the Committee on the Elimination of Discrimination Against Women (CEDAW), which examined the issue of "comfort women" at its forty-fourth session (20 July to 7 August 2009). This issue was also referred to in the report of the Special Rapporteur on violence against women, its causes and consequences, submitted to the United Nations Human Rights Council on 23 April 2010 (A/HRC/14/22).

Some of the above communications also referred to resolutions adopted by the local councils of Japan. Since March 2008 and up to August 2010, 30 local councils adopted resolutions urging the Government to solve the Japanese military sexual slavery issue, to restore dignity and justice to the victims, to provide them with compensation, and to further educate the public.

The Committee notes the Government's indication in its report received on 13 September 2010 that, during the period from 1 June 2008 to 31 May 2010, the courts "pronounced" on two cases regarding the "comfort women" issue (one decision by the Supreme Court and one judgment at the high court level) and on 16 cases regarding "conscripted forced labourers" (six decisions by the Supreme Court, nine judgments at the high court level and one judgment at the district court level), in which the plaintiffs claimed state compensation for damages. The Government states that, in all these cases, the plaintiffs' claims for compensation against the Government of Japan have been dismissed, in accordance with the relevant international agreements and joint communiqués on the settlement of problems. The Government also indicates that, as of 31 May 2010, there were no cases pending in the Japanese courts concerning the "comfort women" issue and only five cases still pending in courts concerning "conscripted forced labourers".

The Committee takes due note of the Government's statement in the report that the Government of Japan has sincerely and faithfully dealt with the issues of reparations, property and claims relating to the Second World War, including those related to the issue of "comfort women", in accordance with its obligations under the San Francisco Peace Treaty, bilateral peace treaties and other relevant treaties and agreements. Concerning, more particularly, the issue of



“comfort women”, the Government reiterates that it remains committed to the position expressed in the August 1993 statement of the then Chief Cabinet Secretary, Yohei Kono, where he expressed sincere apologies and remorse to the former “comfort women”, while recognizing that this issue was, with the involvement of the military authorities of the day, a grave affront to the honour and dignity of a large number of women. This statement embodies the Government of Japan’s official position on this matter which remains unchanged. The Government also states that the Government of Japan has since expressed its sincere apologies and remorse on many occasions. In addition, when the activities of the Asian Women’s Fund (AWF) were implemented, the Prime Minister, on behalf of the Government of Japan, sent a letter expressing apologies and remorse directly to each former “comfort woman”.

The Committee previously noted from the Government’s earlier statements in its reports that, with regard to non-legal measures to respond to the claims of surviving victims of wartime industrial forced labour and military sexual slavery and to meet their expectations, the Government has placed emphasis on the AWF and its related activities, an initiative launched in 1995 and continued until the Fund was dissolved in March 2007, after it had completed its objectives. As the Committee has considered in its 2001 and 2003 observations, the rejection by the majority of former “comfort women” of monies from the AWF because it was not seen as compensation from the Government, and the rejection, by some, of the letter sent by the Prime Minister to the few who accepted monies from the Fund as not accepting government responsibility, suggested that this measure had not met the expectations of the majority of the victims. The Committee therefore expressed the hope that the Government would make efforts, in consultation with the surviving victims and the organizations which represent them, to find an alternative way to compensate the victims in a manner that would meet their expectations.

The Committee notes the Government’s statement in its report that it will continue to implement follow-up activities of the AWF. The Government indicates that, as part of such follow-up, the Government of Japan has entrusted the people who were involved in the AWF to implement visiting care activity and group counselling activity (Republic of Korea and the Philippines), as well as exchange of opinions with government officials and academia (Indonesia and the Philippines). The Committee also notes the Government’s statement in its communication received on 19 November 2010, that the Government of Japan is arranging an occasion for a government member in a responsible position to meeting with former “comfort women” to directly convey the views of the Government of Japan and to listen carefully to their current living circumstances, past experiences and their personal sentiments.

***Given the serious long-standing nature of the case and noting the abovementioned government indications, the Committee reiterates its hope that, in making these further efforts to seek reconciliation with the victims, the Government will take measures, in the immediate future, to respond to the claims being made by the aged surviving victims of wartime industrial forced labour and military sexual slavery, the number of whom has continued to decline with the passing years. Please provide information, in particular, on the implementation of the follow-up activities of the AWF referred to above and on any other measures, taken or envisaged, including any follow-up to the information received on 19 November 2010.***

II. *Articles 1(1) and 2(1) of the Convention. Industrial Training and Technical Internship Programme.* The Committee notes the communications received from the Labour Union of Migrant Workers dated 26 May and 10 August 2010, which contain information concerning the implementation of the Industrial Training and Technical Internship Programme (“Foreign Trainee” Programme), as well as the Government’s response to these communications dated 15 October 2010.

The Committee notes that the abovementioned programme was established in order to develop the human and industrial resources of developing countries, with the aim of securing the transfer of industrial technology, skills and knowledge. Under this programme, foreign nationals can enter Japan as “trainees” for one year and become “technical interns” for another two years; they are required to go back to their country thereafter. The programme has been monitored by the Japan International Training Cooperation Organization (JITCO), under the supervision of the government organizations concerned, including the Immigration Bureau and labour standards inspection bodies.

Before the revision of the programme in July 2010, foreign trainees were not covered by the labour law and were not considered as workers, but more as students; therefore, they did not receive any wages, but an allowance. According to the allegations contained in the above communications from the Labour Union of Migrant Workers, trainees were extremely vulnerable to employers’ abuses: they were often used as cheap labourers, in violation of the minimum wage law, and were obliged to do unpaid overtime; employers used to confiscate trainees’ and interns’ passports and forced them to put their wages and allowances into saving accounts, partly to prevent them from running away. The Union further alleged that there were also restrictions on the freedom of movement of the trainees, such as a prohibition of mobile phone possession, prohibition of going out, staying out, etc.

The Union has referred in this connection to the concluding observations concerning Japan of the United Nations Human Rights Committee (CCPR/C/JPN/CO/5, 18 December 2008), and the CEDAW (CEDAW/C/JPN/CO/6, 7 August 2009), in which both committees expressed concern about the vulnerable situation of foreign industrial trainees and technical interns, who are often exploited by their employers due to the lack of protection. It has also referred to the report submitted by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/14/32/Add.4), annexed to the communication dated 10 August 2010, in which the Special Rapporteur recommended, inter alia, that the Government should take full responsibility for the Training and Technical Internship Programme and its monitoring, by

creating an independent body with no connection to the participating companies, which should closely supervise such companies and ensure the full respect of the rights of trainees; that a law to better regulate the programme should be adopted; and a hotline and an office to report abuses under this programme should be established.

The Committee further notes that, in its communication dated 10 August 2010, the Union refers in detail to the revised Training and Technical Internship Programme, which was put into effect in July 2010. The revision was based on the amendments made on 15 July 2009 to the Immigration Control and Refugee Recognition Act, which extended the applicability of labour laws to foreign trainees and therefore entitled them to be paid the minimum wage and to have the same labour rights as other Japanese workers. Among other features of the revised programme are the following: reinforcement of guidance, supervision and support system by the accepting organizations, as well as enhanced transparency of management; increased penalties for the organizations violating laws and guidelines, creation of disqualification provisions suspending the right of such organizations to accept trainees (for example, in case of violation of immigration laws or in cases of misconduct, such as, for example, confiscation of passports, non-payment of wages, violation of human rights); prohibition to collect “guarantee money” from trainees, etc.

However, the Union states that it may be premature to assess how effective the above remedies would be, since the accepting organizations still have absolute control over the status of trainees, who are afraid of deportation and have no other option but to accept whatever is available. It also refers to the statistical information published by the JITCO concerning the death of the foreign trainees and technical interns as a result of work-related accidents and diseases in 2009.

In its response to the above communications, the Government states that forced labour is prohibited within the structure of the Training and Technical Internship Programme, that the organizations concerned (including JITCO, the Immigration Bureau and labour standards inspection bodies) have been monitoring the programme in order to prevent any improper cases, and that no cases that might fall under the category of forced labour have been recognized in the course of the operation of the programme. As regards the application of section 5 of the Labour Standards Law, which prohibits the use of forced labour by employers by means of physical violence, intimidation, confinement or any other unfair restraint on the mental or physical freedom of workers, the Government states that there have been no cases of violation of this provision since 1993 (the earliest year to which the labour standards inspection bodies can trace violation data).

The Government indicates, however, that there have been reports on cases in which certain accepting organizations have treated trainees as low-wage labourers, and therefore efforts have been made to identify any misconduct on the part of such organizations and to stop them from receiving trainees. In accordance with the established procedure, when a labour standards inspection office receives allegations from a worker concerning violations of labour laws, such as the non-payment of wages or compulsory savings, the office investigates the facts and, if violations have been proved, it provides guidance to the employers for correcting them and then confirms that corrections have been made by the employers. If the case is considered malicious, a labour standards inspector sends papers to a prosecutor for a violation of the labour law. The Government indicates that, in some cases of this kind, employers have been found guilty and convicted in courts; it refers in this connection to a case described in the Union’s communication dated 26 May 2010, in which the employer was convicted in court and his right to accept trainees was suspended.

The Government further states that, in case of any abuse of human rights, such as violence against trainees or taking custody of their passports, the Immigration Bureau conducts the necessary investigation and, after having recognized a misconduct of relevant organizations or companies, takes measures to suspend their acceptance of trainees and technical interns. As regards information concerning the death of the foreign trainees and technical interns as a result of work-related accidents and diseases, the Government indicates that the labour standards inspection offices have been taking appropriate action, such as conducting investigations into industrial accidents and occupational diseases and providing administrative guidance, as well as sending papers to prosecutors.

As regards the revision of the Training and Technical Internship Programme, which entered into force in July 2010, the Government states that it has strengthened the protection of trainees and technical interns, who have been given a status of residence of “Technical Intern Training” for a maximum period of three years and shall be protected under labour laws and regulations, such as the Labour Standards Law and the Minimum Wage Law, while engaging in skill-building activities under their employment contract. In addition, collection of guarantee money and penalty charges by dispatching organizations and accepting organizations and companies shall be prohibited, and the suspension period during which organizations found guilty of human rights abuses are not allowed to accept technical interns is extended from three years to five years. The Government states that it has also strengthened the system of supervision against violations, through substantial investigations conducted by the Immigration Bureau and administrative guidance provided by the labour standards inspection offices, but also through strengthening on-site guidance by the JITCO and improving a telephone counselling hotline in the native languages of trainees.

***The Committee notes this information and requests the Government to continue to provide information on the application in practice of the various measures taken in the course of the revision of the Training and Technical Internship Programme referred to above with a view to strengthening the protection of foreign technical interns. The Government is also requested to provide information on the measures that it continues to take to identify the abuses, through appropriate inspections and monitoring, supplying statistics on the numbers of cases of prosecutions and convictions, and indicating the penalties imposed on perpetrators.***

III. *Articles 1(1), 2(1) and 25. Trafficking in persons.* Referring to its earlier comments, the Committee notes with **interest** the comprehensive information regarding measures taken by the Government in its ongoing efforts to combat trafficking in persons provided in its report received on 30 September 2010. The Committee also notes the 2009 Action Plan to combat trafficking in persons communicated by the Government on 6 October 2010, which is aimed at eliminating the crime of trafficking in persons. The 2009 Action Plan, like the previous 2004 Action Plan, aims to prevent trafficking by achieving close cooperation among all government ministries and agencies concerned and enhancing cooperation with international organizations and NGOs. The Government indicates that the 2009 Action Plan intends to raise the awareness of the general public to understand the definition of trafficking in persons, the fact that victims of trafficking include but are not limited to non-Japanese women and children, and that the crime should be tackled by the society as a whole. The Committee also notes the comments received from the Japanese Trade Union Confederation (JTUC–RENGO) concerning anti-trafficking measures, communicated by the Government with its report, in which JTUC–RENGO calls, inter alia, for the implementation of a multifaceted support system in accordance with the 2008 recommendations of the United Nations Human Rights Committee, encompassing a broad range of measures, including procedures aimed at ensuring the protection of victims' human rights, as well as assistance in repatriation and resettlement in their home countries.

The Committee notes the information supplied by the Government concerning various measures taken in the areas of prevention and awareness raising, protection of victims, law enforcement, prosecution of offenders, and cooperation with foreign governments and international organizations. It notes, in particular, the following information:

- information about the work of the Inter-Ministerial Liaison Committee (Task Force) in reviewing the implementation of the National Action Plan and elaborating of the draft 2009 Action Plan, which was adopted at the ministerial meeting on 22 December 2009;
- information on preventive measures, such as the reinforcement of immigration control measures and measures to raise public awareness of trafficking in persons;
- information on measures relating to the protection of victims of trafficking, including the functioning of the Women's Consulting Offices (which is a network of multi-service public shelters providing various forms of assistance to the victims), improvement in the status of residence of the victims and assistance for the victims' repatriation;
- statistical information concerning the numbers of trafficking prosecutions; and
- information on international cooperation with the Governments of the countries concerned, on cooperation between the Japanese National Police Agency and law enforcement agencies of other countries in the investigation and prosecution of traffickers, and on the contribution of the Japanese Government to the efforts made by the international organizations to prevent, suppress and punish human trafficking and to protect the victims.

***The Committee hopes that the Government will continue to provide, in its future reports, information concerning the implementation of various measures provided for in the 2009 Action Plan to prevent, suppress and combat trafficking in persons, including, in particular, information on the application of criminal sanctions to the perpetrators and supplying available statistics.***

## Kenya

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1964)**

*Articles 1(1) and 2(1) of the Convention. Compulsory labour in connection with the conservation of natural resources.* For many years, the Committee has been referring to sections 13–18 of the Chief's Authority Act (Cap. 128), as amended by Act No. 10 of 1997, according to which able-bodied male persons between 18 and 50 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. The Committee has noted the Government's repeated indication that the Chief's Authority Act will be replaced by the Administrative Authority Act. The Government also states in its latest report that sections 13–18 of the Chief's Authority Act referred to above have never been enforced and undertakes to supply a copy of the new Act, as soon as it is adopted.

***The Committee expresses the firm hope that the Administrative Authority Act, which is intended to replace the Chief's Authority Act, will soon be adopted and that the legislation will be brought into conformity with the Convention and the indicated practice. It asks the Government to supply a copy of the Administrative Authority Act, as soon as it is adopted.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)**

The Committee notes with **satisfaction** the adoption of the Merchant Shipping Act, 2009, which has repealed the Merchant Shipping Act of 1967, which contained provisions punishing various breaches of discipline by seafarers with imprisonment (involving compulsory labour), even in circumstances where the ship or the life or health of persons were not endangered, as well as provisions, under which deserting seafarers could be forcibly returned on board ship to perform their duties.

The Committee also notes with *satisfaction* the adoption of the Labour Relations Act, 2007, which has repealed the Trade Disputes Act (Cap. 234), under which sentences of imprisonment (involving compulsory labour) could be imposed for participating in strikes.

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views.* For many years, the Committee has been referring to certain provisions of the Penal Code, the Public Order Act and the Prohibited Publications Order, 1968, under which sentences of imprisonment (involving compulsory labour) may be imposed as a punishment for participating in certain meetings and gatherings, for the display of emblems or the distribution of publications signifying association with a political object or political organization. The Committee has noted the Government's repeated statement in its reports that it is committed to bring the national legislation into conformity with the Convention. It notes from the Government's latest report that the issues raised by the Committee have been brought to the attention of the relevant authorities. ***The Committee trusts that the provisions of the Penal Code, the Public Order Act and the Prohibited Publications Order referred to above will be brought into conformity with the Convention and that the Government will soon be in a position to report the progress made in this regard. It also asks the Government to provide information on various points raised in a more detailed request addressed directly to the Government.***

## Kiribati

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)**

*Article 1(d) of the Convention. Sanctions for participating in strikes.* The Committee notes with *satisfaction* that the Industrial Relations Code (Amendment) Act, 2008, has repealed a provision in section 30 of the Industrial Relations Code, which imposed sanctions of imprisonment (involving compulsory prison labour) against unlawful strikes. The Committee also notes with *satisfaction* that the same Act has repealed a provision in section 37 of the Industrial Relations Code, which imposed similar sanctions in cases where a strike might "expose valuable property to the risk of destruction, loss or serious injury".

## Kuwait

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1968)**

*Articles 1(1) and 2(1) of the Convention. Freedom of domestic workers to terminate employment.* The Committee notes the ILO technical assistance mission in February 2010, during which a tripartite workshop was held on report writing on international labour standards, and issues relating to the application of the Conventions were discussed, including the situation of foreign domestic workers. Referring to its earlier comments, in which the Committee expressed concern about the situation of domestic workers, the Committee notes that the new Labour Code (Law No. 6, 2010) excludes domestic workers from its scope (section 5). It notes, however, that the same section of the new Labour Code authorizes the competent minister to issue a decision concerning this category of workers specifying the rules governing the relationship between domestic workers and their employers. The Committee also notes Order No. 568 of 29 May 2005, issued by the Council of Ministers, supplied by the Government with its report, which provides for the establishment of a permanent committee for the regulation of the situation of migrant workers in the private sector, including domestic workers, as well as the information concerning the activities of this permanent committee. The Committee further notes sample copies of employment contracts concluded with domestic workers, in accordance with the model contract issued by the Ministry of Interior, communicated by the Government. Regarding the right of domestic workers to terminate employment, the Committee notes that, according to section 1 of Part V of the model contract, domestic workers can terminate employment by notifying their employer two months before the end of the contract. The Government also states, as regards a possibility for domestic workers to have recourse to courts, that these workers may initiate legal proceedings without any restrictions.

***While noting this information, the Committee trusts that the Ministerial Decision specifying the rules governing the relationship between domestic workers and their employers, to which reference is made in the new Labour Code, will be issued in the near future, and that it will provide adequate protection for domestic workers as regards their freedom to terminate employment. The Committee asks the Government to communicate a copy of the Ministerial Decision, as soon as it is promulgated.***

*Articles 1(1), 2(1) and 25. Trafficking in persons.* In its previous comments, the Committee requested the Government to indicate measures taken or envisaged, both in legislation and in practice, to prevent, suppress and punish trafficking in persons, including victim protection measures, as well as any intention to introduce penal provisions aiming specifically at the punishment of trafficking in persons. The Committee notes the Government's indication in its report that a bill on combating trafficking in persons and the smuggling of migrants has been submitted to the Council of Ministers for its adoption before its referral to the *Majlis El Ummah* (Parliament). The Government indicates that the bill includes a definition of trafficking in persons and the provisions imposing penalties on perpetrators, as well as the provisions relating to the protection of victims of human trafficking. Furthermore, the bill provides for the setting up of a national committee for combating human trafficking, which will formulate policies and programmes in this field.

*The Committee hopes that the bill on combating trafficking in persons will be passed in the near future and that the Government will provide a copy of the new anti-trafficking law, once it has been adopted. Please provide information on the activities of the national committee for combating human trafficking referred to above, in particular on the relevant policies and programmes, as well as the information on the application in practice of sections 138 and 173 of the Penal Code, to which the Government refers in its report in relation to the punishment of human trafficking.*

*Article 25. Penal sanctions for the illegal exaction of forced or compulsory labour.* In its earlier comments, the Committee observed that the national legislation does not contain any specific provisions under which the illegal exaction of forced or compulsory labour is punishable as a penal offence, and invited the Government to take the necessary measures, for example by introducing a new provision to that effect in the legislation. The Government has referred in this regard to various penal provisions (such as sections 49 and 57 of Law No. 31 of 1970 on the amendment of the Penal Code, or section 121 of the Penal Code) prohibiting public officials or employees to force a worker to perform a job for the State or for any public body, as well as to section 173 of the Penal Code, which provides for the imposition of penalties on anyone who threatens another person physically or with damage to his reputation or property with a view to forcing the victim to do something or to refrain from doing something.

The Committee takes note of the Government's view expressed in its report that the above penal provisions are sufficient to hinder a person from exacting labour from another person. The Government indicates, however, that the information on the application of these provisions in practice is not currently available.

The Committee recalls, referring to the explanations in paragraphs 135–140 of its 2007 General Survey on the eradication of forced labour that, in stipulating that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and that States must ensure that the penalties imposed by law are really adequate and strictly enforced, *Article 25* provides a repressive component which ultimately plays a preventive role, since effective punishment of perpetrators encourages victims to lodge complaints and has a dissuasive effect. *The Committee therefore trusts that the necessary measures will be taken (e.g. on the occasion of the possible future revision of the Penal Code) in order to give full effect to Article 25 of the Convention. Pending the adoption of such measures, the Committee again requests the Government to communicate information on the application of the above penal provisions in practice, supplying copies of the court decisions and indicating the penalties imposed, as soon as such information becomes available.*

The Committee is raising other points in a request addressed directly to the Government.

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

*Article 1(a) of the Convention. Punishment for expressing political views.* The Committee previously noted that Legislative Decree No. 65 of 1979, which imposed certain restrictions on the organization of public meetings and gatherings enforceable with penalties of imprisonment (involving compulsory prison labour), was declared unconstitutional by the Constitutional Court in 2006. It also noted that a new law concerning public meetings and gatherings was drafted in 2008. *While noting the Government's indication that the new law concerning public meetings and gatherings is still in the draft form, the Committee hopes that this law will soon be adopted and that the Government will communicate a copy for the examination by the Committee.*

*Article 1(c) and (d). Disciplinary measures applicable to seafarers.* For many years, the Committee has been referring to certain provisions of Legislative Decree No. 31 of 1980 regarding security, order and discipline on board ship, under which various breaches of discipline (unauthorized absence, repeated disobedience, failure to return to the vessel) committed by common agreement by three persons may be punished by imprisonment (involving compulsory prison labour). The Committee recalls that penalties imposed for violations of labour discipline or punishment for having participated in a strike do not come within the scope of the Convention if the acts endanger the safety of the vessel or the life or health of persons. The Committee notes that sections 11, 12 and 13 of the Legislative Decree do not appear to limit the application of the penalties to such acts.

The Committee notes the Government's indication in the report that no penalties have been imposed under Legislative Decree No. 31 of 1980 and no violations of its provisions have been committed. The Government also undertakes to communicate information on any measures taken with regard to the above Legislative Decree. *While noting these indications, the Committee expresses the firm hope that the necessary measures to amend Legislative Decree No. 31 of 1980 will soon be taken, for example by clearly indicating that the imposition of penalties involving compulsory labour is strictly limited to acts endangering the vessel or the life or health of persons. Pending the adoption of such measures, the Committee requests the Government to continue to provide information on the application of the Legislative Decree in practice, supplying copies of court decisions and indicating the penalties imposed.*

## **Lebanon**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1977)**

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers with regard to the illegal exaction of forced labour.* Referring to its earlier comments, the Committee notes the Government's indication in

its report that the National Steering Committee has drafted a Bill on the regulation of the work of domestic workers, which is to be reviewed by the House of Deputies. It also notes with *interest* the preparation of a Guiding Manual for migrant female domestic workers, as well as the promulgation by the Minister of Labour of Order No. 38/1 of 16 March 2009, relating to the implementation of a consolidated labour contract for domestic workers and Order No. 52/1 of 28 April 2009, extending the coverage of social security to all foreign workers in Lebanon, including domestic workers.

The Government also indicates that a working team has been established by Order No. 8/1 of 20 January 2009, whose task is to monitor the work of employment agencies which bring in migrant domestic workers, to examine requests to establish new agencies for bringing in workers and to investigate the complaints against such employment agencies, as well as complaints filed by domestic workers against employers. In this regard, the Minister of Labour issued Memorandum No. 21/1 of 20 February 2009, which regulates the work of the team, in particular examining and investigating the complaints filed against the employment agencies which bring in female domestic workers. Furthermore, the Minister of Labour promulgated Order No. 13/1 of 22 January 2009, regulating the employment agencies which bring in migrant female domestic workers.

***While noting this information, the Committee asks the Government to provide a copy of the Bill on the regulation of the work of domestic workers referred to above, once it has been adopted by the House of Deputies. Please also continue to provide information on the activities of the National Steering Committee and on the various measures taken, both in legislation and in practice, to protect migrant domestic workers with a view to the complete elimination of the exaction of forced labour from this category of workers.***

The Committee is raising other points in a request addressed directly to the Government.

## **Liberia**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1931)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1(1), 2(1), and 25 of the Convention. Forced labour and captivity practices as a consequence of the armed conflict.* In its earlier comments, the Committee referred to the allegations concerning forced labour and captivity practices which took place in the south-eastern part of the country in connection with armed conflict, where children were allegedly held hostage by adults and used as a source of forced and captive labour. The Committee previously noted the Government's indication in its report that the special investigation committee sent by the Government to investigate the alleged forced labour practices in the south-eastern region recommended that a national committee be established to trace and reunite displaced women and children taken captive during the war and that, in order to enhance the National Reconciliation and Reunification Programmes, "local authorities should be directed to encourage their citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment for appropriate investigation and corrective measures".

While having noted that the south-eastern part of the country was in a grave humanitarian crisis and an extreme state of poverty and that any reported situations of forced labour exploitation were due to the consequences of the war, the Committee expressed the hope that the Government would encourage joint efforts and cooperation between governmental bodies and non-governmental organizations at all levels with a view to the effective elimination of all forms of compulsory labour, including that of children, and requested the Government to supply full information on measures taken to this end.

The Committee notes the Government's brief indication in its report supplied in May 2008 that a tripartite national committee is being considered to investigate the complaints of forced labour and hostage situation in the south-eastern region, that consultations for this investigation have already begun and the committee is expected to start its work in the near future. ***The Committee reiterates the firm hope that the Government will provide, in its next report, full information on the activities of the abovementioned tripartite national committee and on the specific action taken to investigate the situation in the South-East as regards the alleged practices of forced labour, as well as on the measures taken to eliminate such practices. The Committee also hopes that the Government will supply information on the results achieved in this regard by the Liberian Truth and Reconciliation Commission (TRC), which was set up to investigate human rights violations and was empowered to recommend for prosecution the most serious offenders, as well as information on the progress achieved in the establishment of an Independent National Human Rights Commission and drawing up of a national human rights action plan.***

***Recalling also that, under Article 25 of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence and it shall be an obligation of the State to ensure that the penalties imposed are really adequate and are strictly enforced, the Committee hopes that the necessary action to give effect to this Article will be taken in the near future, by imposing penal sanctions on persons convicted of having exacted forced labour, and that the Government will provide, in its next report, information on any legal proceedings which have been instituted for that purpose and on any penalties imposed.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## **Libyan Arab Jamahiriya**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(a), (c) and (d) of the Convention. Sanctions for expressing political views, for breaches of labour discipline or participation in strikes.* Since many years, the Committee has been referring to various provisions of the Publications Act of

1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section 24(1) of the Penal Code, an obligation to perform labour). The Committee also referred to sections 237 and 238 of the Penal Code, under which penalties of imprisonment (involving compulsory labour) may be imposed on public servants or employees of public institutions as a punishment for breaches of labour discipline or for participation in strikes, even in services the interruption of which would not endanger the life, personal safety or health of the whole or part of the population.

The Committee notes the Government's indication in its report that the abovementioned Publications Act No. 76 of 1972 will be amended and the Committee's comments have been taken into account in the draft new Act under consideration. The Government also indicates that the draft amended Act has been submitted to the 2008 session of the Basic People's Congresses. The Committee notes, however, that no new information has been supplied as regards the amendment of sections 237 and 238 of the Penal Code referred to above, though the Government has repeatedly expressed its intention to amend them in its earlier reports.

*The Committee trusts that Publications Act No. 76 of 1972, as well as the provisions of the Penal Code referred to above, will be amended in the near future, in order to bring legislation into conformity with the Convention, so as to ensure that no penalties involving compulsory labour may be imposed as a punishment on persons who have expressed certain political or ideological opinions or who have committed breaches of labour discipline or participated in strikes. The Committee asks the Government to supply copies of the amended texts, as soon as they are adopted.*

*Supply of legislation. The Committee asks the Government once again to provide copies of the legislative texts governing the establishment, functioning and dissolution of associations and political parties and hopes that the Government will not fail to supply such copies with its next report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Morocco

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

*Article 2(2)(d) of the Convention. Requisitioning of persons.* For many years the Committee has been emphasizing the need to amend or repeal several legislative texts which authorize the requisitioning of persons and of goods in order to satisfy national needs (the Dahirs of 10 August 1915 and 25 March 1918, as retained in the Dahir of 13 September 1938 and reintroduced by Decree No. 2-63-436 of 6 November 1963). These provisions go beyond what is authorized under *Article 2(2)(d)* of the Convention, under the terms of which requisitioning, and consequently the imposition of work, should be confined to situations endangering the existence or well-being of the whole or part of the population.

In view of the consensus obtained with the social partners to amend the provisions of the legislation and the fact that in practice the public authorities do not appear to make use of these provisions for the requisitioning of persons, the Committee expressed the hope in its previous observation that contacts between the Department of Labour and the Ministry of the Interior would rapidly result in the Dahir of 1938 being brought into conformity with the Convention. *Noting with regret that the Government has not provided any information on the progress achieved with a view to the amendment of the Dahir of 1938, the Committee trusts that the Government will not fail to take all the necessary measures to ensure that the national legislation is in conformity with the Convention and with the indicated practice.*

*Article 25. Effective and strictly applied penal sanctions.* In its previous comments, the Committee expressed its reservations concerning the dissuasive nature of the penalties set out in section 12 of the Labour Code against persons requisitioning employees to perform forced labour or to work against their will (a fine of between 25,000 and 30,000 dirhams and, in the event of repeated offences, a fine of double that amount and imprisonment for between six days and three months, or one of these two penalties). The Committee emphasized that recourse to forced labour is a serious offence and that the penalties that may be imposed have to be considered effective enough to be of a really dissuasive nature. In its last report, the Government indicates that the penalties set out in section 12 of the Labour Code are deemed sufficiently repressive and that the courts opt for the penalty that appears to be the most appropriate, on the basis of the facts and circumstances of the offence.

The Committee recalls the importance of the penalties set out by the national legislation in cases of the exaction of forced labour being of a penal nature, as required by *Article 25* of the Convention, and of them being considered really effective. The Committee has already indicated that a fine or a short prison sentence cannot be considered an effective penalty in view of the gravity of the offence, on the one hand, and the need for the penalties to be of a dissuasive nature, on the other. *While noting that the penalties set out in section 12 of the Labour Code correspond to the highest level of penalties established by the Labour Code, the Committee hopes that the Government will be able to re-examine this matter, either in the context of a revision of the Labour Code or by criminalizing forced labour in the Penal Code and making persons who have recourse to forced labour liable to the penalties applicable for criminal offences.*

## Myanmar

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1955)**

*Follow-up to the recommendations made by the Commission of Inquiry  
(complaint made under article 26 of the Constitution of the ILO)*

#### *Historical background*

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government's gross, long-standing and persistent non-observance of the Convention, as well as the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution. The continued failure by the Government to comply with these recommendations and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

The Committee recalls that the Commission of Inquiry, in its conclusions on the case, pointed out that the Convention was violated in national law and in practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the report of the Commission of Inquiry of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, to be accomplished through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. In its earlier comments, the Committee of Experts has identified four areas in which "concrete action" should be taken by the Government to fulfil the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

#### *Developments since the Committee's previous observation*

There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- the report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 99th Session of the International Labour Conference in June 2010, as well as the discussions and conclusions of that Committee (ILC, 99th Session, *Provisional Record* No. 16, Part Three(A) and document D.5(D));
- the documents submitted to the Governing Body at its 307th and 309th Sessions (March and November 2010), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication made by the International Trade Union Confederation (ITUC) received in August 2010 together with the detailed appendices of more than 1,400 pages;
- the communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in September 2010 with appendices; and
- the reports of the Government of Myanmar received on 16 December 2009, 4 January, 4 February, 12 and 18 March, 6 April, 19 May, 19 August, 8 September and 6 October 2010.

#### *The Supplementary Understanding of 26 February 2007 – Extension of the complaints mechanism*

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. As the Committee previously noted, the SU sets out a complaints mechanism, which has as its object "to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies



available under the relevant legislation and in accordance with the Convention". The Committee notes that the trial period of the SU was extended for the third time, on 19 January 2010, for a further 12 months from 26 February 2010 until 25 February 2011 (ILC, 99th Session, *Provisional Record* No. 16, Part Three, document D.5(F)). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

### *Discussion and conclusions of the Conference Committee on the Application of Standards*

The Committee on the Application of Standards once again discussed this case in a special sitting during the 99th Session of the Conference in June 2010. The Conference Committee acknowledged some limited steps on the part of the Government, such as: the further extension of the SU for another year; the agreement for publication and distribution of an informative brochure on forced labour; certain activities concerning awareness raising of the complaints mechanism established by the SU, including newspaper articles in the national language; and certain improvements in dealing with under-age recruitment by the military. The Conference Committee was, however, of the view that those steps remained totally inadequate. It noted that none of the three specific and clear recommendations of the Commission of Inquiry had been implemented and strongly urged the Government to: fully implement without delay these recommendations and, in particular, to take the necessary steps to bring the relevant legislative texts into line with the Convention; to ensure the total elimination of the full range of forced labour practices, including the recruitment of children into the armed forces and human trafficking for forced labour that are still persistent and widespread; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism.

### *Discussions in the Governing Body*

The Governing Body continued its discussions of this case during its 307th and 309th Sessions in March and November 2010 (GB.307/6, GB.309/6). The Committee notes that, following the discussion in November 2010, the Governing Body reconfirmed all of its previous conclusions and those of the International Labour Conference and called upon the Government and the Office to work proactively towards their realization. In the light of the commitment made by the Permanent Representative of the Government, the Governing Body called on the new Parliament to proceed without delay to bring legislation into line with the Convention. While noting the increased number of the complaints received under the SU complaints mechanism, the Governing Body considered it essential that the movement towards an environment free from harassment or fear of retribution be sustained, and called upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative. Notwithstanding the reported progress in increased awareness of both government personnel and the community at large of their rights and responsibilities under the law, further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking, as well as the strict application of the Penal Code to all perpetrators, in order to bring an end to the impunity. The Governing Body also called for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing government personnel, the military and civil society. Finally, the Governing Body welcomed the release of Daw Aung San Suu Kyi and urged that other persons still in detention, including labour activists and persons associated with the submission of complaints under the SU, would be similarly given their liberty as soon as possible.

### *Communication received from workers' organizations*

The Committee notes the comments made by the ITUC in its communication received in August 2010. Appended to this communication were 51 documents, amounting to more than 1,400 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities in almost all of the country's states and divisions. In many cases, the documentation refers to specific dates, locations, circumstances, specific civil bodies, military units and individual officials. Specific incidents referred to in the ITUC documentation involve allegations of a wide variety of types of work and services requisitioned by authorities, including work directly related to the military (portering, construction and forced recruitment of children), as well as work of a more general nature, including work in agriculture, construction and maintenance of roads and other infrastructure work. The ITUC documentation includes, inter alia, reports submitted to it by the Federation of Trade Unions of Burma (FTUB) and its affiliate, the FTUK, which contain allegations that victims of forced labour who were encouraged by these organizations to report to the ILO, have been prosecuted for it and subsequently jailed. The ITUC documentation also includes translated copies of numerous written orders ("Order documents" or "Order letters") apparently from military and other authorities to village authorities in Karen State, Chin State and some other states and divisions, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. Thus, the report submitted by the FTUK, which was also directly communicated to the ILO in a communication received in September 2010 referred to above, includes translated copies of 94 Order documents issued by military authorities to village heads in Karen State between January 2009 and June 2010. The tasks and services demanded by these documents involved, inter alia, portering for the military, bridge repair, collection of raw materials, production and delivery of thatch shingles and bamboo poles,

attendance at meetings, provision of money, food and other supplies, provision of information on individuals and households, etc. The report states that the above orders illustrate the persistent exaction of forced labour by the military in the rural Karen State, which significantly contributes to poverty, livelihoods vulnerability, food insecurity and displacement of large numbers of villagers. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September 2010, for such comments as it may wish to make on the matters raised therein.

### *The Government's reports*

The Committee notes the Government's reports, referred to in paragraph 4 above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning the Government's continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation and the operation of the SU complaints mechanism, as well as the Government's efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) presentation made at the Deputy Township Judges' training course in Yangon in March 2010 and the distribution of booklets on the SU and informative, simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-age children and to release newly recruited under-age soldiers from September 2009 up to August 2010. As regards the amendment of the legislation, the Government indicates that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing the Village Act and Towns Act. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee also notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC and the FTUK referred to above, as well as in the communication by the ITUC received in September 2009. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the above communications from the ITUC and the FTUK, making particular reference to the "Order documents", which constitute conclusive evidence of the systematic imposition of forced labour by the military.***

### *Assessment of the situation*

Assessment of the information available on the situation of forced labour in Myanmar in 2010 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

#### *(i) Amendment of legislation*

The Committee previously noted the Government's statement in its report received on 27 August 2009 that the Village Act and the Towns Act "have been put into dormant [sic] effectively and legally" by Order No. 1/99 (Order directing not to exercise powers under certain provisions of the Towns Act 1907, and the Village Act 1907) as supplemented by the Order of 27 October 2000. The Committee observed that the latter orders had yet to be given bona fide effect and do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour. ***Noting the Government's indication in its report received on 19 August 2010, that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing these Acts, the Committee expresses the firm hope that the long overdue steps to amend or repeal them will soon be taken and that legislation will be brought into conformity with the Convention. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.***

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which excepts from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public". The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2) of the Convention* and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with *regret* the Government's statement in its report received on 19 August 2010, that "it is completely impossible to amend the Constitution ... as it was ratified by the referendum held in May 2008 with 92.48 per cent affirmative votes". ***The Committee urges the Government once again to take the necessary measures with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

#### *(ii) Measures to stop the exaction of forced or compulsory labour in practice*

*Information available on current practice.* In paragraph 8 of this observation, the Committee referred in detail to the communications received from the ITUC and the FTUK, which contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010 by military and civil authorities in almost all of the country's states and divisions. The information in the numerous appendices refers to specific dates, locations and circumstances of the occurrences, as well as to specific civil bodies, military units and individual officials responsible for

them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities, and has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2010 (ILC, 99th Session, *Provisional Record* No. 16, Part Three, document D.5(C)) that, while the SU complaints mechanism continues to function and the awareness-raising activities continue to take place, complaints alleging the use of forced labour by both military and civil authorities continue to be received (paragraphs 5 and 6). The ILO Liaison Officer also refers to numerous requests to the authorities to release identified victims of under-age military recruitment and states that the work related to under-age recruitment under the SU supports the activity of the UN Country Task Force on Monitoring and Reporting on Children Affected by Armed Conflict under Security Council Resolution 1612 (paragraphs 8 and 12). According to the report, a number of complaints of human trafficking for forced labour have been received; three such cases have been referred to the ILO anti-trafficking projects based outside the country and have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The ILO Liaison Officer further states that “non-verifiable available evidence does suggest that the use of forced labour by the civilian authorities has been reduced at least in some locations and parts of the country”, which is most likely due to the extensive awareness-raising activities and the heightened awareness of local authority personnel (paragraphs 7 and 11). However, according to the Governing Body document submitted to its 307th Session in March 2010, “Whilst there are indications from some parts of the country that the actual incidence of forced labour imposed by civilian authorities has diminished to some extent, this on its own would not account for the reduction in complaints. The use of forced labour, particularly by the military, remains an issue throughout the country” (GB.307/6, paragraph 5).

*Issuing specific and concrete instructions to the civilian and military authorities.* In its earlier comments, the Committee emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee previously noted the Government’s general statement in its report received on 1 June 2009 that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”. However, the Committee notes that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee expresses the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.***

*Ensuring that the prohibition of forced labour is given wide publicity.* In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government’s reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2010. These included, inter alia, three joint ILO–MOL awareness-raising seminars at state/division level for civil and military personnel held in Rhakine State, Magway Division and Bago Division; two joint ILO–MOL presentations on the law and practice on forced labour to a refresher training course for township judges and deputy judges; and three training seminars/presentations for members of the armed forces, the police and the prison service on the law and practice concerning under-age recruitment into the military. During the meeting of the ILO mission with the Minister of Labour (January 2010), the Government agreed to the publication of a simply worded brochure, in Myanmar language, explaining the law pertaining to forced labour, including under-age recruitment, and the procedures available to victims for lodging a complaint (GB.307/6, paragraph 9). The Governing Body, while calling for the continuation and intensification of awareness-raising activities during its November 2010 session, called on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages (GB.309/6, paragraph 4). ***The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded.***

The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6), that the number of complaints received under the SU complaints mechanism continued to increase: over the period 1 June to 21 October 2010, 160 complaints have been received, as compared to 65 complaints received during the corresponding period in 2009 and 25 for the same period in 2008 (paragraph 18). As at 21 October 2010, a total of 503 complaints have been received under the SU mechanism; 288 cases (assessed to be within the ILO mandate) have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction; 127 forced and/or under-age recruits have been released/discharged from the military in

association with complaints under the SU mechanism (paragraphs 14 and 15). The Committee reiterates its view that the complaints mechanism under the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. ***The Committee therefore hopes that the Government will intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising; that it will undertake awareness-raising activities in a more coherent and systematic way; and that it will provide, in its next report, information on measures taken or contemplated in this regard. The Committee further hopes that the Government will provide information on the impact of awareness-raising activities on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.***

*Making adequate budgetary provisions for the replacement of forced or unpaid labour.* In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalls in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required”. The Committee has noted the Government’s repeated indication in its reports, including the report received on 19 August 2010, that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. ***Noting that no other information has been provided by the Government on this important issue, the Committee requests the Government once again to provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour.***

### ***(iii) Ensuring the enforcement of the prohibition of forced labour***

The Committee previously noted that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will. It also noted that Order No. 1/99 and its Supplementing Order of 27 October 2000, as well as the series of instructions and letters issued by government authorities in 2000–05 with a view to securing the enforcement of those Orders, provide for persons “responsible” for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code. The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6) that, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the above provision of the Penal Code. The ILO has been advised that, in four instances, disciplinary action has been taken under military procedures in response to complaints submitted under the SU mechanism, and that in some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change (paragraph 11). As regards cases concerning forced labour exacted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1, which has been already noted by the Committee in its earlier comments and resulted in the prosecution of two civilian officials, who were punished with penalties of imprisonment. In other instances, the solution has involved administrative penalties, including dismissal or transfer, with the majority of cases being resolved by addressing the situation of the complainants without punitive action being taken against the perpetrators (paragraph 12). As regards cases of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied and military perpetrators have been referred to summary trial under military regulations, which resulted in imprisonment in three instances; other penalties which appear to be regularly administered included the loss of seniority, pensionable rights or several days’ pay, as well as the issuance of various levels of formal reprimand (paragraph 13).

The Committee notes with ***regret*** that no new information has been provided by the Government in its 2010 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. ***The Committee points out once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour are strictly enforced, in conformity with Article 25 of the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.***

### ***Concluding remarks***

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observes that, in spite of the efforts made, particularly in the field of awareness raising, cooperation in the functioning of the SU complaints mechanism and in the release of under-age recruits from the military, the Government has not yet implemented the recommendations of the Commission of Inquiry: it has failed to amend or repeal the Towns Act and the Village Act; it has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities. The Committee continues to believe that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar

authorities to demonstrate unambiguously their commitment to achieving that goal. *The Committee urges the Government once again to demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government, and that all the long-overdue steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.*

## Niger

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

*Articles 1(1) and 2(1) of the Convention. Slavery and slave-like practices.* In its previous comments, the Committee examined the matter of slavery in Niger which exists within certain communities where the status of slave continues to be transmitted by birth to persons from certain ethnic groups. The relations between master and slave are based on direct exploitation: slaves are obliged to work for their masters without remuneration, largely as shepherds, agricultural workers or domestic employees. The Committee noted that the Government did not deny that slavery still existed in certain areas of its territory but indicated that it had taken measures to combat these practices. Among the measures taken by the Government, the Committee noted:

- The adoption of Act No. 2003-025 of 13 June 2003 which amended the Penal Code by introducing sections 270-1 to 270-5. These provisions define slavery, describe the elements that constitute the crime of slavery and the various slavery offences, and lay down the penalties applicable. They also authorize associations established for the purpose of combating slavery or similar practices to sue for damages.
- The issue of circulars requesting the Minister of the Interior to meet with administrative heads, and religious and traditional chiefs to draw their attention to the pressing need to comply with the law and to put an end to all forms of slave-like practices.
- The establishment in August 2006 of the National Committee to Combat Forced Labour and Discrimination to prepare a national action plan in this field on the basis of an in-depth diagnostic study. The plan was finalized in October 2007 and is due to be submitted to the Government for adoption.

The Committee notes with *regret* that, in its latest report received in December 2009, the Government provides no information on the measures taken to combat slavery and its vestiges, the adoption of the national action plan or the status of the study on the vestiges of forced labour. The Government only states that “the only action brought before the courts involved investigations carried out by the families of future spouses before their engagement or the refusal of a master to allow his servant to marry”. All these cases were considered to be defamation. Furthermore, the Government indicates that the difficulties in implementing sections 270-1 to 270-5 of the Penal Code arise from the fact that “so-called slaves or descendants of slaves make no complaints about their situation or fate. On the contrary, they are pleased that the so-called master or nobleman provides them with all the care and security that they need in return for services rendered”.

The Committee expresses *deep concern* at the lack of concrete information provided by the Government. It notes that during the period covered by the report, it became aware of the publication, in July 2008, of a study carried out by the National Committee on Human Rights and Fundamental Freedoms (CNDHFF) on the issue of forced labour, child labour and all other forms of slave-like practices. According to this study, “slavery as defined by the international instruments does not exist in Niger but the survival of certain degrading cultural practices means that some individuals do not manage to express themselves fully”. Furthermore, the study concludes that it appears that forced labour as defined by Convention No. 29 does not exist across the entire national territory and that information and communication meetings are necessary to ensure understanding of the definition, characteristics and texts which punish forced labour.

The Committee notes, however, that on 27 October 2008, the Court of Justice of the Economic Community of West African States (ECOWAS) recognized, in a case concerning the sale by a tribal leader of a young girl of 12 years of age to be a domestic worker and concubine (the “wahiya” practice or fifth spouse) that this young girl “has been a victim of slavery and that the Republic of Niger is responsible as a result of the failure of its administrative and judicial authorities to take action against that practice”. The Court found that the Republic of Niger had not sufficiently protected the rights of the claimant against the practice of slavery and ordered the payment of a fixed allowance to the victim. The Committee also notes that, in its concluding observations, the United Nations Committee on the Rights of the Child (CRC) expressed deep concern that Niger had not provided information in its report on caste-based slavery practices while those practices exist throughout the country and that the perpetrators of these practices are not prosecuted or punished. The CRC expressed particular concern at the absence of services to free children and adult victims of traditional slavery practices and at the little efforts to educate the public about harmful slavery practices in general (CRC/C/NER/CO/2 of 18 June 2009).

Finally, the Committee notes the agreement between the National Statistics Institute and the International Labour Office, with the collaboration of the National Committee to Combat Forced Labour and Discrimination, on the preparation of a study which gives an account of the forms of forced labour found in Niger and provides estimated statistics at the national level. The results of this study should be validated by the end of 2010.

*Taking into account the above information, the Committee hopes that, in its next report, the Government will be in a position to report on the measures taken towards the adoption of a national action plan on combating all forms of forced labour, in particular slavery. The Committee hopes that the national action plan will provide for measures to publicize the provisions of the Penal Code criminalizing slavery, as well as measures to raise the awareness of the population and of the key actors involved in combating slavery, particularly religious and traditional chiefs, police officers and magistrates. The Committee requests the Government to provide information on the action taken by the National Committee to Combat Forced Labour and Discrimination. Finally, the Committee requests the Government to provide information on the conclusions of the statistical survey carried out by the National Statistics Institute and the Office, including the follow-up decisions taken.*

Finally, the Committee recalls that, in accordance with *Article 25* of the Convention, the Government shall ensure that the penalties imposed by law are really adequate and are strictly enforced. It stresses that it is essential that the victims are actually in a position to go to the police and judicial authorities to assert their rights so that the perpetrators of slavery offences or the crime of slavery, as provided for in the Penal Code, are prosecuted and, when appropriate, sentenced. **In this regard, the Committee requests the Government to indicate whether there have been any court decisions based on sections 270-1 to 270-5 of the Penal Code and, if so, to provide a copy of them.**

## Nigeria

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views.* 1. In its earlier comments, the Committee referred to the Public Order Act, Cap. 382, Laws of the Federation of Nigeria, 1990, which contains provisions imposing certain restrictions on the organization of public assemblies, meetings and processions (sections 1–4), offences being punishable with imprisonment (sections 3 and 4(5)), which involves compulsory prison labour. The Committee recalled that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also refers in this connection to paragraphs 154 and 162 of its General Survey of 2007 on the eradication of forced labour, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. Since opinions and views opposed to the established system are often expressed at various kinds of meetings and assemblies, restrictions affecting the organization of such meetings and assemblies may give rise to similar problems of the application of the Convention, if such restrictions are enforceable with penalties involving compulsory labour.

While noting the Government's statement in the report that the Public Order Act, Cap. 382, does not impose restrictions on the organization of public assemblies by workers for trade union activities and there is therefore no conviction for violation, the Committee observes, however, that the above Act still imposes restrictions on the freedom of expression enforceable with sanctions involving compulsory labour, which is incompatible with the Convention.

***The Committee therefore expresses the firm hope that the necessary measures will be taken in order to bring the provisions of the Public Order Act into conformity with the Convention. While having noted the Government's indication in its previous report that there was no record of the violation of the provisions of the Act, the Committee reiterates its hope that, pending the amendment, the Government will continue to provide information on its application in practice, including information on convictions for violation of its provisions and on penalties imposed.***

2. In its earlier comments, the Committee referred to the Nigerian Press Council (Amendment) Act, 2002, which imposes certain restrictions on journalists' activities enforceable with penalties of imprisonment (section 19(1) and (5)(a)), which involves compulsory prison labour. ***While having noted the Government's repeated indication in its reports that no conviction has been made under the Act, and referring also to the explanations in point 1 of this observation, the Committee reiterates its hope that measures will be taken to repeal or amend these provisions in order to bring the legislation into conformity with the Convention and the indicated practice. Pending the amendment, the Government is requested to continue to provide information on the application of these provisions in practice, indicating, in particular, any convictions under the above Act and penalties imposed.***

*Article 1(c) and (d). Punishment for breaches of labour discipline and for participation in strikes.* In its earlier comments, the Committee referred to the following provisions enforceable with sanctions of imprisonment (which involves compulsory prison labour):

- section 81(1)(b) and (c) of the Labour Decree, 1974, under which a court may direct fulfilment of a contract of employment and posting of security for the due performance of so much of the contract as remains unperformed, and a person failing to comply with such direction may be committed to prison;
- section 117(b), (c) and (e) of the Merchant Shipping Act, under which seafarers are liable to imprisonment for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons;
- section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990, under which participation in strikes may be punished with imprisonment.

The Committee previously noted the Government's indications that all these provisions were under consideration by the National Labour Advisory Council. It also noted the Government's indication in its 2005 report that the review of the labour laws had been completed and submitted to the federal Government for further action. In its latest report, the Government states that the provisions referred to above have been addressed in the Collective Labour Relations Bill. ***The Committee expresses the firm***

*hope that all of the legislative provisions referred to above will soon be amended, so as to bring legislation into conformity with the Convention, and that the Government will indicate, in its next report, the progress achieved in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Pakistan

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

The Committee notes a communication dated 30 July 2010, received from the Pakistan Workers Federation (PWF), which contains comments on the application of the Convention by Pakistan. It notes that this communication was sent to the Government in August 2010 for any comments it might wish to make on the matters raised therein. *The Committee hopes that the Government's comments will be supplied in its next report, so as to enable the Committee to examine them at its next session.*

#### Articles 1(1) and 2(1) of the Convention

##### A. Debt bondage

*Comments from workers' organizations.* In its comments made for a number of years, the Committee has noted the difficulties in the implementation of the Bonded Labour System (Abolition) Act (BLSA), 1992. The Committee referred in this connection to the comments made by the All Pakistan Federation of Trade Unions (APFTU), the All Pakistan Trade Union Federation (APTUF) and the International Trade Unions Confederation (ITUC). In its latest communication dated 29 August 2008, the ITUC observed that, some 15 years after the adoption of the BLSA and six years after the approval of the National Action Plan (2001), bonded and forced labour was still commonly used in many industries across Pakistan. The ITUC referred in this connection to the rapid assessments commissioned by the Ministry of Labour in collaboration with the ILO, which were carried out in nine sectors (brick kilns, agriculture, carpet industry, mining, glass bangle making, tanneries, construction, domestic work and begging). The ITUC considered that the BLSA had not been properly applied and those who used bonded labour had been able to do it with impunity. The Pakistan Institute for Labour Education and Research (PILER) had only been able to document the release of some 8,530 people between 1990 and 2005; of these, 5,166 were released through judicial intervention, in combination with non-governmental organizations and local state officials, only 563 were released solely through state intervention. According to the ITUC views, the vigilance committees set up under the BLSA had not performed their functions of identifying and releasing bonded labourers and had not been restructured as envisaged in the National Action Plan. The lack of adequate labour inspection machinery was another key reason why bonded labourers were not being identified and released.

*Implementation of National Policy and Plan of Action for the Abolition of Bonded Labour.* In its earlier comments, the Committee noted a number of initiatives undertaken by the Government within the framework of its 2001 National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers, including, inter alia, the organization of training workshops for key district government officials, and other concerned stakeholders, to enhance their capacity and enable them to draw up district-level plans to identify bonded labourers and activate the district vigilance committees; the incorporation of the issue of bonded labour into the syllabi of judicial, police and civil service academies, in order to help sensitize judicial, law enforcement and civil service officials to the problem; and conducting of capacity-building seminars. The Committee also noted the Government's indication that, under the BLSA, inspection functions in the area of bonded labour had been assigned to the regular labour inspectorate, as well as to local government heads/officials and police departments. In its latest report, the Government refers to a number of studies undertaken with the technical assistance of the ILO with regard to bonded labour in various sectors in Pakistan.

*While having noted the Government's initiatives to combat bonded labour, the Committee expresses the firm hope that the Government will pursue its efforts with vigour in order to ensure the effective implementation of the 2001 National Policy and Plan of Action and will provide detailed information on progress made and practical results achieved, including copies of relevant reports on all of the activities, projects, institutions and mandates referred to in the action plan. The Committee asks the Government to provide, in particular, information on the activities of the National Committee for the Abolition of Bonded Labour and Rehabilitation of Bonded Labourers which had to be established to coordinate the implementation of the plan and to review the implementation of the BLSA, including copies of monitoring/evaluation reports concerning the functioning of the vigilance committees. Please also provide information on the activities of the fund established under the BLSA rules, to which the Government referred in its 2005 report. The Committee also asks the Government to indicate the measures taken or envisaged to assess and address the causes of debt bondage.*

*Debt bondage: Data-gathering measures to ascertain the current nature and scope of the problem.* The Committee previously noted a report entitled "Rapid assessment studies of bonded labour in different sectors in Pakistan", which contained findings and conclusions from a series of rapid assessment studies conducted at the initiative of the Ministry of Labour and the ILO by teams of social scientists and researchers under the auspices of the Bonded Labour Research Forum (BLRF), with a view to exploring the existence and nature of bonded labour in ten sectors (agriculture, construction, carpet weaving, brick making, marine fisheries, mining, glass bangles, tanneries, domestic work, and begging). The project represented the first phase of a larger research programme and was intended to lay the groundwork

for detailed sector studies and a national survey to determine the incidence of bonded labour across the country, as foreseen in the Government's National Plan of Action. However, no such national survey has yet been carried out and the Government refers in this connection to the existing difficulties in the identification of bonded labourers.

While noting this indication, the Committee points out once again that accurate data are a vital step in both the development of the most effective systems to combat bonded labour and providing a true base for the assessment of effectiveness of those systems. ***The Committee therefore expresses the firm hope that the Government, as a follow-up to the preliminary part of the research programme noted above, and in accordance with the mandate of its 2001 National Policy and Plan of Action, will undertake a statistical survey on bonded labour throughout the country, using a valid methodology in cooperation with employers' and workers' organizations and with human rights organizations and institutions, and that it will supply information on the progress achieved in this connection.***

### **B. Trafficking in persons**

The Committee previously noted the adoption of the Prevention and Control of Human Trafficking Ordinance, 2002 (PCHTO). It also noted that, in accordance with the report of the International Organisation for Migration (IOM) entitled "Data and research on human trafficking: A global survey", Pakistan continued to be a major destination country for trafficked women, as well as a major transit country of persons trafficked from Bangladesh to Middle Eastern countries, where women are subject to sexual exploitation. The report emphasized that there was an urgent need to carry out comprehensive national baseline surveys with the aim of developing a South Asian database on trafficking in persons.

***The Committee reiterates its hope that the Government will undertake a national baseline survey on trafficking in persons, in cooperation with employers' and workers' organizations, as well as other organizations and institutions concerned, and that it will supply information on the progress achieved in this connection. Please also provide information on the application in practice of the Prevention and Control of Human Trafficking Ordinance (2002) referred to above, as well as, more generally, on the policies and measures aiming at the effective elimination of trafficking in persons, including copies of the relevant policy documents and available statistics.***

### **C. Restrictions on voluntary termination of employment**

The Committee previously noted the Government's indication that an amendment to the Essential Services (Maintenance) Act, 1952, under which government employees who unilaterally terminate their employment without consent of the employer are subject to a term of imprisonment, was to be considered by the tripartite commission on the consolidation, simplification and rationalization of labour laws. ***As the Government's report contains no new information on this subject, the Committee trusts that the necessary measures will be taken in order to bring the federal and provincial essential services Acts into conformity with the Convention and that the Government will report on the progress achieved in this regard.***

### **Article 25. Penalties for the illegal exaction of forced or compulsory labour**

The Committee notes the Government's indications in the report concerning the number of the trafficking-related complaints registered under the Prevention and Control of Human Trafficking Ordinance (2002), the number of investigations and the number of convictions obtained during the period 2007–09. It also notes the Government's indication concerning the penalties imposed on perpetrators.

***The Committee asks the Government to continue to provide updated information on the enforcement of the 2002 Ordinance, communicating the numbers of trafficking-related complaints registered, court proceedings initiated, convictions obtained and the penalties imposed, including sample copies of the relevant court decisions, indicating the minimum penalties imposed. Recalling also that Article 25 of the Convention provides that the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and strictly enforced, the Committee once again requests information on any legal actions taken against employers of bonded labourers under the BLSA, including copies of any court decisions in order to demonstrate the effectiveness of its provisions and to indicate the penalties imposed.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

*Article 1(c) and (d) of the Convention.* 1. *Work imposed as a means of labour discipline and as a punishment for having participated in strikes.* For a number of years, the Committee has been commenting on certain provisions of the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, under which employees are prohibited from leaving their employment without the consent of the employer or from striking, subject to penalties of imprisonment that may involve compulsory labour. The Committee previously noted the comments made under the Convention by the All Pakistan Federation of Trade Unions (APFTU), in which it stated that the provisions of the Essential Services Act apply, inter alia, to workers employed in various public utilities such as WAPDA, Railway, Telecommunication, Karachi Port Trust, Sui Gas, etc., and these workers cannot resign from their service and cannot go on strike. In its comments supplied in 2005, the APFTU reiterated its earlier statement that the Essential Services (Maintenance) Act continues to restrict the right to strike even in non-essential services. This view has been shared by the Pakistan Workers' Federation (PWF) in its communication received in 2008.



The Committee previously noted the Government's repeated statement in its reports that the application of the 1952 Act has been made very restrictive and it is extended only in cases of extreme nature, when peaceful and uninterrupted supply of goods and services to the general public appears to be disturbed. While having noted this indication, the Committee points out once again that all the workers concerned – whether in any employment under the federal and provincial governments and local authorities or in public utilities, including essential services – must remain free to terminate their employment by reasonable notice; otherwise a contractual relationship based on the will of the parties may be changed into service by compulsion of law, which is incompatible with both the present Convention and the Forced Labour Convention, 1930 (No. 29), likewise ratified by Pakistan. The Committee also recalls that, in its comments addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it has observed that no penal sanction should be imposed against a worker for having carried out a peaceful strike, and therefore penalties of imprisonment should not be imposed on any account.

***Referring to the explanations provided in paragraph 189 of its 2007 General Survey on the eradication of forced labour, the Committee trusts that the Pakistan Essential Services Act and corresponding provincial Acts will be either repealed or amended in the near future, so as to ensure that, in conformity with the Convention, no penal sanction involving compulsory labour can be imposed against workers for peaceful participation in a strike, and that the Government will report the progress achieved in this regard.***

2. *Penal sanctions applicable to seafarers for various breaches of labour discipline.* For many years, the Committee has been referring to the provisions of the legislation concerning merchant shipping (Merchant Shipping Act, 1923, which was repealed and replaced by the Pakistan Merchant Shipping Ordinance, 2001 (No. LII of 2001)), under which penalties involving compulsory labour may be imposed in relation to various breaches of labour discipline by seafarers, and seafarers may be forcibly returned on board ship to perform their duties. It noted, in particular, that under sections 204, 206, 207 and 208 of the Pakistan Merchant Shipping Ordinance, 2001, penalties of imprisonment, which may involve compulsory labour by virtue, inter alia, of section 3(26) of the General Clauses Act, 1897, may be imposed in respect of various breaches of labour discipline, such as absence without leave, wilful disobedience, or combining with the crew in “neglect” of duty, and seafarers may be forcibly conveyed on board ship.

While noting the Government's statement in the report that penalties of imprisonment may only be awarded by a competent court of law after a trial, the Committee refers to the explanations in paragraph 144 of its 2007 General Survey, where it pointed out that, in the great majority of cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of the Convention (such as in the cases of the exaction of labour from common offenders convicted, for example, of robbery, kidnapping, acts of violence or various acts or omissions that have endangered the life or health of others). But if a person has to perform compulsory prison labour because that person holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by the Convention, which prohibits the use “of any form” of forced or compulsory labour as a means of coercion, education or punishment for violation of labour discipline.

***The Committee expresses the firm hope that, after several decades of comments addressed to the Government on this point, the necessary measures will at last be taken to repeal or amend these provisions of the 2001 Merchant Shipping Ordinance which prescribe penalties of imprisonment for breaches of labour discipline (e.g. by limiting their scope to offences committed in circumstances endangering the safety of the ship or the life or health of persons) and to repeal the provisions under which seafarers may be forcibly returned on board ship to perform their duties. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.***

*Article 1(a). Penalties involving compulsory labour as a punishment for expressing political views.* In comments made for many years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10–13), the Political Parties Act, 1962 (sections 2 and 7) and the West Pakistan Press and Publications Ordinance, 1963, which gave the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour.

The Committee previously noted the adoption of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, which had repealed the West Pakistan Press and Publications Ordinance, 1963. It noted, in particular, the provisions of sections 5 and 28 of the 2002 Ordinance, under which a person who edits, prints, or publishes a newspaper in contravention of the Ordinance (for instance, without having made a declaration or without having a declaration authenticated by the District Coordination Officer) is liable to penalties of imprisonment (which may involve compulsory labour) for a term of up to six months.

***The Committee hopes that the necessary measures will be taken with a view to bringing these provisions of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, into conformity with Article 1(a) of the Convention, so that no penalty of imprisonment involving compulsory labour can be imposed as a punishment for expressing political views. Pending the adoption of such measures, the Committee asks the Government to provide information on the application of sections 5 and 28 in practice, indicating the penalties imposed and supplying sample copies of the relevant court decisions. Please also communicate a copy of any rules issued under section 44 of the 2002 Ordinance.***

As regards the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, referred to above, the Committee previously noted that the Government's Law and Justice Commission, in response to a Supreme Court ruling, had drafted legislative proposals for certain amendments to be made to the Security of Pakistan Act, 1952, and that proposals to amend other laws, including the Political Parties Act, 1962, were under consideration. ***Noting that the Government's latest report contains no new information on this subject, the Committee reiterates its hope that the Government's concerns will be taken into account by the Law and Justice Commission and that the necessary measures will soon be taken to bring the abovementioned provisions of the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, into conformity with the Convention. Pending the adoption of such measures, the Committee again requests the Government to provide information on the practical application of these provisions, indicating the number of convictions and supplying sample copies of the relevant court decisions.***

*Article 1(e). Penalties involving compulsory labour as a means of religious discrimination.* In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punishable with penalties of imprisonment (which may involve compulsory labour) for a term of up to three years. The Committee previously noted the Government's repeated statement in its reports that religious discrimination does not exist and is forbidden under the Constitution, which guarantees equal citizenship and fundamental rights to minorities living in the country. The Government also stated that the Penal Code imposes equal obligations on all citizens, whatever their religion, to respect the religious sentiments of others, and an act that impinges upon the religious sentiments of other citizens is punishable under the Penal Code. The Government further indicated that religious rituals referred to in Ordinance No. XX are prohibited only if exercised in public, whereas if they are performed in private without causing provocation to others, they do not fall under the prohibition.

While noting these indications, the Committee points out once again, referring to the explanations provided in paragraphs 154 and 190 of its 2007 General Survey, that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But where punishment involving compulsory labour is aimed at the peaceful expression of religious views, or where such punishment (for whatever offence) is meted out more severely, or even exclusively, to certain groups defined in social or religious terms, this falls within the scope of the Convention. ***The Committee reiterates the firm hope that the necessary measures will be taken in relation to sections 298B and 298C of the Penal Code, so as to ensure the observance of the Convention. Pending the adoption of such measures, the Committee again requests the Government to provide, in its next report, information on the application of these provisions in practice, including sample copies of the court decisions and indicating the penalties imposed.***

## Papua New Guinea

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)***

*Article 1(c) and (d) of the Convention. Penal sanctions applicable to seafarers for various breaches of labour discipline.* In comments it has been making since 1978, the Committee has been referring to certain provisions of the Seamen (Foreign) Act, 1952, under which a seafarer belonging to a foreign ship who deserts or commits certain other disciplinary offences is liable to imprisonment (which involves an obligation to perform labour) (section 2(1) and (3)–(5)). The Committee has been also referring to section 1 of the same Act and section 161 of the revised Merchant Shipping Act (Chapter 242) (consolidated to No. 67 of 1996), which stipulate that foreign seafarers deserting their ship may be forcibly returned on board ship.

As the Committee repeatedly pointed out, referring to the explanations in paragraph 179 of its 2007 General Survey on the eradication of forced labour, sanctions of imprisonment (involving an obligation to perform labour) would only be compatible with the Convention where they are clearly limited to acts endangering the safety of the ship or the life or health of persons. However, provisions imposing such sanctions which relate more generally to breaches of labour discipline (such as desertion, absence without leave or disobedience), often supplemented by provisions under which seafarers may be forcibly returned on board ship, are incompatible with the Convention.

The Committee previously noted the Government's indication that numerous requests concerning the Committee's comments had been communicated to the Department of Transport, which is responsible for administering and applying the above legislation, with a view to amending these provisions. However, the Government indicates in its latest report that no positive response has been communicated by this Department as feedback to the observation made by the Committee.

***While noting the Government's renewed commitment to review national provisions and to ensure compliance with the ratified Conventions, the Committee trusts that the necessary measures will be taken in the near future with a view to bringing the above provisions of the Seamen (Foreign) Act and the Merchant Shipping Act into conformity with the Convention and that the Government will soon be in a position to report the progress achieved in this regard.***

## Peru

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

The Committee notes the Government's report, the comments of the National Confederation of Private Business Institution (CONFIEP) communicated by the Government with its report, and the comments on the application of the Convention made by the General Confederation of Workers of Peru (CGTP), which were forwarded to the Government on 16 November 2009.

*Articles 1(1) and 2(1) of the Convention.* 1. *Forced labour in indigenous communities.* For many years, the Committee has been examining the situation of members of indigenous communities who are victims of forced labour practices (slavery, debt bondage and serfdom), particularly in sectors such as agriculture, stock-raising and forestry. It referred in particular to the region of Atalaya, the harvesting of chestnuts in Madre de Dios and widespread forced labour in illegal timber activities in the region of Ucayali. The Committee noted the establishment in 2007 of the National Commission to Combat Forced Labour and the approval of the National Plan to Combat Forced Labour, the objective of which is to address structural issues (the vulnerability of victims) and take coordinated measures to resolve situations of forced labour in practice. The Committee noted the various components of the National Plan and requested the Government to provide information on their implementation and the results achieved. The Committee observes in this respect the CGTP's view that the measures adopted for the implementation of the Plan are inadequate. The CONFIEP however gives a favourable assessment of the manner in which the Government is combating forced labour.

*Legislative measures.* One of the objectives of the National Plan is the existence of legislation that is in conformity with international standards respecting freedom of work and rules which give a legal basis for action to combat forced labour. The Government has previously acknowledged that the legislation does not contain specific provisions encompassing the whole of the issue of forced labour and that it is necessary to update and harmonize the penal, civil and labour legislation on this matter. The Committee notes the Government's indication in its last report that there is not yet legislation specifically criminalizing forced labour and determining its constituent elements, although a legislative proposal is being studied which should be examined soon by the Congress. The Government, however, specifies that other provisions of the national legislation protect the right to freedom of work, such as section 168 of the Penal Code, which establishes a sentence of imprisonment for any person who obliges or threatens another person with a view to the performance of work without receiving the corresponding remuneration, and section 153 which criminalizes and defines the constituent elements of trafficking in persons. The Government considers that, in view of the fact that this section defines the constituent elements of the crime of trafficking in persons with reference to its purpose, namely exploitation, the victims of forced labour could benefit from the protection and assistance guaranteed on the basis of this section. The Government finally hopes that the legislation will soon be supplemented by a Bill which will bring the national legislation into conformity with the Convention.

The Committee notes this information. The Committee recalls in this respect that forced labour, as established by the Convention, is a broader concept than trafficking in persons and that it is important for national jurisdictions to have precise provisions, taking into account the principle of the strict interpretation of penal law. ***The Committee therefore hopes that the Government will take the necessary measures to ensure that the legislative initiative to which it refers results in the adoption of penal provisions specifically criminalizing forced labour and defining the constituent elements of forced labour so as to cover all the forced labour practices existing in the country. Finally, referring to its previous observation, the Committee would be grateful if the Government would indicate whether it has followed up the proposal in the National Plan to formulate a Bill to regulate private employment agencies and labour recruitment systems, by giving emphasis to the prevention of forced labour and by including them within the competence of the labour inspectorate.***

*Labour inspection.* The Committee notes that the National Plan envisages the reinforcement of the labour inspectorate, particularly through the establishment of mobile inspection units in areas difficult to access and the establishment of machinery to receive complaints and forward them to the corresponding services. The Government indicates that a special labour inspection unit to combat forced labour (GEIT) was created in August 2008. This unit, composed of five labour inspectors and headed by a supervisor, undertook its first mission between September and December 2008. The mission aimed at inspecting timber activities in the Department of Loreto and to develop the investigatory capacities of the GEIT. The GEIT concluded that in this Department the system of "*habilitación*" remains a widespread means of recruiting mixed race and indigenous labour for timber extraction. The second mission consisted of an operational plan to inspect export enterprises in the timber sector, and particularly in forestry concessions that are distant from towns. The Government adds that financial difficulties have prevented the GEIT from travelling to distant areas and communities. It further indicates that the GEIT has conducted preliminary investigations into situations of forced labour in agro-industrial and mining activities.

The Committee notes this information. It also notes that, in its comments, the CGTP emphasizes that the GEIT is established in the capital, Lima, and not in the area where forced labour is widespread, namely in the Amazon forest. This makes it difficult to achieve the objectives set out in the National Plan. The Committee considers that the specialization of a group of inspectors in combating forced labour constitutes a positive element. However, it observes with ***concern*** that the GEIT does not appear to have the financial resources to carry out its missions. ***The Committee requests the***

**Government to provide information on the measures adopted to ensure that the GEIT is provided with adequate human and material resources to be able to travel rapidly, effectively and safely throughout the national territory. Please indicate the number of inspections carried out, the situations of forced labour reported and the judicial action taken as a result of the violations reported.**

*Awareness raising and prevention.* The Committee notes the detailed information provided by the Government concerning the measures adopted to disseminate information and raise awareness on the problem of forced labour. It observes in particular the draft communication strategy which, in the absence of financing, has not yet been implemented. It also notes the web page of the Ministry of Labour and Employment Promotion devoted to forced labour; the decentralized action taken by the Ministry of Education to disseminate the National Plan, and to carry out awareness-raising and prevention activities among teachers, students and parents, with emphasis on rural areas where the population is most vulnerable; the broadcasting of television programmes on forced labour on the State channel; the awareness-raising and training activities undertaken in training institutions for the police and officials in institutions working in fields linked to the issue of forced labour. **The Committee encourages the Government to continue developing this type of awareness-raising activities and requests it to provide information on this subject. It would also be grateful if the Government would indicate the measures adopted to improve the identification of victims and establish their number, and on whether the proposals in the National Plan have been implemented for the preparation of studies on forced labour in certain sectors and the periodic development of assessments of the forced labour situation.**

2. *Domestic work under conditions of forced labour.* The Committee noted previously the allegations of forced labour practices of which certain women domestic workers are reported to be the victims. It notes the information provided by the Government on the numerous activities undertaken to ensure that women domestic workers are aware of their rights, both through training workshops and information campaigns (distribution of brochures, posters, television programmes). The Committee observes that the CGTP confirms in its comments that many women domestic workers are subject to violation of their rights amounting to forced labour. The trade union refers to women workers who are exploited and obliged to work over 18 hours a day without receiving remuneration, or with their remuneration being paid in kind, and who are deprived of their freedom of movement or their identity papers. The CGTP emphasizes that it is necessary to amend the legislation and to develop a quantitative and qualitative assessment of forced labour in this sector since, in the absence of such an evaluation, it is difficult to combat this form of forced labour. The State should also make available to women domestic workers the tools through which they can assert their rights. **The Committee trusts that the Government will take every necessary measure to ensure the protection of women domestic workers against the imposition of practices which amount to forced labour, both at the legislative level and in practice, providing the necessary assistance so as to enable them to assert their rights and denounce any abuses of which they may be victims.**

3. *Trafficking in persons.* In addition to the adoption of the provisions in the Penal Code which criminalize and define the constituent elements of trafficking in persons, referred to above, the Committee notes the creation of the Division to Combat Trafficking in Persons in the Criminal Investigation Directorate of the National Police. The Government indicates that this Division works with the GEIT on the complaints lodged over the telephone line established for that purpose by the Ministry of the Interior concerning trafficking in persons for the exploitation of their labour. The Government also refers to the system for the recording and compilation of statistics on the crime of trafficking in persons and similar offences, through which indicators are established on complaints, investigations, locations, offences, identities and types of trafficking. A telephone line available 24 hours a day, seven days a week, has also been set up with professionals to provide assistance and advice to victims of trafficking and who can, where appropriate, forward complaints to the police services. **The Committee requests the Government to continue to provide information on the measures adopted to combat trafficking in persons, and particularly to protect and assist victims. Please provide information on the results obtained by the Division to Combat Trafficking in Persons of the National Police, the difficulties encountered and the measures adopted to overcome them.**

*Article 25. Effective and strictly applied penal sanctions.* The Committee previously noted the lack of specific provisions in criminal law to repress and punish forced labour, which prevented effect to be given to *Article 25* of the Convention, under which the illegal exaction of forced or compulsory labour shall be punishable as a penal offence and the penalties imposed have to be really adequate and strictly enforced. The Committee notes that the Government provides information in its report on certain procedures that have been established to enable victims to denounce their situation (free telephone line for trafficking in persons and on-line denunciation on the web page devoted to forced labour of the Ministry of Labour). The Committee observes that the Government does not provide any information on the initiation of prosecutions against persons charged with the exaction of forced labour.

The Committee emphasizes that, as indicated above, forced labour practices in Peru take various forms (including practices similar to slavery or debt bondage of indigenous populations and exploitation of women domestic workers) and it appears that the legislation that is currently in force is inadequate for the punishment of those responsible for these practices. The Committee observes the emphasis placed by the CGTP on the fact that, when situations of forced labour are identified, the lack of an adequate legal basis for bringing criminal charges before the court prevents the punishment of those responsible. **In these circumstances, the Committee refers to its comments set out above on the need to adopt specific provisions criminalizing forced labour and defining its constituent elements, as a basis upon which the police and prosecution authorities can initiate judicial procedures against those responsible for the various forms of forced**

labour existing in Peru. With regard to trafficking in persons, the Committee requests the Government to provide information on the effect given in practice to sections 153 and 153A of the Penal Code and to provide copies of relevant court rulings. Please also indicate whether criminal courts have handed down decisions under section 168 of the Penal Code.

Finally, the Committee notes that, under the terms of section 25 of the Regulations issued under the General Act on Labour Inspection (Supreme Decree No. 019-2006-TR), forced labour, whether paid or not, and trafficking in, or the abduction of persons for the purpose of forced labour constitutes a very serious offence from the labour relations perspective and is punishable with an administrative sanction (fine). *The Committee requests the Government to provide information on the penalties applied under this provision, with an indication of their number and amount.*

## Philippines

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

*Article 1(a) of the Convention. Punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* In comments it has been making for a number of years, the Committee has been referring to the following provisions of the Revised Penal Code, under which penalties of imprisonment (involving compulsory labour) may be imposed:

- section 142 (inciting to sedition by means of speeches, proclamations, writings or emblems; uttering seditious words or speeches; writing, publishing or circulating scurrilous libels against the Government);
- section 154 (publishing any false news which may endanger the public order or cause damage to the interest or credit of the State, by means of printing, lithography, or any other means of publication).

While having noted the Government's views expressed in its previous report, according to which the above provisions punish the acts of making speeches, writings or proclamations "that create a clear and present danger to the public safety, public order and public good", the Committee draws the Government's attention to the explanations contained in paragraphs 152–166 of its General Survey of 2007 on the eradication of forced labour, in which it has considered that the range of activities which must be protected under *Article 1(a)* of the Convention comprises the freedom to express political or ideological views, which may be exercised orally and through the press and other communications media, as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and the adoption of policies and laws reflecting them, and which also may be affected by measures of political coercion. The Committee observes that the above provisions of the Revised Penal Code are worded in terms broad enough to lend themselves to be applied as a means of punishment for the expression of views and, in so far as they are enforceable with sanctions involving compulsory labour, they fall within the scope of the Convention.

*The Committee trusts that the necessary measures will be taken in the near future in order to amend or repeal sections 142 and 154 of the Revised Penal Code so as to bring legislation into conformity with the Convention, and that the Government will soon be in a position to provide information on the progress made in this regard. Pending the amendment, the Committee again requests the Government to provide information on the application of sections 142 and 154 in practice, including sample copies of relevant court decisions defining or illustrating their scope.*

*Article 1(d). Punishment for having participated in strikes.* For a number of years, the Committee has been referring to certain legislative provisions, under which, in the event of a planned or current strike in an industry considered "indispensable to the national interest", the Secretary of Labour and Employment may assume jurisdiction over the dispute and settle it or certify it for compulsory arbitration. Furthermore, the President may determine the industries "indispensable to the national interest" and assume jurisdiction over a labour dispute (section 263(g) of the Labor Code). The declaration of a strike after such "assumption of jurisdiction" or submission to compulsory arbitration is prohibited (section 264), and participation in an illegal strike is punishable by imprisonment (section 272(a) of the Labor Code), which involves an obligation to perform labour (pursuant to section 1727 of the Revised Administrative Code). The revised Penal Code also lays down sanctions of imprisonment for participants in illegal strikes (section 146).

The Committee recalls that *Article 1(d)* of the Convention prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes. It refers in this connection to the explanations contained in paragraph 189 of its 2007 General Survey, in which it has considered that, regardless of the legality of the strike action, any sanctions imposed should not be disproportionate to the seriousness of the violations committed, and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a strike. The Committee points out, however, that the Convention does not prohibit the punishment of acts of violence, assault or destruction of property committed in connection with the strike.

*Referring also to its comments addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), likewise ratified by Philippines, the Committee expresses the firm hope that the necessary measures will be taken to amend or repeal the above provisions of the Labour Code so as to ensure that no penalties involving compulsory labour can be imposed for the participation in a strike, in order to bring*

legislation into conformity with the Convention. It asks the Government to provide, in its next report, information on the progress achieved in this regard.

## Russian Federation

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1956)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its earlier comments, the Committee referred to the communication from the International Trade Union Confederation (ITUC), according to which thousands of persons were trafficked from the Russian Federation to other countries, including Canada, China, Germany, Israel, Italy, Japan, Spain, Thailand and the United States. Internal trafficking within the Russian Federation also reportedly took place; women were generally forced to work as prostitutes while men were trafficked into agricultural or construction work. The Government indicated in its 2007 report that detection of human trafficking cases had increased six-fold in three years, and several dozens of organized criminal groups engaged in recruiting Russian citizens for the purpose of sexual and labour exploitation in the countries of Western Europe, Middle East and North America had been uncovered. According to the 2009 Global Report on forced labour under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, recent data from the Russian Federation and other countries of the Commonwealth of Independent States point to a steady increase in the number of identified persons trafficked for labour exploitation.

The Committee previously noted the information provided by the Government concerning prosecution of offences of human trafficking under the new section 127.1 of the Criminal Code. However, in spite of the legal prohibition and punishment of human trafficking, it still remains a source of serious concern in practice. In this connection, the Committee notes with *regret* that no progress has been achieved as regards the adoption of the draft Law on Combating Human Trafficking, which provides for a system of bodies to combat trafficking and contains provisions concerning prevention of trafficking, as well as protection and rehabilitation of victims, to which the Government referred in its earlier reports.

*The Committee therefore expresses the firm hope that the Government will take immediate steps with a view to ensuring that the draft Law on Combating Human Trafficking is adopted in the near future. It also requests the Government to continue to provide information on the application in practice of section 127.1 of the Criminal Code, supplying sample copies of the relevant court decisions in order to demonstrate the effectiveness of this provision and to indicate the penalties imposed on perpetrators. Please also provide information on the practical measures taken or envisaged to prevent, suppress and combat trafficking in human beings.*

## Sierra Leone

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1(1), and 2(1) of the Convention. Compulsory agricultural work.* Over many years, the Committee has been referring to section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on "natives". On numerous occasions, it requested the Government to repeal or amend this provision. The Committee also noted the Government's statement that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable. The Committee takes due note of the Government's repeated indication that section 8(h) is not applicable in practice and that information on any amendment of this section would be communicated to the ILO in the near future. *As the Government has repeatedly indicated since 1964 that this legislation would be amended, the Committee reiterates firm hope that the necessary measures will at last be taken in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It requests the Government to provide, in its next report, information on the progress made in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Sri Lanka

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

The Committee notes the information supplied by the Government in its report, as well as the comments made by the National Trade Union Federation (NTUF) on the application of the Convention.

*Article 2(2)(d) of the Convention. Emergency regulations.* For many years, the Committee has been commenting on the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulation (adopted in 1989 and revised in 1994, 2000, 2005 and 2006). The Committee recalls, referring to paragraphs 62–64 of its General Survey of 2007 on the eradication of forced labour, that recourse to compulsory labour under emergency powers should apply only in restricted circumstances where a calamity or threatened calamity occurs, and the legislation governing that issue should clearly set forth that the power to exact compulsory labour is limited in extent and duration to what is strictly required to cope with the said circumstances.

The Committee has noted the Government's statement that the civil war, which previously necessitated such emergency regulations, had ended in May 2005. However, the Government adds that, in this post-conflict period, it is too early to lift the emergency regulation in the interests of public security, protection of public order and the maintenance of supplies and services essential to the life of the community. The Government additionally indicates that it has not engaged in practices which would be tantamount to forced labour within the context of the Convention.

***While noting this information, the Committee firmly hopes that the Government will take action without delay to bring legislation into conformity with the Convention, and that the Government will report the progress made in this regard.***

*Articles 1(1) and 2(1). Compulsory public service.* In its previous comments, the Committee has referred to sections 3(1), 4(1)(c) and 4(5) of the Compulsory Public Service Act, No. 70 of 1961, under which compulsory public service of up to five years may be imposed on graduates. The Committee has noted the Government's repeated statement in its reports, including its latest report, that no prosecutions under the Act have been reported so far. The Government also indicates that the decision to repeal the Act is under consideration by the Ministry of Public Administration and Home Affairs. ***The Committee expresses the firm hope that the Compulsory Public Service Act will be repealed in the near future and the legislation will be brought into compliance with the Convention and the indicated practice. It asks the Government to provide in its next report information on the progress made in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

## Sudan

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1957)***

The Committee has noted the information provided by the Government to the Conference Committee on the Application of Standards in a communication received on 6 June 2010, to which it attached its response to the Committee's comments made under the present Convention and the Worst Forms of Child Labour Convention, 1999 (No. 182). It has also noted the discussion that took place, in June 2010, in the Conference Committee, which has requested the Government, in its conclusions, to provide a full report for examination by the Committee of Experts at its forthcoming session. The Committee has further noted the observations dated 26 August 2010 received from the International Trade Union Confederation (ITUC), concerning the application of the Convention by Sudan, which was sent to the Government, on 7 September 2010, for any comments it may wish to make on the matters raised therein.

The Committee notes that no report has been supplied by the Government at the request of the Conference Committee, and no comments have been provided in response to the above observations by the ITUC. ***The Committee firmly hopes that the Government will provide a full report for examination by the Committee at its next session, as well as its comments on the observations by the ITUC.***

*Articles 1(1) and 2(1) of the Convention. Abolition of forced labour practices.* For many years, the Committee has been referring, in relation to the application of the Convention, to the continuing existence of the practices of abduction and forced labour exploitation, which affected thousands of women and children in the regions of the country where an armed conflict was under way. The Committee recalls that this case has been discussed repeatedly over the years in its own observations and on numerous occasions by the Conference Committee. The Committee has repeatedly pointed out that the situations concerned constitute gross violations of the Convention, since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions, and combined with ill treatment which may include torture and death. The Committee has considered that the scope and gravity of the problem are such that it is necessary to take urgent action that is commensurate in scope and systematic. The Government has been therefore requested to provide detailed information on the measures taken to combat the practice of forced labour through abduction of women and children and to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators.

*Conference Committee on the Application of Standards.* The Committee notes that, in its conclusions adopted in June 2010, the Conference Committee noted the Government's efforts to improve the human rights situation in the country and, in particular, information about the recent elections which were held in the country, which were considered as a new step towards the full implementation of the Comprehensive Peace Agreement of 2005. While noting these positive developments, as well as the Government's renewed statement that after the end of the civil war abductions had stopped completely, the Conference Committee observed once again that there was no verifiable evidence that forced labour had been completely eradicated in practice. In this regard, the Conference Committee noted with regret that the latest statistics concerning the Committee for the Eradication of Abduction of Women and Children (CEAWC) activities (showing the numbers of cases of victims identification and reunification with their families) dated back to May 2008, and that no updated information of this kind had been provided by the Government. The Conference Committee noted once again the convergence of allegations and the broad consensus among United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of human rights and international humanitarian law in certain regions of the country. It also noted with concern that there was a lack of accountability of perpetrators and that victim rehabilitation measures were not sufficient. The Conference Committee strongly urged the Government to pursue its efforts, including through the CEAWC, in order to

ensure the full application of the Convention, both in law and in practice. It expressed the firm hope that the Government would provide detailed information in its next report for examination by the Committee of Experts, indicating, in particular, whether the cases of exaction of forced labour had stopped completely, whether the victims had been reunified with their families and received adequate compensation and rehabilitation, and whether perpetrators had been punished, particularly those unwilling to cooperate. Noting the Government's request for technical assistance from the Office, the Conference Committee invited the ILO to provide the necessary assistance.

*United Nations bodies.* The Committee previously noted that, in United Nations Security Council resolution 1881 (2009), the Security Council had expressed concern at the continued seriousness of the security situation and deterioration of the humanitarian situation in Darfur and reiterated its condemnation of all violations of human rights and international humanitarian law in that region. The resolution emphasized the need to bring to justice the perpetrators of such crimes and urged the Government of Sudan to comply with its obligations in this respect. The Committee also noted a report of the Special Rapporteur on the situation of human rights in the Sudan (A/HRC/11/14, June 2009), in which the Special Rapporteur observed that, despite some positive steps in the area of law reform, improvement of the human rights situation on the ground continued to remain a significant challenge. Thus, in Darfur, human rights violations and breaches of international humanitarian law continued to be committed by all parties; in southern Sudan, several hundred civilians were killed in tribal conflict and attacks by Lords Resistance Army (LRA) and a number of women and children were abducted. According to the report, impunity remained an ongoing and serious concern in all areas of Sudan, allegations of violations of human rights were not duly investigated, many perpetrators of serious crimes had not been brought to justice and reparations had not been provided to victims. The Special Rapporteur reiterated all previously unimplemented human rights recommendations contained in her reports and, in particular, a recommendation to ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that perpetrators are promptly brought to justice (paragraph 92(d)).

The Committee notes the report of the independent expert on the situation of human rights in the Sudan (A/HRC/15/CRP.1) issued pursuant to Decision 14/117 by the Human Rights Council and noted by Resolution 15/27 adopted by the Human Rights Council (A/HRC/RES/15/27), which provided an overview of developments and activities during the period from 1 May to 31 August 2010. The report states that, during the abovementioned reporting period, while the Government continued to take steps towards democratic transformation, the general human rights situation in the Sudan deteriorated. In Darfur, clashes between government forces and the armed movements as well as inter-communal violence continued to cause further death and displacement among the civilian population. The situation in Southern Sudan continued to be characterized by "high volatility in localized areas affecting the civilian population, especially women and children, as well as increasing human rights violations by the Sudan People's Liberation Army (SPLA)". The report states that concrete measures aimed at ensuring law and order and addressing accountability and impunity should be urgently considered by both the national Government and the government of southern Sudan. The report reiterates all previously unimplemented human rights recommendations, including those made by the Special Rapporteur on the situation of human rights in the Sudan, and recommends to the Government, inter alia, to "ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are brought to justice promptly, in particular those with command responsibilities".

*Comments from workers' organizations.* In the observations dated 26 August 2010 referred to above, the ITUC noted that there continued to be serious problems with forced labour and compensation of its victims. According to the ITUC, the practice of abduction and forced labour exploitation is still in place affecting thousands of women and children in armed conflict areas. The Government continues to refuse to punish forced labour offenders, insisting that such cases will be settled through the traditional community chief mediation process. However, in the meantime, there is no documented evidence of such informal community mediation process having yielded positive results. The ITUC further alleges that there are still cases of involuntary returns of some abductees and extensive cases of unaccompanied children, most of whom have lost their families due to death and displacement in the war. The ITUC considers that the Government must strengthen the work of the CEAWC in terms of prosecution of perpetrators of abduction and forced labour, as a number of perpetrators remain unwilling to cooperate. Finally, the ITUC welcomes the Government's willingness to accept technical assistance from the ILO.

*The Government's response.* The Committee notes that the Government's response to the Committee's comments, attached to a communication received on 6 June 2010 referred to above, contains the information already supplied to the ILO in November 2008, in response to a communication by the ITUC dated 29 August 2008. This information relates, inter alia, to the activities of the CEAWC up to the end of April 2008, including statistics concerning documented cases of abductions and cases of reunification of abducted persons with their families, which has already been noted by the Committee. The Government confirms once again its strong and continued commitment to completely eradicate the phenomenon of abductions and to provide continued support to the CEAWC. It also reiterates its previous statement that abductions have stopped completely, which, according to the Government, has also been confirmed by the Dinka Chiefs Committee (DCC). For that reason, the Government has urged once again that this case be dismissed and its discussion stopped in the ILO, since it has already been satisfactorily dealt with according to the reports of the UN specialized agencies. Concerning the situation in Darfur, the Government reiterated its view that, since it was under examination by the UN Security Council and the African Union, the issues concerned should not be discussed in the ILO, in order to avoid



duplication of work. As regards the prosecution of perpetrators, the Government repeated its previous indications that the CEAWC, which was initially of the view that legal action was the best measure to eradicate abductions, had been requested by all the tribes concerned including the DCC not to resort to legal action, unless the amicable efforts of the tribes are not successful. The Government reiterated its view that legal action takes a very long time and is very expensive, and that it could not build peace among the tribes concerned and did not correspond to the spirit of national reconciliation. The Committee also notes the statement of the Government representative to the Conference Committee in June 2010 that bringing perpetrators to justice would have a negative impact on helping people return or settle; however, the Government has credited those who wished to submit claims with available information. He also stated that the Government had done what it could to bring the perpetrators to justice, however it could not force people to bring up complaints, but just encourage them to do so.

***While noting this information, the Committee strongly urges the Government once again to redouble its efforts in order to completely eradicate the forced labour practices which constitute a gross violation of the Convention, and in particular, to resolve the cases of abductions in all the regions of the country and to ensure the victims' right to be reunified with their families. While noting the Government's renewed commitment to resolve the problem, the Committee expresses the firm hope that the Government will continue to provide detailed information on the liberation and reunification process, supplying updated and reliable statistics supported by CEAWC reports.*** Having also noted the Government's repeated statement that abductions have stopped completely, the Committee observes with concern that this statement is in contradiction with other reliable sources of information. It again refers in this connection to the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of human rights and international humanitarian law in certain regions of the country. ***The Committee reiterates the need for the Government to take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations and widespread impunity, which would help to create better conditions for the full observance of the forced labour Conventions. Noting also the Government's request for technical assistance of the ILO, the Committee hopes that the Government will take all the necessary measures, with the Office's assistance, in order to ensure full compliance with the Convention, both in law and in practice, and that the Government will provide, in its next report, information on the progress made in this regard.***

*Article 25. Penalties for the illegal exaction of forced or compulsory labour.* The Committee previously noted the Criminal Code provisions punishing the offence of abduction with penalties of imprisonment, and requested the Government to take measures to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators. The Committee has noted the Government's repeated indication in its reports that the CEAWC, which was initially of the view that legal action was the best measure to eradicate the abductions, has been requested by all the tribes concerned not to resort to legal action, unless the amicable efforts of the tribes are not successful. The Government reiterates its view that, within the context of the comprehensive peace process, there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour in the spirit of national reconciliation.

The Committee recalls again in this connection that, under *Article 25* of the Convention, "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced". The Committee therefore considers that the failure to apply penal sanctions in respect of perpetrators is contrary to this provision of the Convention and may have the effect of creating an environment of impunity for abductors who exploit forced labour.

***The Committee urges the Government to take all the necessary measures to ensure that legal proceedings are instituted against perpetrators, particularly against those unwilling to cooperate, and penal sanctions will be imposed on persons convicted of having exacted forced labour, as required by the Convention. The Committee again requests the Government to provide, in its next report, information on the application in practice of the penal provision punishing the offence of abduction, as well as the provisions punishing kidnapping and the exaction of forced labour (sections 161, 162 and 163 of the Criminal Code), supplying sample copies of the relevant court decisions and indicating the penalties imposed.***

## Thailand

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)***

*Article 1(c) of the Convention. Sanctions involving compulsory labour as a means of labour discipline.* The Committee previously noted that sections 131–133 of the Labour Relations Act BE 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed on any employee who violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18, 22–24, 29 and 35(4) of the Labour Relations Act, were incompatible with the Convention. The Government states in its latest report that the Ministry of Labour (MOL) is trying its best to take the necessary measures to bring the Labour Relations Act into closer conformity with the Convention. To this end, the Government indicates that its Committee on Revision of Labour Relations Laws in conformity with the principles of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), will take into consideration the

provisions of the Labour Relations Act BE 2518 that are in contravention of Convention No. 105. The Committee notes in particular the Government's indications concerning an analysis to be conducted by the above Committee on the conformity of the Act with the Convention.

***The Committee reiterates the firm hope that the necessary measures will soon be taken with a view to bringing the above provisions of the Labour Relations Act into conformity with the Convention, either by repealing sanctions involving compulsory labour or by limiting their scope to acts endangering the life or health of persons. It asks the Government to provide a copy of any proposed amendments to the Labour Relations Act elaborated to this end.***

*Article 1(d). Sanctions involving compulsory labour as a punishment for having participated in strikes.* The Committee has previously referred to the following provisions of the Labour Relations Act BE 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes:

- section 140 read in conjunction with section 35(2): if the minister orders the strikers to return to work, being of the opinion that the strike may affect the national economy or cause hardship to the public or endanger national security or be contrary to public order;
- section 139 read in conjunction with section 34(5): if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the minister under section 23(1), (2), (6) or (8) or by the Labour Relations Committee under section 24.

***While noting the Government's intention to bring these provisions into account of the Committee on Revision of Labour Relations Laws referred to above, the Committee expresses the firm hope that the necessary measures will be taken in the near future with a view to bringing the above provisions of the Labour Relations Act into conformity with the Convention, by ensuring that no sanctions involving compulsory labour can be imposed for the mere fact of a peaceful participation in a strike.***

Previously, the Committee had referred to the State Enterprise Labour Relations Act BE 2543 (2000) (SELRA), which prohibits strikes in state enterprises (section 33), violation of this prohibition being punishable with imprisonment (involving compulsory labour) for a term of up to one year; this penalty is doubled in the case of a person who instigates this offence (section 77). The Committee notes the Government's indications in its report that the Committee on Revision of Labour Relations Laws referred to above is going to take into account the feasibility of revising the SELRA to bring it into conformity with the Convention. ***The Committee trusts that the necessary measures will soon be taken with a view to amending the above provisions of the SELRA in order to bring the legislation into conformity with the Convention, by providing that no sanctions involving compulsory labour can be imposed for the mere fact of a peaceful participation in a strike. It asks the Government to provide, in its next report, information on progress made in this regard.***

## Trinidad and Tobago

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)***

*Article 1(c) and (d) of the Convention. Sanctions involving compulsory labour for breaches of labour discipline and participation in strikes.* For many years, the Committee has been referring to sections 157 and 158 of the Shipping Act, 1987, section 8(1) of the Trade Disputes and Protection of Property Act and section 69(1)(d) and (2) of the Industrial Relations Act, under which penalties of imprisonment (involving compulsory labour under the Prisons Rules) may be imposed for various breaches of labour discipline and participation in strikes in circumstances where the life, personal safety or health of persons are not endangered. The Government indicated in its earlier reports that efforts were under way to amend the provisions mentioned above and that no sanctions had been imposed under these provisions in practice.

The Government states in its latest report that no amendments have been made to the above legislation, but the Ministry of Labour and Small and Micro Enterprise Development has included the Industrial Relations Act in its Legislative Review Programme for the period 2009–10. However, the Trade Disputes and Protection of Property Act has not been put up for any legislative review in the upcoming parliamentary term. No information has been supplied in this regard about the Shipping Act, 1987.

***The Committee trusts that the necessary measures will be taken in the near future in order to amend the abovementioned provisions with a view to bringing legislation into conformity with the Convention. Noting that the legislative amendments required have been under consideration for many years, the Committee asks the Government to provide, in its next report, information on the progress made in the revision of the Industrial Relations Act, as well as on any steps taken to amend the Trade Disputes and Protection of Property Act and the Shipping Act, in order to ensure compliance with the Convention.***

## Turkey

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1998)***

The Committee notes with *satisfaction* that the 1998 “Regulations on the administration of penitentiaries and work centres of detention centres and administration, accounting and bidding of work centres” and the 1967 “Regulations

pertaining to the administration of penitentiaries and detention centres and to the execution of sentences”, under which prison labour was compulsory for both convicted and remand prisoners, were repealed, respectively, by the Regulation on the Administration and Bidding of Penitentiaries and Work Centres of Detention Institutions, adopted in December 2005 and the Regulation on Administration of Penitentiaries and Execution of Sentences, adopted in 2006.

The Committee had previously noted the adoption of section 114 of the Act on the Execution of Sentences and Security Measures (No. 5275 of December 2004), under which prisoners awaiting trial or detained without trial may not be compelled to work.

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its previous comments, the Committee noted a communication received from the International Confederation of Free Trade Unions (ICFTU) (now the International Trade Union Confederation (ITUC)), which pointed out the gravity and extent of the practice of trafficking in persons in Turkey. The Committee had also noted the information provided by the Government on measures adopted to combat this phenomenon. The Committee requested the Government to provide further information on measures taken to strengthen action against trafficking in persons, particularly with regard to prevention and protection measures, supplying information on intergovernmental cooperation, police training and other efforts to improve law enforcement, as well as on convictions and sentences imposed.

The Committee notes the comments on the application of the Convention by Turkey, made by the Turkish Confederation of Employers’ Associations (TİSK), which concerned, inter alia, the measures taken by the Government to combat trafficking in persons.

The Committee notes the Government’s indications in its report concerning the amendments made to certain legislative acts, such as the Work Permit for Foreign Workers Act (No. 4817 of 2003), the Citizenship Law and the Highway Transportation Law, which introduced certain measures aiming at the prevention of trafficking as an organized crime.

The Committee notes the information in the Government’s report concerning other measures it has taken, which include, inter alia, the following:

- training and awareness-raising activities for law enforcement officers, organized in collaboration with the International Organization for Migration (IOM);
- implementation, in collaboration with the European Union, of a project on “Strengthening the institutional capacity with a view to combating trafficking in human beings”, that resulted in an action plan determining the activities and targets for the beneficiary institutions and organizations in the short-, medium- and long-term perspective; and which is waiting to be signed for approval;
- bilateral agreements to combat human trafficking in cooperation with source countries such as Belarus, Georgia, Azerbaijan, Ukraine, Republic of Moldova and Kyrgyzstan;
- bilateral “cooperation protocols” signed by the General Directorate of Security and national NGOs, aiming at improving the capacity to identify and provide assistance to potential sex trafficking victims, and establishing “victims’ shelter houses” in various municipalities;
- the launching in 2009 of a project, within the framework of financial cooperation with the Swedish International Development Agency (SIDA), with a view to building the capacity of local NGOs at the provincial level to improve victims’ identification, and contributing to the implementation of a national action plan.

The Committee further notes the information provided by the Government in its report concerning the amendment of section 80 of the Turkish Penal Code in 2006 so as to include forced prostitution in the human trafficking definition. It also notes the information in the Government’s report on recent law enforcement efforts, including the references to judicial cases involving the arrest, prosecution and punishment of perpetrators. ***The Committee hopes that the Government will continue to provide information on progress on the above measures, as well as information on any other measures taken or contemplated to prevent, suppress and punish trafficking in persons. In particular, please continue to provide information concerning the application in practice of sections 80, 117(2) and 227(3) of the Penal Code, including information on convictions, and supplying sample copies of the relevant court decisions.***

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)***

The Committee notes the information provided by the Government in reply to its earlier comments, including copies of legislative texts and court decisions. It also notes the comment made by the Turkish Confederation of Employers’ Associations (TİSK) on the application of the Convention.

*Article 1(a) of the Convention. Political coercion and punishment for holding or expressing views opposed to the established system.* The Committee notes the information provided by the Government as regards the application in practice of sections 215–218 of the Penal Code. It also notes the adoption of Law No. 5759 of 30 April 2008, which has amended section 301 of the Penal Code that provides for penal sanctions for insulting or vilifying, inter alia, “Turkism” and various state authorities. The Committee notes, in particular, the amendment of paragraph 4 of section 301, according to which the expression of ideas in the form of criticism shall not be punished. ***While noting this amendment, the Committee asks the Government to supply information about the application of section 301 of the Penal Code in***

*practice, including information on any prosecutions, convictions and sentences under its provisions, in particular as regards paragraph 4, so as to enable the Committee to ascertain that the expression of political views or views ideologically opposed to the established political, social or economic system are not punished with penalties involving compulsory labour.*

In its earlier comments, the Committee noted with regard to section 8 of the Act on the Fight against Terrorism (No. 3713 of 1991) that, by virtue of Act No. 4744 of 6 February 2002, a penalty of imprisonment in this section was replaced with fines, and it requested the Government to provide clarification on the phrase “unless such acts necessitate a heavier penalty” and to supply copies of the court decisions defining or illustrating the scope of this provision. The Committee previously noted that, in June 2006, the Grand National Assembly adopted amendments to the Act. ***Noting that no information concerning this point was provided in the Government’s report, the Committee hopes that, in its next report, the Government will clarify the provision for penalties in section 8 and communicate a copy of the 2006 amendments to the Act, including the relevant provisions regarding penalties. Please also supply updated information relating to the application in practice of the Act, as amended, including sample copies of the relevant court decisions and indicating the penalties imposed.***

For a number of years, the Committee has been referring to provisions of the 1965 Act concerning political parties, which prohibits political parties from asserting the existence in Turkey of any minorities based on nationality, culture, religion or language and from attempting to disturb national security by conserving, developing or propagating languages and cultures other than the Turkish language or culture. It noted that penalties of imprisonment (involving compulsory labour) could be imposed under sections 80–82, read in conjunction with section 117, of the Political Parties Act (No. 2820 of 1983). The Committee noted the Government’s indication in its 2003 report that changes were to be made in the Political Parties Act, in accordance with the Emergency Action Plan published on 3 January 2003, with a view to ensuring that the whole population would be able to participate in political parties and to make possible the establishment of equity and justice in political representation.

Referring to the explanations contained in paragraphs 133–140 of its General Survey of 1979 on the abolition of forced labour, the Committee points out once again, that prohibitions enforced by penalties involving compulsory labour which affect the constitution or functioning of political parties or associations, either generally or where they advocate certain political or ideological views are incompatible with *Article 1(a)* of the Convention. ***The Committee therefore expresses the firm hope that measures will be taken to bring the Political Parties Act into conformity with the Convention. Having also noted the Government’s earlier indication that the penalties applicable to prohibited activities under sections 80–82 of the Political Parties Act had been “re-regulated” under the Penal Code (Act No. 5237 of 2004), the Committee asks the Government to clarify how the application of these sections is influenced by the application of the Penal Code, indicating the relevant penal provisions.***

*Article 1(b). Use of conscripts for purposes of economic development.* The Committee notes the Government’s statement in its report confirming its previous indication that Act No. 3358, which amended section 10 of the Military Service Act, No. 1111, was no longer applied after 1991. The Committee previously noted from the Government’s 2005 report that a new draft Military Service Bill aiming at bringing legislation into conformity with “current conditions” had been examined by a special expert committee of the Turkish Grand National Assembly. The Government indicated, in particular, that the Bill had been drawn up in a way to embody a policy of protecting persons conscripted into military service from being assigned duties in public bodies or undertakings without their consent. ***Noting that no information was provided in the Government’s report as regards the repeal of the amendment of these provisions, the Committee asks the Government to keep the Office informed about the progress in the adoption of the bill, in order to bring legislation into conformity with the Convention and the indicated practice.***

*Article 1(c) and (d). Disciplinary measures applicable to seafarers.* In its earlier comments the Committee noted that, under section 1467 of the Commercial Code (Act No. 6762 of 29 June 1956), seafarers may be forcibly conveyed on board ship to perform their duties, and that, under section 1469 of the Commercial Code, various breaches of discipline by seafarers are punishable with imprisonment (involving an obligation to perform labour). The Committee also noted that the Government had submitted to the Parliament a bill to amend section 1467 of the Commercial Code, which contains a provision limiting the powers of the master to circumstances jeopardizing the safety of the ship or endangering the lives of the passengers and the crew, and expressed the hope that section 1469 of the Commercial Code would likewise be amended to limit its scope to acts endangering the safety of the ship or the lives or health of persons. The Committee notes the Government’s indication that the new draft Commercial Code submitted to the Grand National Assembly does not contain the provisions similar to those in sections 1467 and 1469 of the present Commercial Code. ***The Committee expresses the firm hope that the new Commercial Code will soon be adopted and that the legislation will be brought into conformity with the Convention.***

*Article 1(d). Punishment for participation in strikes.* For a number of years, the Committee has been referring to Act No. 2822 of 1983 regarding collective labour agreements, strikes and lockouts, which provides in sections 70–73, 75, 77 and 79 for penalties of imprisonment (involving compulsory labour) as a punishment for the participation in unlawful strikes, in circumstances falling within the scope of *Article 1(d)* of the Convention. The Committee notes with *interest* that article 73 of Act No. 2822 has been repealed by Act No. 5728 of 2008. ***Referring to its comments addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the***

*Committee expresses the firm hope that Act No. 2822 of 1983 referred to above will be further amended in order to ensure that no penal sanctions involving compulsory labour can be imposed as a punishment for the peaceful participation in strikes.*

## Uganda

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1963)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1(1) and 2(1) of the Convention.* 1. *Legislation concerning compulsory placement of unemployed persons on agricultural enterprises in rural areas.* For a number of years, the Committee has been referring to section 2(1) of the Community Farm Settlement Decree, 1975, under which any unemployed able-bodied person may be settled on any farm settlement and required to render service; section 15 of the Decree makes it an offence punishable with a fine and imprisonment for any person to fail or refuse to live on any farm settlement or to desert or leave such settlement without authorization. The Committee previously noted the Government's indication in its report that the abovementioned Decree was in the process of being repealed under the laws of Uganda revision exercise by the Uganda Law Reform Commission. The Committee has also noted from the statement of the Government representative before the Conference Committee on the Application of Standards in June 2006, that the 1975 Decree is a "dead law" which is not applied in practice, and that the current Parliament intends to repeal it. *While having noted these indications, the Committee expresses the firm hope that the Community Farm Settlement Decree, 1975, will be repealed in the near future, in order to bring the legislation into conformity with the Convention and the indicated practice. It asks the Government to supply a copy of the repealing text, as soon as it is adopted.*

2. *Freedom of career military officers to leave their service.* The Committee previously noted the Government's indication that the Armed Forces (Conditions of Service) (Officers) Regulations, 1969, were replaced by the National Resistance Army (Conditions of Service) (Officers) Regulations, No. 6 of 1993 (now the Uganda Peoples' Defence Forces (Conditions of Service) (Officers) Regulations). The Committee has noted that section 28(1) of these Regulations contains a provision (which is similar to a corresponding provision of the repealed Regulations) under which the Board may permit officers to resign their commission in writing at any stage during their service. The Committee has noted the Government's repeated indication in its reports, which was also confirmed by the Government representative in his statement before the Conference Committee in June 2006, that the officer applying for the resignation must give his/her reasons for it, and the Board will consider these reasons and, if it finds them fit, will grant a permission to resign.

The Committee observes that it follows from the wording of section 28(1) that the application to resign may be either accepted or refused. It refers to the explanations provided in paragraphs 46 and 96–97 of its 2007 General Survey on the eradication of forced labour, where it pointed out that career military servicemen who have voluntarily entered into an engagement cannot be deprived of the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service. *The Committee therefore expresses the firm hope that the necessary measures will be taken with a view to amending section 28(1) of the above Regulations, so as to bring it into conformity with the Convention. Pending such amendment, the Committee again requests the Government to provide information on the application of section 28(1) in practice, indicating in particular the criteria applied by the Board in accepting or rejecting a resignation, as well as the number of resignations accepted and refused.*

3. *Military service of persons enrolled below the age of 18 years.* The Committee previously noted the Government's indication in its report that the Armed Forces (Conditions of Service) (Men) Regulations, 1969, which provided that the term of service of persons enrolled below the age of 18 years might be extended until they are 30 years old, was repealed by the National Resistance Army (Conditions of Service) (Men) Regulations No. 7 of 1993. The Government indicated that section 5(4) of these Regulations prohibits a person below the age of 18 years or above 30 years to be employed in the armed forces. *While having noted these indications, the Committee again requests the Government to supply a copy of Regulations No. 7, 1993, with its next report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(a) of the Convention.* *Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* For a number of years, the Committee has been referring to the following legislation:

- the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour;
- sections 54(2)(c), 55, 56 and 56A of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such combination illegal and punishable with imprisonment (involving an obligation to perform labour).

As the Committee repeatedly pointed out, any penal sanctions involving an obligation to perform prison labour are contrary to the Convention when imposed on persons convicted for expressing political views or views opposed to the established political system, or having contravened a widely discretionary administrative decision depriving them of the right to publish their views or suspending or dissolving certain associations (see, for example, paragraphs 152–166 of its General Survey of 2007 on the eradication of forced labour).

*The Committee expresses the firm hope that the necessary measures will at last be taken to repeal or amend the abovementioned provisions of the Public Order and Security Act, No. 20 of 1967, and of the Penal Code, in order to bring the*

*legislation into conformity with the Convention, and that the Government will provide, in its next report, information on progress made in this regard.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Uzbekistan

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)**

*Article 1(b) of the Convention. Mobilization and use of labour for purposes of economic development in agriculture (cotton production).* In its earlier comments, the Committee noted communications received in 2008 and 2009 from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC), which alleged that, despite the existence of the legal framework against the use of forced labour, there were continued non-governmental organizations denouncing, and media reports recording the systematic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan. The IOE and the ITUC alleged that the Government systematically mobilized both school-aged children and adults to work in the annual cotton harvest for purposes of economic development. The Committee also noted previously the comments made by the Council of the Trade Unions Federation of Uzbekistan, communicated by the Government with its 2004 report, which contained allegations concerning practices of mobilization and use of labour for purposes of economic development in cotton production, in which public sector workers, school children and university students were involved.

The Committee notes two new communications received in November 2010 from a number of workers' organizations: a communication dated 19 November 2010, received from the European Apparel and Textile Confederation (EURATEX) and the European Trade Union Federation: Textiles, Clothing and Leather (ETUF: TCL); and a communication dated 22 November 2010 received from the International Trade Union Confederation (ITUC), the European Trade Union Confederation (ETUC), the ETUF: TCL, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT). Both communications, which relate to the issue of continued use of child labour in the cotton harvest, were sent to the Government, in November 2010, for such comments as it may wish to make on the matters raised therein.

The Committee notes the Government's response to the 2008 and 2009 communications by the IOE and the ITUC, received in January 2010, in which the Government submitted its observations on the alleged cases of widespread use of forced child labour in the cotton industry, including information on the implementation of the national action plan concerning the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Minimum Age Convention, 1973 (No. 138), likewise ratified by Uzbekistan. 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 this problem can 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 refer to its comments on the application of Convention No. 182.

However, the Committee previously noted that, according to the above allegations made by the IOE and the ITUC, adults were also subject to forced labour during the cotton harvest. The ITUC alleged, in particular, that local administration employees, teachers, factory workers and doctors were commonly forced to leave their jobs for weeks at a time and pick cotton with no additional compensation; in some instances refusal to cooperate could lead to dismissal from work; even elderly people and mothers of young babies had been reportedly ordered by local government officials to pick cotton or lose their pensions or child benefits. The ITUC concluded that, even if forced labour in the cotton fields was not the result of state policy, the Government still violated the Convention by failing to ensure its effective observance, since it systematically required persons to work in the cotton fields against their will, under the threat of a penalty and in extremely perilous conditions for the purposes of economic development.

The Committee notes that, in its reply to the above communications by the IOE and the ITUC, received in January 2010, the Government denies the allegations about coercion of large numbers of people to participate in agricultural work and reiterates that, under no circumstances, employers may use compulsory labour for the production or harvesting of agricultural products in Uzbekistan, the exaction of forced labour being punishable with penal and administrative sanctions, and employers being liable for violation of labour legislation. The Government also reiterates its earlier statement that almost all the country's cotton is produced by private undertakings that have no economic interest in employing additional labour.

*While noting these indications, the Committee asks the Government to state, in its next report, whether public sector workers and university students participate in the cotton harvest and, if so, how their work is organized, indicating, in particular, the measures taken, including through labour inspection, in order to eliminate any possibility to use compulsory labour in cotton production, so as to ensure the observance of the Convention, which prohibits the use of compulsory labour for purposes of economic development. Please also provide information on the legal*

*proceedings which have been instituted against employers for the exaction of compulsory labour in cotton production under the existing penal and administrative provisions, supplying copies of the relevant court decisions and indicating the penalties imposed.*

The Committee is raising other points in a request addressed directly to the Government.

## Zambia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1964)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* The Committee notes with *interest* the adoption of the Anti-Human Trafficking Act (No. 11 of 2008), which provides for various measures aiming at combating human trafficking, including prevention and victim protection measures. It notes, in particular, that, under section 3 of the Act, persons found guilty of human trafficking and related crimes are liable to imprisonment for a term of not less than 20 years and up to 30 years and, in certain situations, to imprisonment for life. The Committee also notes the information on the application in practice of the Penal Code provisions criminalizing human trafficking adopted in 2005.

*The Committee asks the Government to provide, in its next report, information on the application in practice of the new Anti-Human Trafficking Act (No. 11 of 2008), as regards both victim protection measures (particularly sections 34, 37, 40–47 and 58) and punishment of perpetrators (section 3), supplying sample copies of the relevant court decisions and indicating the penalties imposed.*

The Committee notes the Government's brief indications in the report concerning the tasks of the Inter-Ministerial Committee on Human Trafficking, which include, inter alia, coordination of various programmes concerning prevention and protection measures, prosecution of traffickers, as well as development and revision of policies and legislation on human trafficking.

*The Committee asks the Government to provide, in its next report, information on the application in practice of the National Plan of Action to combat trafficking, to which reference has been made in the Government's previous report, as well as the information on practical activities of the Inter-Ministerial Committee referred to above, including copies of relevant reports and available statistics. Please also supply a copy of the National Anti-Human Trafficking Policy referred to in the Government's 2008 report.*

The Committee is raising other points in a request addressed directly to the Government.

## Zimbabwe

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for the expression of views opposed to the established political, social or economic system.* The Committee previously noted a communication received, in September 2009, from the Zimbabwe Congress of Trade Unions (ZCTU), which contained observations concerning the application of the Convention by Zimbabwe. The ZCTU alleged, inter alia, that national laws (such as the Criminal Law (Codification and Reform) Act) contain provisions restricting freedom of expression in criticizing the President and the police, and that workers, as well as citizens in general, are subjected to harassment if they express views contrary to the State. The Committee has also noted the findings, conclusions and recommendations of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has noted, in particular, the complainants' allegations concerning, among others, the continual recourse made by the Government to the Public Order and Security Act (POSA) and the Criminal Law (Codification and Reform) Act to repress basic civil liberties and trade union rights, as well as the Commission's conclusions, in which the Commission, inter alia, expressed the opinion that the way in which the POSA has been used in practice denies trade unions the right to demonstrate.

In its earlier comments, the Committee referred to the following provisions of national legislation, under which penalties of imprisonment (involving compulsory prison labour by virtue of section 76(1) of the Prisons Act (Cap. 7:11) and section 66(1) of the Prisons (General) Regulations, 1996) may be imposed in circumstances falling within *Article 1(a)* of the Convention:

- sections 15, 16, 19(1)(b), (c) and 24–27 of the Public Order and Security Act (POSA) (Cap. 11:17) (publishing or communicating false statements prejudicial to the State; making any false statement about or concerning the President; performing any action, uttering any words or distributing or displaying any writing, sign or other visible representation that is threatening, abusive or insulting, intending thereby to provoke a breach of peace; failure to notify the authority of the intention to hold public gatherings, violation of the prohibition of public gatherings or public demonstrations, etc.);
- sections 31 and 33 of the Criminal Law (Codification and Reform) Act (Chapter 9:23), which contain provisions similar to those of the POSA referred to under the previous point concerning the publishing or communicating false statements prejudicial to the State or making any false statement about or concerning the President, etc.;

- sections 37 and 41 of the Criminal Law (Codification and Reform) Act (Chapter 9:23), under which sanctions of imprisonment may be imposed, inter alia, for participating in meetings and gatherings with the intention of “disturbing the peace, security or order of the public”; uttering any words or distributing or displaying any writing, sign or other visible representation that is threatening, abusive or insulting, “intending thereby to provoke a breach of peace”; engaging in disorderly conduct in public places with similar intention, etc.

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It also refers in this connection to paragraph 154 of its 2007 General Survey on the eradication of forced labour, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour are incompatible with the Convention if they enforce a prohibition of the peaceful expression of non-violent views that are critical of Government policy and the established political system, whether the prohibition is imposed by law or by an administrative decision. Since opinions and views opposed to the established system may be expressed not only through the press or other communications media, but also at various kinds of meetings and assemblies, if such meetings and assemblies are subject to prior authorization granted at the discretion of the authorities and violations can be punished by sanctions involving compulsory labour, such provisions also come within the scope of the Convention (see, for example, the explanations in paragraph 162 of the General Survey referred to above).

While taking due note of the Government’s statement that courts of law merely impose a prison term and the suitability of an offender to perform labour is determined by the prison authorities, the Committee recalls that the Convention prohibits the use of “any form” of forced or compulsory labour, including compulsory prison labour, as a punishment in respect of the persons covered by *Article 1(a)*.

***The Committee therefore expresses the firm hope that the necessary measures will be taken in order to repeal or amend the provisions of the Public Order and Security Act and the Criminal Law (Codification and Reform) Act, in order to bring legislation into conformity with the Convention. Pending the adoption of such measures, the Committee requests the Government to provide information on the application of these provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.***

*Article 1(d)*. *Penal sanctions involving compulsory labour as a punishment for having participated in strikes.* In its earlier comments, the Committee referred to certain provisions of the Labour Act punishing persons engaged in an unlawful collective action with sanctions of imprisonment, which involves compulsory prison labour by virtue of section 76(1) of the Prisons Act (Cap. 7:11) and section 66(1) of the Prisons (General) Regulations, 1996. The Committee noted, in particular, that section 104(2), and (3) of the Labour Act, as amended, not only prohibits collective job action in essential services and in the case of the agreement of the parties to refer the dispute to arbitration, but also provides for other restrictions on the right to collective job action related to procedural requirements, which are equally enforceable with sanctions of imprisonment (involving compulsory prison labour), under sections 109(1), (2) and 112(1) of the Act. Besides, it follows from the wording of section 102(b) of the Act that the Minister can declare essential any service, other than that interruption of which would endanger the life, personal safety or health of the whole or part of the population.

The Committee recalls that *Article 1(d)* of the Convention prohibits the use of forced or compulsory labour as a punishment for having participated in strikes. It also notes that, in its conclusions referred to above, the Commission of Inquiry expressed concern that the legislation includes disproportionate sanctions for the exercise of the right to strike and an excessively large definition of essential services, which means that a significant number of workers has no right to strike.

The Committee notes the Government’s statement in its report that, in the context of labour law reform, consideration is being made for the review of section 109 of the Labour Act in so far as reference is made to penalties for engaging in unlawful collective job action.

***The Committee trusts that the necessary measures will soon be taken to amend the provisions of the Labour Act imposing restrictions on the right to strike enforceable with sanctions involving compulsory prison labour, so as to ensure that no such sanctions can be imposed for the mere fact of organizing or participating in strikes, in order to bring legislation into conformity with the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 29** (Algeria, Angola, Armenia, Azerbaijan, Bahrain, Benin, Botswana, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, China: Macau Special Administrative Region, Colombia, Comoros, Congo, Côte d’Ivoire, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Guinea, Guinea-Bissau, Islamic Republic of Iran, Ireland, Jamaica, Jordan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Liberia, Luxembourg, Madagascar, Malawi, Mongolia, Montenegro, Morocco, Namibia, Netherlands, Netherlands: Aruba, Niger, Nigeria, Oman, Papua New Guinea, Peru, Philippines, Poland, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Solomon



*Islands, South Africa, Sri Lanka, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom: St Helena, Uzbekistan, Viet Nam, Zambia, Zimbabwe); Convention No. 105 (Afghanistan, Algeria, Angola, Armenia, Bahrain, Barbados, Benin, Botswana, Bulgaria, Burkina Faso, Burundi, Central African Republic, Chad, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Comoros, Congo, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominican Republic, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Hungary, Israel, Jordan, Kenya, Kiribati, Kyrgyzstan, Latvia, Lesotho, Madagascar, Malawi, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands: Aruba, Niger, Oman, Pakistan, Peru, Philippines, Qatar, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Serbia, Seychelles, Sierra Leone, Slovakia, South Africa, Sri Lanka, Thailand, Togo, Uganda, United Arab Emirates, Uzbekistan, Zimbabwe).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 29 (Slovakia).**

## **Elimination of child labour and protection of children and young persons**

### **Albania**

#### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

*Article 2(1) of the Convention. Scope of application. Self-employed children or children working in the informal sector.* The Committee previously noted that section 3(1) of the Labour Code specifies that the Code is applicable to an employment contract, which is defined as an agreement regulating the work relations between employers and employees. It therefore observed that the Labour Code appeared to exclude children engaged in work outside of an employment agreement, such as self-employed children or those working in the informal sector.

The Committee notes the information in the Government's report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that 13.3 per cent of children identified during labour inspections conducted by the State Labour Inspectorate did not have an individual work contract. It also notes the statement in the Government's National Child Strategy of 2005 that child labour mostly occurs in the informal sector, in work such as street vending and windshield washing. The Committee further notes the statement in the report of the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the Trade Policies of Albania of 28 and 30 April 2010, entitled "Internationally recognized core labour standards in Albania" (ITUC Report) that labour inspectors generally investigate only the formal labour sector, although most child labour occurs in informal economic activities. The Committee reminds the Government that the Convention applies to all sectors of economic activity and covers all forms of employment or work, whether or not there is an employment contract or the work is carried out on a self-employed basis. ***The Committee therefore requests the Government to take the necessary measures to ensure that the protection afforded by the Convention is granted to children carrying out economic activities without an employment agreement, including self-employed children and children working in the informal economy, as soon as possible. In this regard, the Committee encourages the Government to take measures to adapt and strengthen the State Labour Inspectorate to improve the capacity of labour inspectors to identify cases of child labour in the informal sector.***

*Article 3(3). Authorization to work from the age of 16 years.* Following its previous comments, the Committee notes with **satisfaction** that pursuant to section 100 of the Labour Code (as amended in 2003), only persons over 18 years of age may be employed to carry out difficult jobs or jobs that pose danger for their health or personality.

*Article 6. Apprenticeship and vocational training.* The Committee previously noted that, in accordance with section 98(2) of the Labour Code, young persons under the age of 14 years engaged in vocational training activities or orientation are subject to rules defined by decree. It also noted that, according to section 3 of Decree No. 384, as amended by Decree No. 205 of 2002, minors under 14 years of age may be engaged in the vocational training system under authorization of the State Labour Inspectorate. The Committee requested the Government to provide information on the minimum age for entering an apprenticeship programme.

The Committee notes the Government's statement that in technical schools, practical internships are part of the professional qualification programme. The Committee observes that, as minors under 14 years may be engaged in vocational training, it appears that these children may be authorized to undertake practical internships. ***Recalling that Article 6 of the Convention authorizes work to be carried out by persons aged at least 14 years in enterprises within the context of an apprenticeship programme, the Committee requests the Government to take the necessary measures to ensure that only persons from the age of 14 are permitted to undertake practical internships in enterprises.***

*Article 7(3). Determination of types of light work.* Following its previous comments, the Committee notes that section 98(1) of the Labour Code (as amended in 2003) states that juveniles between the ages of 14–16 may be employed during their school holidays, provided that this employment does not harm their health and development. The Committee also notes the Government's statement that no regulations have been issued pursuant to this section. In this regard, the Committee reminds the Government that, pursuant to *Article 7(3)* of the Convention, the competent authority shall determine the activities which constitute light work and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken. ***The Committee accordingly requests the Government to take the necessary measures to ensure the determination of the types of activities which constitute permissible school holiday work for persons between the ages of 14–16, in addition to number of hours during which and the conditions in which such employment may be undertaken. It requests the Government to provide information on the progress made in this regard, with its next report.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that a national survey on child labour was under preparation, and requested a copy of this national survey. The Committee notes the Government's statement in its report submitted under Convention No. 182, that in February 2010, implementation began of a national survey on child labour by INSTAT (the Government's institute for statistics), in cooperation with ILO-IPEC. In this regard, the Committee notes the information in an ILO-IPEC Technical Progress Report for the project entitled "Upstream activities for the prevention and elimination of the worst forms of child labour in Central and Eastern

Europe” of February 2010 that this survey will be completed by May 2011, and will include both quantitative and qualitative data on the labour market and child activities. The Committee also notes the information in the Government’s report that, during the reporting period, 7,123 enterprises were inspected and 503 working children under the age of 18 identified, 457 of whom were in the production sector. The Government also indicates that the State Labour Inspectorate fined six enterprises for violations of provisions in the Labour Code related to the employment of children.

Nonetheless, the Committee notes the statement in the ITUC Report that child labour is a severe and deep-rooted problem in Albania. The ITUC Report indicates a large number of children work in extremely hazardous occupations and under dangerous conditions in the following sectors: agriculture, construction, small shoe and clothing factories and the service sector. The ITUC Report also states that the majority of child labourers work as street or shop vendors, farmers or shepherds, textile factory workers, miners, shoeshine boys, in small trade and services, transport, or street construction, and that the Construction Workers’ Trade Union reports that 20 per cent of construction workers are less than 16 years of age. The ITUC Report further indicates that children working in these sectors are exposed to chemicals, carrying heavy loads, exhaustion owing to long working hours, injuries from tools, and denial of access to schooling and social activities necessary for proper growth and development. Lastly, the ITUC Report indicates that these children were employed both as permanent workers and as seasonal or day workers, and refers to figures from Education International estimating that 50,000 children work part time or full time in Albania. Therefore, while noting the efforts made by the Government to combat child labour, the Committee expresses its *concern* at reports of a large number of working children in the country, as well as the significant number of children engaged in hazardous occupations. ***The Committee accordingly requests the Government to strengthen its efforts to address the problem of child labour in the country, in continued collaboration with ILO-IPEC. The Committee requests the Government to provide information on the concrete measures taken in this regard, and on the results achieved. Lastly, the Committee requests the Government to provide information from the national survey on child labour, once completed, particularly on the number of working children under the minimum age of 16.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee observed that although the trafficking of children for labour or sexual exploitation was prohibited by law, it remained an issue of concern in practice. It noted the information from the Confederation of Trade Unions of Albania that children were victims of trafficking. The Report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography of 27 March 2006 indicated that since 2001 Albania had emerged as a source country for victims of trafficking (for the purposes of both sexual and labour exploitation), though initiatives had resulted in a decline in child trafficking for labour exploitation (E/CN.4/2006/67/Add.2, paragraphs 10 and 15). It noted the adoption of the Strategy and Plan of Action for the Fight Against Child Trafficking and the Protection of Child Victims of Trafficking for the period 2005–07, and requested information on the impact of the various measures taken within this framework.

The Committee notes the Government’s statement that the implementation of the National Anti-Trafficking Strategy 2008–10 has proceeded according to the timelines envisioned in the action plans. The Government indicates that the National Anti-Trafficking Strategy 2008–10 focuses on four main aspects: prosecution of traffickers, protection and assistance for victims, prevention and coordination. The Government’s report also indicates that law enforcement agencies have continued the successful investigation of trafficking offences, and that cooperation between the Prosecutor’s office and the police continues, including the exchange of statistical data. In this regard, the Government indicates that the Database on Victims of Trafficking is being improved to ensure detailed reporting on the identified, protected and reintegrated victims of trafficking. The Committee also notes the various measures implemented to prevent child trafficking, including the organization of an awareness-raising campaign aimed at children between 7–14 years, and the facilitation of birth registration of children. The Committee further notes the information in the Government’s report that Regional Anti-Trafficking Committees within the country have met regularly, with activities including awareness raising among women and girls, identifying vulnerable social groups, identifying cases of trafficking, reporting on the number of children who have dropped out of school and supporting civil society organizations engaged in combating trafficking.

While taking due note of these measures, the Committee notes the statement in the report of the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the Trade Policies of Albania of 28 and 30 April 2010, entitled “Internationally recognized core labour standards in Albania” (ITUC Report) that the trafficking of children for labour or sexual exploitation remains a problem in the country, and that the Government should strengthen its prosecution of traffickers. The ITUC Report indicates that the prevalence of child trafficking results from poverty, economic instability, housing problems, poor living conditions, low levels of education, low employment opportunities, and improper and ineffective law enforcement. In this regard, the Committee expresses its *concern* at the continued prevalence of the trafficking of children under 18 years of age in Albania. ***It accordingly urges the Government to strengthen its efforts, within the framework of the National Anti-Trafficking Strategy 2008–10, to combat the trafficking of persons under 18 years of age, and to ensure that thorough investigations and robust prosecutions of persons who commit this offence are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It requests the Government to provide information on the impact of measures taken in this regard, particularly with respect to the number of prosecutions, convictions and the sentences imposed for the trafficking of***

**children. It also requests the Government to continue to provide any additional information on the trafficking of persons under 18 years of age from the Database on Victims of Trafficking.**

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking.* The Committee previously noted that the National Strategy and Plan of Action against Child Trafficking contained various measures to protect, rehabilitate and reintegrate child victims of trafficking. It requested the Government to provide information on the number of children reached through this Strategy. The Committee notes the Government's statement that in 2009, 22 child victims of trafficking were offered services in public and private residential centres. The Committee also notes the information in the Government's report that pursuant to amendments to the Law on Social Assistance and Services (No. 9335) of 2 March 2010, victims of trafficking will benefit from economic assistance after they leave residential centres. The Government also indicates that municipal economic assistance offices and protection units provide referrals and assistance to persons at risk and trafficked persons. The Committee further notes the information in the Government's report that the Guideline of the Minister of Labour No. 316 of 10 February 2010 "On the implementation of standards of social care services for trafficked or at-risk persons" aims to standardize the practice and documentation of every institution providing services to victims of trafficking. The Government indicates that it has taken measures to improve the vocational education curriculum, providing free vocational training to 38 victims of trafficking (both girls and women) and that 92 victims of trafficking were employed and reintegrated. Lastly, the Committee notes the information in the Government's report that the National Reception Centre for Victims of Trafficking offers reception, accommodation, rehabilitation, referral for reintegration and repatriation to Albanian and foreign women and girls, as well as children who are at the risk of being trafficked. This Reception Centre is high security, and provides medical, legal and educational services, as well as psychosocial counselling for children.

*Clause (d). Identifying and reaching out to children at special risk. Street children and children from minority groups.* The Committee previously noted the ITUC's allegations that significant numbers of Albanian boys and girls are engaged in begging, starting as early as 4 or 5 years, and that most children involved are from the Roma or Egyptian communities. The ITUC also urged the Government to assist children who work on the streets to overcome barriers to education and help them re-enter the school system and to introduce and support programmes to reduce the poverty and inequality faced by Roma and Egyptian communities. It also noted the information in the Report of the UN Special Rapporteur that the most visible form of child labour in Albania is street work, though it noted that one of the target groups of the Strategic Framework for Action on Child Labour is children who work on the streets. It requested the Government to provide information on the number of children found working on the streets and then rehabilitated and integrated as a result of the measures taken.

The Committee notes the Government's statement that the major issues with regard to the Roma community are low levels of education (with high illiteracy and low numbers of pupils enrolled), poor living conditions, poverty, and high levels of trafficking and prostitution. The Government indicates that it is implementing a ten-year National Strategy for the Improvement of the Living Conditions of the Roma Minority, adopted in 2003 (National Strategy on Roma 2003), which seeks to address, inter alia, education, poverty reduction and social protection. The Government indicates that this has resulted in an increase in attendance in schools by Roma children. However, the possibility of teaching the Roma language in schools has not yet been fully implemented. The Government also indicates that it organizes summer schools with Roma and non-Roma children, and that Roma children have benefited from measures to increase access to education for children from poor families. The Government further indicates that the Ministry of Interior has undertaken a campaign for the protection of children and their removal from the streets. Nonetheless, the Committee notes the Government's statement that, despite some successful initiatives, the implementation of the National Strategy on Roma 2003 has been poor, and the Strategy's objectives have not been successfully transmitted to local level institutions. However, the Committee notes that the Government acceded to the Roma Inclusion Decade in 2008 and that a National Action Plan for the implementation of the Roma Inclusion Decade was adopted on 28 October 2009. The Committee also notes the information in the ILO-IPEC Technical Progress Report for the project entitled "Upstream activities for prevention and elimination of the worst forms of child labour in Central and Eastern Europe" of February 2010 (ILO-IPEC TPR 2010) that an action project entitled "Classes for alternative education and vocational training" was launched in 2009, and will continue until 2012. This action project targets children between 10–16 years of age from Roma and Egyptian communities in Elbasan, Berat and Korca, who are involved or at risk of trafficking and street work. It also notes the information in the ILO-IPEC TPR 2010 that the action programme entitled "Integrated programme on the elimination of the worst forms of child labour", implemented in 2009, resulted in the withdrawal of 99 boys and 43 girls from work on the streets.

While noting the various measures undertaken by the Government, the Committee observes that Roma children remain at an increased risk of being engaged in the worst forms of child labour. ***The Committee therefore requests the Government to strengthen its efforts, within the framework of the new National Action Plan for the Roma Inclusion Decade, to ensure the protection of Roma children against worst forms of child labour, particularly trafficking, forced begging and work on the streets. It requests the Government to provide information on the effective and time-bound measures taken in this regard, and on the results achieved.***

*Article 8. International cooperation. Trafficking.* The Committee previously noted that the National Strategy and Plan of Action against Child Trafficking included several measures to cooperate at the international level in order to prevent child trafficking. It requested information on the impact of these measures.

The Committee notes the information in the Government's report that it participates in a Transnational Referral Mechanism, which is a cooperation agreement between countries of the region with respect to cross-border transfer and care of victims of trafficking. This Mechanism facilitates cross-border cooperation and dialogue, for the rapid exchange of information regarding the identification, investigation and return of victims. The Committee also notes the information in the Government's report that it is working with the International Organization on Migration to draft standard operational procedure for the clear division of obligations of parties for the improvement of the functioning of the National Referral Mechanism, and that cooperation with the Organization for Security and Co-operation in Europe has resulted in the provision of training to Regional Anti-Trafficking Committees. The Committee further notes the Government's indication that it has signed an agreement with the Government of Greece on the return, rehabilitation and care for trafficked children. ***The Committee requests the Government to pursue its international cooperation efforts to combat inter-state trafficking of persons under 18. It requests the Government to continue to provide information on the measures taken in this regard, and on the results achieved.***

The Committee is raising other points in a request addressed directly to the Government.

## Angola

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee previously noted the indication of the National Union of Angolan Workers (UNTA) that cases of child trafficking existed in the country. It also noted that the Committee on the Rights of the Child (CRC) expressed concern about the extent of the problem of sexual exploitation and trafficking of children. The Committee further noted that, although Angolan law criminalizes kidnapping, forced labour and bonded servitude, it does not prohibit trafficking in persons, including children. In this regard, the Committee noted that section 183 of the draft Penal Code (finalized in 2006) prohibited recruiting or receiving persons under 18 for the exercise of prostitution in a foreign country. The Committee observed that while the draft Penal Code prohibited some types of child trafficking, it did not prohibit the sale and trafficking of children for labour exploitation, nor internal trafficking.

The Committee notes that article 12 of the new Constitution of Angola (2010) states that the Government shall respect and implement the principles of the UN Charter on the basis of, inter alia, repudiating human trafficking. However, the Committee observes, that article 12 does not specifically prohibit and penalize human trafficking. The Committee notes the Government's statement in its report to the CRC of 26 February 2010 that trafficking is not defined in national legislation, and that the prevention and mitigation of the phenomenon requires, inter alia, legislative reform (CRC/C/AGO/2-4 paragraph 175). The Committee further notes the Government's statement in its reply to the list of issues of the CRC of 24 August 2010 that the draft Penal Code has been submitted to Parliament for discussion and approval (CRC/C/AGO/Q/2-4/Add.1, paragraphs 60 and 61). The Committee notes an absence of information in the Government's report as to whether this draft Penal Code has been modified to include internal trafficking or trafficking of children for the purpose of labour exploitation.

In this regard, the Committee notes the statement in a report on the worst forms of child labour in Angola of 10 September 2009, available on the website of the Office of the High Commissioner for Refugees (www.unhcr.org) (WFCL Report), that children are trafficked internally for the purpose of sexual exploitation and labour exploitation (in agriculture and domestic service). The Committee also notes the information in a report on trafficking in persons in Angola of 14 June 2010, also available on the website of the Office of the High Commissioner for Refugees (Trafficking Report), that women and children more often become victims of internal rather than transnational sex trafficking. ***Therefore, the Committee urges the Government to take the necessary measures to ensure that provisions prohibiting both the internal trafficking of children under 18 years and their sale and trafficking for the purpose of labour exploitation are included in national legislation, and to establish penalties in this regard, as a matter of urgency.***

*Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that section 184(1) of the draft Penal Code prohibits anyone from promoting, facilitating, permitting, using or offering a young person under 16 years of age for, among other things, pornographic photography, films or engravings. It reminded the Government that, by virtue of *Article 3(b)* of the Convention, each Member which ratifies the Convention shall prohibit the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances.

The Committee notes an absence of information on this point in the Government's report. However, the Committee notes that the draft Penal Code is still under discussion by Parliament. ***The Committee therefore urges the Government to take the necessary measures to ensure that the forthcoming Penal Code includes a prohibition on using, procuring or offering of all persons under 18 years of age for the production of pornography or for pornographic performances, in conformity with Article 3(b) of the Convention. It requests the Government to provide a copy of the amended Penal Code, once adopted.***

*Article 4(1). Determination of hazardous types of employment or work.* In its previous comments, the Committee noted that Decree No. 58/82, which contained a comprehensive list of hazardous types of work prohibited for children under 18 years of age, was repealed by the General Labour Act of 2000 (Act No. 2/00). The Committee observed that while section 284(1) of Act No. 2/00 prohibits the employment of minors in hazardous work, pursuant to section 284(2), this prohibition only includes employment in theatres, cinemas, nightclubs, cabarets, discotheques and other similar establishments, or as traders or in publicity for pharmaceutical products.

The Committee observes that the prohibition of hazardous work for minors in section 284(2) of Act No. 2/00 appears to encompass only types of work which may harm the morals of children, and does not address types of work which may harm their health or safety. In this regard, the Committee once again reminds the Government that pursuant to *Article 4(1)* of the Convention, the types of work which, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. With regard to types of work that may be harmful to the health and safety of children, the Committee notes the Government's statement in its report to the CRC of 26 February 2010 identifying cases of children engaged in hazardous activities and exploitative work such as work in high-seas fishing in the Namibe province, in diamond mines, in border localities, in markets and in bus terminals (CRC/C/AGO/2-4, paragraph 432). Moreover, the Committee notes the information in the WFCL Report that children working in agriculture in Benguela are known to apply chemicals, use machinery and dangerous tools, and carry heavy loads. The Committee draws the Government's attention to Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), which provides that in determining the types of hazardous work prohibited to minors, consideration should be given, inter alia, to: (a) work which exposes children to physical, psychological or sexual abuse; (b) work underground, underwater, at dangerous heights or in confined spaces; (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (d) work in unhealthy environments which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer. ***The Committee therefore requests the Government to take the necessary measures to ensure that the determination of the types of hazardous work prohibited to minors includes not only a prohibition against types of work that are harmful to a child's morals, but also a prohibition against types of work that are harmful to their health and safety, in conformity with Article 4(1) of the Convention. It hopes that, in this regard, the Government will take into consideration the types of work enumerated in Paragraph 3 of Recommendation No. 190.***

*Article 5. Monitoring mechanisms. Labour inspection.* The Committee previously noted the UNTA's indication that cases of children working in the informal sector had been reported. It also noted, in its comments under the Labour Inspection Convention, 1947 (No. 81), that most working minors are engaged in the informal economy.

The Committee notes the Government's statement, in its communication of 2 June 2009 regarding the comments of the UNTA, that efforts to monitor the informal sector are being made by the labour inspectorate and that provincial monitoring units are also involved in monitoring this sector. The Government further indicates that, despite efforts towards the formalization of this sector, the informal sector will not disappear any time soon. The Committee also notes the statement in the WFCL Report that the Government does not have the capacity to regulate the informal sector, where the majority of children work and where most labour law violations occur. ***The Committee therefore requests the Government to take the necessary measures to strengthen and adapt the capacity of the labour inspection and provincial monitoring units to improve the monitoring of children working in the informal economy. It requests the Government to provide information on the measures taken in this respect with regard to combating the worst forms of child labour in the informal sector, and on the results achieved.***

*Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee previously noted the ILO-IPEC information that close to 44 per cent of all children in Angola do not attend school. It also noted that Angola was implementing, in collaboration with UNESCO, a National Plan of Action for Education for All (2001–15) (NPA EFA) and that measures had been taken within the framework of the reform of the education system.

The Committee notes the Government's statement in its reply to the list of issues of the CRC of 24 August 2010 that the Ministry of Education has developed a series of actions for the mid-term assessment of the NPA EFA (CRC/C/AGO/Q/2-4/Add.1, paragraph 35). The Committee also notes the Government's indication in its report to the CRC of 26 February 2010 that it has begun implementation of a literacy and catch-up strategy (2006–15), in partnership with UNICEF, which seeks to accelerate learning with the use of self-teaching and the certification of skills acquired in various contexts of formal and informal education (CRC/C/AGO/2-4, paragraph 354). The Government also indicates that the number of students attending primary school rose between 2004 and 2006, although, due to the lasting effects of armed conflict, the growth was higher in the inland provinces than in the coastal provinces, and that the gender disparity in enrolment rates persisted (CRC/C/AGO/2-4, paragraphs 338 and 339). The Government further indicates in this report that there are high student failure and drop-out rates in the country, and that due to familial poverty, only 37.2 per cent of all children who start the first grade will finish the sixth grade (CRC/C/AGO/2-4, paragraph 344).

In this regard, the Committee notes that the Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations of 1 December 2008, expressed its concern at the limited access to education for groups such as children from rural areas and poor families and girls. The CESCR also expressed its concern that budgetary allocations were not sufficient to meet the rising number of children of school age, and the lack of schools and trained teachers, particularly in remote areas and in slums settlements (E/C.12/AGO/CO/3, paragraphs 38 and 39). Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee expresses its *concern* that children from several vulnerable groups are less likely to attend and complete school. ***The Committee requests the Government to redouble its efforts, within the framework of the NPA EFA, to strengthen the functioning of the education system and to facilitate access to free basic education, particularly for children in remote areas and conflict affected regions, in addition, to children from poor families, rural areas and girls. The Committee also requests the Government to provide information on the outcome of the assessment of the NPA EFA, and the subsequent measures taken to strengthen this plan. Lastly, the Committee encourages the Government to pursue its efforts to provide informal educational opportunities and vocational training to children who are not enrolled in formal schooling.***

*Clause (b). Removal of children from the worst forms of child labour and their rehabilitation and social integration. Child victims of trafficking and commercial sexual exploitation.* The Committee previously noted the Government's indication in its report to the CRC in August 2004 (CRC/C/3/Add.66, paragraph 250) that the abduction of children began during the armed conflict and with the end of the conflict, a child protection programme was introduced whereby thousands of children were taken into hostels and camps for displaced persons and refugees, particularly girls who had been victims of sexual exploitation or slavery. The Committee also noted the ILO-IPEC information that the sexual and economic abuse of girls and boys, including the trafficking of children in certain parts of the country, had emerged as a problem. In this regard, the Committee noted that the Government had formulated the National Plan of Action and Intervention against the Sexual and Commercial Exploitation of Children (NPAI SCEC), which included the objectives of protecting and defending the rights of child victims of sexual and commercial exploitation and rehabilitating and preventing the social exclusion of these child victims.

The Committee notes the Government's statement in its report to the CRC of 26 February 2010 that the NPAI SCEC has not been implemented with the required efficiency (CRC/C/AGO/2-4, paragraph 189). The Government indicates in this report that the NPAI SCEC proved unsuitable for the current context, and that there is an urgent need to revise it (CRC/C/AGO/2-4, paragraph 432). The Government indicates that the National Childs Council (INAC) is in the process of evaluating the NPAI SCEC's implementation, with the goal of strengthening the strategy (CRC/C/AGO/2-4, paragraphs 432 and 412).

The Committee also notes the information in the Trafficking Report that while the Government mainly relies upon religious, civil society, and international organizations to protect and assist victims of trafficking, there has been an increase in the number of victims referred to these services by the Government. This report further indicates that, in partnership with UNICEF, the INAC operates 18 child protection networks, which serve as crisis centres for victims of trafficking and other crimes who are between the ages of 9 and 16, and that victims over 16 are referred to shelters run by the Organization of Angolan Women. Nonetheless, the Committee notes the information in the Trafficking Report that law enforcement, immigration and social services personnel do not have a formal system of proactively identifying victims of trafficking among high-risk persons with whom they come in contact. ***The Committee strongly requests the Government to take immediate measures to revise and strengthen the NPAI SCEC to ensure its effective implementation, with child participation, particularly with regard to initiatives targeting child victims of commercial sexual exploitation. The Committee also urges the Government to redouble its efforts with regard to identifying child victims of trafficking and commercial sexual exploitation, and to ensure that identified victims are referred to appropriate services for their rehabilitation and social reintegration. It requests the Government to provide information on the results achieved.***

*Clause (d). Identification of children at special risk. 1. Former child soldiers and children displaced as a result of the conflicts.* The Committee previously noted that the CRC expressed deep concern that inadequate attention was being given to the plight of former child soldiers, particularly girls. The Committee also noted that the Special Representative of the Secretary-General for Children and Armed Conflict expressed concern over the large numbers and appalling conditions of internally displaced children. It noted the ILO-IPEC information that over 100,000 children were separated from their families as a result of war. In this regard, it noted that the Government had implemented a programme for the reintegration of demobilized minors in eight provinces and that the Government adopted the Post-war Child Protection Strategy (PWCP), which was implemented from 2002 to 2006.

The Committee notes the Government's indication in its reply to the list of issues of the CRC of 24 August 2010 that, following the end of the war in 2002, the return and reintegration of people directly affected by the conflict (including displaced children and former soldiers) was a priority for the Government. The Government indicates that there were approximately 4 million displaced persons, of which 40 per cent were children (CRC/C/AGO/Q/2-4/Add.1, paragraph 38). The Government also indicates in its report to the CRC of 26 February 2010 that it is implementing a programme to return and resettle the displaced populations, refugees and other persons directly affected by the armed conflict, with special attention to children. The Government's report to the CRC also indicates that the Cabinda provincial

government carried out a series of programmes to provide special services to children in the context of reintegrating the vulnerable groups directly affected by the armed conflict. This project to support the reintegration of vulnerable groups includes a training package in various vocational skills (such as cooking, sewing and embroidery), life skills based on micro-lending, child protection and primary health care (CRC/C/AGO/2-4, paragraphs 368 and 369).

The Committee notes the statement in the WFCL Report that children living in provinces most affected by the civil war are more likely to work than children in less-affected provinces. ***The Committee requests the Government to strengthen its efforts with regard to rehabilitating and reintegrating children affected by the conflict, including former child soldiers. It requests the Government to provide information on the number of children reached through the measures taken in this regard.***

2. *Street children.* In its previous comments, the Committee noted the Government's indication that the displacement of a large number of people during the armed conflict gave rise to the phenomenon of street children. The Committee also noted that the Government had set up hostels with the aim of getting these children off the streets, in addition to plans to build 600 regional reception centres for children in need of protection. However, the Committee noted a report indicating that at least 10,000 children work on the streets in the capital city of Luanda, and noted the Government's indication that street children are also found in other large cities, such as Benguela, Lobito, Lubango and Malang.

The Committee notes the Government's statement in its report to the CRC of 26 February 2010 that there has been a decrease in the number of children living on the street due to the relative improvement in the lives of the citizens, but that there remains a significant number of street children (CRC/C/AGO/2-4, paragraph 397). The Committee also notes the Government's indication in this report that efforts are made to reintegrate street children into their biological families, or to place them in foster families. This is done through the Family Tracing and Reunification Programme, which provides support to separated children in temporary institutions and reunites children with their families. The Government also indicates that while the factors contributing to the phenomenon of street children have not been eliminated, 1,545 street children have been picked up and hosted in Casa Pia de Luanda (a children's home), in an effort to reintegrate these children with their families. The Government further indicates that cooperation is ongoing between different governmental partners to implement programmes to develop and upgrade the private institutions in which street children are sheltered (including the provision of integrated education and vocational training programmes) (CRC/C/AGO/2-4, paragraphs 398–401).

The Committee further notes the Government's indication in its reply to the list of issues of the CRC of 24 August 2010 that some children working and living in the street were provided with social reintegration services: 239 street children in 2007, 240 such children in 2008 and 260 such children in 2009. Almost all of these children were boys (CRC/C/AGO/Q/2-4/Add.1, page 14). Lastly, the Committee notes the information in the WFCL Report that the Government continues to implement a project funded by the Government of St. Kitts and Nevis to prevent child labour among street children in Benguela and Lobito. ***Recalling that street children are particularly vulnerable to the worst forms of child labour, the Committee requests the Government to redouble its efforts to protect street children from these worst forms, and to provide for their rehabilitation and reintegration. The Committee also requests the Government to provide information on the number of street child who have been provided with educational and vocational training opportunities in children's institutions.***

3. *Child orphans of HIV/AIDS and other vulnerable children (OVCs).* Following its previous comments, the Committee notes the information in the Government's report to the CRC of 26 February 2010 that the number of OVCs could reach approximately 200,000 by 2010 and that the number of OVCs in Angola is rising (CRC/C/AGO/2-4, paragraphs 263–264). The Government also indicates in this report that it began preparing, in 2007, a National Action Plan for OVCs due to HIV/AIDS, which includes strengthening family, community and institutional capacity to respond to the needs of OVCs, and an expansion of services and social protection mechanisms for these children (CRC/C/AGO/2-4, paragraphs 261 and 374). The Government further indicates that the number of survival grants given to OVCs is rising (CRC/C/AGO/2-4, paragraph 50). However, the Committee notes the Government's indication in its Country Progress Report to UNGASS of March 2010 that only 16.8 per cent of households with OVCs receive basic external support. ***The Committee recalls that OVCs are at an increased risk of being engaged in the worst forms of child labour and therefore urges the Government to take immediate and effective measures, within the framework of the National Action Plan for OVCs due to HIV/AIDS, to ensure that children orphaned by HIV/AIDS and other vulnerable children are protected from these worst forms. The Committee requests the Government to provide information on the concrete measures taken in this regard, and on the results achieved, particularly with regard to the percentage of households with OVCs receiving support services and grants.***

*Part V of the report form. Application of the Convention in practice.* Following its previous comments, the Committee notes the Government's statement in its report to the CRC of 26 February 2010 that children in Angola are involved in the worst forms of child labour, particularly in hazardous work (diamond mining and fishing), street labour and commercial sexual exploitation (CRC/C/AGO/2-4, paragraph 432). The Committee also notes the Government's information on this report that 20 child victims of trafficking were identified by law enforcement officials in 2007 and that there have been clear cases of child trafficking in the Zaire Province. The Government states in this report that child trafficking is difficult to control due to the vast border and that Angolan children are taken from the capital city of the



country and brought to the DRC and that Congolese children are trafficked from Kinshasa into Angola (paragraphs 172–175). The Committee further notes the indication in the Trafficking Report that the use of children for the purpose of illicit activities is also present in the country, as children are forced to act as couriers in illegal cross-border trade between Namibia and Angola as part of a scheme to skirt import fees. **While noting the difficult situation prevailing in the country, the Committee expresses its deep concern at the situation of persons under the age of 18 working in the worst forms of child labour, and accordingly urges the Government to redouble its efforts to ensure in practice the protection of children from these worst forms, particularly trafficking, commercial sexual exploitation, use in illicit activities and hazardous work. It also requests the Government to take the necessary measures to ensure that sufficient data on these worst forms of child labour are available, and to provide information with its next report on the nature, extent and trends of the worst forms of child labour, the number of children covered by the measures giving effect to the Convention, the number and nature of infringements, investigations, prosecutions, convictions and sanctions. To the extent possible, all information provided should be disaggregated by sex and age.**

The Committee is raising other points in a request addressed directly to the Government.

## Antigua and Barbuda

### Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

*Article 2(1) and (3) of the Convention. Minimum age for admission to employment and age of completion of compulsory schooling.* In its previous comments, the Committee drew the Government's attention to the fact that the provisions of the national legislation respecting the minimum age for admission to employment or work were not in conformity with the age specified by the Government when ratifying the Convention. Indeed, although the Government had specified the minimum age of 16 years when ratifying the Convention, section E3 of the Labour Code provides that no child shall be employed or shall work in a public or private agricultural or industrial undertaking or in any branch thereof, or on any ship, while the term "child", by virtue of section E2 of the Labour Code, means a person under the age of 14 years. The Committee had noted on several occasions that amendments to the Labour Code were under examination with a view to bringing the minimum age for admission to employment or work into conformity with the minimum age specified when ratifying the Convention and with the compulsory school-leaving age which, under section 43(1) of the Education Act of 1973, is 16 years of age. The Committee notes in the Government latest report that a draft of the Labour Code is being circulated, where section E2 of the Labour Code has been amended to fall in line with the minimum age as specified upon ratification. **Observing that the Convention was ratified by Antigua and Barbuda more than 25 years ago, the Committee urges the Government to take the necessary measures to ensure the adoption of the draft Labour Code, whose section E2 has been amended to define a child as a person under the age of 16, which would bring the minimum age for admission to employment or work in the national legislation in conformity with the minimum age specified upon ratification. It requests the Government to provide a copy thereof once it has been adopted.**

*Article 3(1) and (2). Minimum age for admission to hazardous work and determination of these types of work.* The Committee notes from the Government's current report that consultations were held with the unions and employer's federation regarding the activities and occupations to be prohibited to persons below 18 years. The Committee notes that though a recommendation was made, it was not taken before the National Labour Board, as it is the Government's aim to revamp the occupational health and safety legislation. The Committee reminds the Government that *Article 3(1)* of the Convention provides that the minimum age for admission to any type of employment or work, which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years. It also reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. **The Committee requests the Government to provide information regarding the progress made towards amending the occupational health and safety legislation, which would contain a list of activities and occupations to be prohibited to persons below 18 years of age, in accordance with Article 3(1) and (2) of the Convention. It also requests the Government to provide a copy of the amendments to the occupational health and safety legislation once they have been adopted.**

*Article 4(2). Exclusion of limited categories of employment or work.* The Committee had previously noted that section E3 of the Labour Code provides that the prohibition upon the employment or work of children, that is persons under the age of 14 years (section E2), does not apply to any undertaking or ship on which only members of the same family are employed, to members of a recognized youth organization who are engaged collectively in such employment for the purposes of fund raising for such an organization, nor to a child who is working together with adult members of his/her family on the same work and at the same time and place. **Noting that the Government's report does not contain any information on this subject, the Committee urges the Government to indicate in future reports any changes in law and practice in respect of these excluded categories.**

**The Committee invites the Government to consider seeking technical assistance from the ILO.**

**[The Government is asked to reply in detail to the present comments in 2011.]**

## Argentina

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1996)**

*Article 2(2) and (5) of the Convention. Raising the minimum age for admission to employment or work.* Further to its previous comments, the Committee notes with **satisfaction** the Government's indication in a statement to the Director-General dated 25 May 2010 that it is officially raising the minimum age for admission to employment or work from 15 to 16 years.

*Article 1 and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted the results of the 2004 study (subsequently published in 2006) entitled "Childhood and adolescence: Work and other economic activities" conducted by ILO-IPEC, the National Statistics and Census Institute of Argentina and the Ministry of Labour, Employment and Social Security in three provinces in the north-west of the country (Jujuy, Salta and Tucumán), two in the north-east (Formosa and Chaco), the province of Mendoza and the metropolitan region of Buenos Aires. It noted with interest the measures taken as part of the implementation of the National Plan for the Prevention and Elimination of Child Labour. In this regard, it particularly noted the following information: (i) the signing of an agreement between the Ministry of Labour, Employment and Social Security and the Ministry of Education, Science and Technology with a view to implementing the National Programme for Educational Integration, which provides for measures to enable working children to quit their jobs and re-enter or remain in the school system, including remedial courses and economic assistance; (ii) the establishment of the network of enterprises against child labour on 27 June 2007; (iii) the increased participation of workers' organizations in efforts to combat child labour, which led to the signing of a memorandum of intent for the prevention and elimination of child labour in agriculture on 12 June 2007; (iv) training workshops for labour inspectors and tobacco producers in Salta and Jujuy; and (v) campaigns to raise awareness of the use of child labour, especially in tobacco plantations, among the general public, teachers and health officials. The Committee also noted that the results of a survey conducted in 2006 on the work of boys, girls and young persons between 5 and 17 years of age in the provinces of Córdoba and Misiones were being validated.

The Committee notes the results of the 2006 survey communicated in the Government's report. According to this survey, 8.4 per cent of children between 5 and 13 years of age and 29.7 per cent of children between 14 and 17 years of age are engaged in economic activity. As regards the province of Córdoba, children between 5 and 13 years of age work particularly in the following sectors: assistance in commerce, office work or workshops, childcare, non-residential care for elderly or sick persons, and other service-related or commercial activities such as roadside vending or services rendered to third parties. The main areas of activity of young persons between 14 and 17 years of age are assistance in commerce, work in offices or workshops, assistance with construction or repair work and other activities in the tertiary sector such as non-residential care for elderly or sick persons. The vast majority of children between 5 and 13 years of age in the province of Córdoba are involved in family work (72 per cent), whereas young persons between 14 and 17 years of age generally work for an employer (44 per cent) or on a self-employed basis. In addition, the survey reveals that premature entry to the world of employment has a negative impact on children's success in school. Accordingly, 15 per cent of children who worked during the reference week used for the survey have repeated a school year and 50 per cent of working adolescents do not attend school in the province of Córdoba. The Committee notes the Government's indication that the percentage of young people who work and do not attend school in the other provinces of the country, as shown by the 2004 study, is lower than in the province of Córdoba (25 per cent).

The Committee duly notes the various measures taken by the Government as part of the National Plan for the Prevention and Elimination of Child Labour. It notes in particular that, under Decree No. 1602/2009 of 29 October 2009, the provision of family benefits has been expanded and these are now awarded to children whose parents are unemployed or working in the informal or domestic sectors. It also notes that various training workshops have been established in order to strengthen the labour inspectorate in its action to prevent and combat child labour. According to the information supplied in the Government's report, between 2007 and 2009 labour inspectors identified 43,042 children who were at risk. Finally, the Committee observes that provincial committees were set up in 23 out of 24 provinces in the country. The task of these committees is to implement locally the measures adopted in the context of the National Plan. Two national meetings of regional committees are held each year in order to formulate joint action strategies.

The Committee notes, however, that the Committee on the Rights of the Child, in its concluding observations of June 2010 on the third and fourth periodic reports of Argentina (CRC/C/ARG/CO3-4, paragraph 73) noted with concern the absence of effective coordination mechanisms, as well as insufficient structures for enforcement at the provincial level. **The Committee requests the Government to step up its efforts to ensure the effective implementation of the National Plan for the Prevention and Elimination of Child Labour, particularly at provincial level. It requests the Government to continue to supply information on the action taken and the results achieved in the context of the National Plan, indicating the number of children who have benefited from these measures. The Committee further requests the Government to continue to supply information on the manner in which the Convention is applied in practice, including extracts from the reports of the inspection services and information on the number and nature of violations reported and penalties imposed.**

## **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the comments of the General Confederation of Labour (CGT), dated 29 October 2010, and the Government's report. With reference to its comments under the Forced Labour Convention, 1930 (No. 29), on the sale and trafficking of children and, as Convention No. 182 addresses these worst forms of child labour, the Committee considers that they may be examined more specifically in the context of the present Convention.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted with interest the adoption of Act No. 26.364 of 30 April 2008 on the prevention of, and conviction for, the trafficking of persons and on assistance to victims. In its observations under Convention No. 29, it notes the comments of the International Trade Union Confederation (ITUC) concerning the international dimension of trafficking according to which Argentina is a country of destination of trafficking for the sexual exploitation of women and young girls from the Dominican Republic, Paraguay and Brazil. It noted that Argentinian women and young girls, mostly originating from the provinces of Misiones, Tucumán, La Rioja, Chaco and Buenos Aires, are also subjected to sexual exploitation abroad, mainly in Spain and Brazil. The Committee also observed that the ITUC's comments report corruption in the police forces and the direct involvement of police officers in criminal activities related to the trafficking of persons. Furthermore, according to the ITUC, the involvement of the police is one of the significant factors explaining the increase in cases of domestic and international trafficking reported over recent years, as well as the ineffectiveness of the criminal procedures conducted to endeavour to bring those responsible for these acts to justice.

The Committee notes the information from the Office for the Assistance and Support of Victims of Trafficking (*Oficina de Rescate y Acompañamiento a Personas Damnificadas por el Delito de Trata*) of the Ministry of Justice, Security and Human Rights, contained in the Government's report on the application in practice of Act No. 26.364 of 30 April 2008. It notes with *interest* that, since the entry into force of the Act and up to 31 July 2010, a total of 590 raids were carried out, 583 persons were arrested and 921 victims were assisted, including 204 children under 18 years of age. These cases resulted in 15 convictions for the trafficking of persons for sexual exploitation, for which the sentences ranged from four to 15 years of imprisonment. ***The Committee requests the Government to continue taking the necessary measures to ensure that thorough investigations and vigorous prosecutions of persons engaged in the sale and trafficking of children under 18 years of age, including State employees suspected of complicity, are completed and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to continue providing information on the number of investigations conducted, prosecutions and convictions under Act No. 26.364 of 30 April 2008.***

*Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that the provisions of the Penal Code do not cover the use of a child for prostitution. The Government, however, indicated that Act No. 26.364 of 30 April 2008 covers the use of a child for prostitution. The Committee drew the Government's attention to the fact that, in the context of the Convention, the use of a child for prostitution applies equally to a person, in this case a client, who performs a sexual act with a child under 18 years of age in return for payment or any other form of benefit. It therefore requested the Government to indicate the manner in which Act No. 26.364 of 30 April 2008 makes it possible, in practice, to prosecute and punish a client for using a child under 18 years of age for prostitution.

The Committee notes the Government's indication that Act No. 26.364 of 30 April 2008 does not provide for the penalization of a client for using a child under 18 years of age for prostitution. ***The Committee therefore urges the Government to take immediate and effective measures to prohibit and penalize the use of a child under 18 years of age for prostitution, in accordance with Article 3(b) of the Convention.***

*Article 4(1). Establishment of the list of hazardous types of work.* In its previous comments, the Committee noted that a draft Decree regulating the types of work that are hazardous to children had been prepared, and that the activities included in Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), had been taken into consideration.

Nevertheless, the Committee notes the CGT's comments that the list of hazardous types of work has still not been established. ***The Committee therefore requests the Government to take the necessary measures to ensure that the draft Decree establishing the list of hazardous types of work is adopted without delay. It requests the Government to provide information on any new development in this respect.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and removing them from such labour. Commercial sexual exploitation of children and trafficking for this purpose.* In its previous comments, the Committee noted the establishment of the National Programme for the Prevention and Elimination of the Trafficking of Persons and Assistance to Victims. It observed that one of the objectives of this Programme is to promote inter-institutional collaboration between government agencies, NGOs and other civil society institutions for the implementation of action to prevent the trafficking of persons and to provide assistance for the social integration of the victims of trafficking.

The Committee notes the establishment of the Office for Assistance and Support to Victims of Trafficking in 2008. This Office is responsible for centralizing action for the prevention and investigation of trafficking of persons, and measures of psychological, medical and legal support and assistance for victims. It also notes that assistance for the rehabilitation and social integration of such children is the responsibility of the Service for the Prevention of, and

Assistance to, Victims of Trafficking of Persons (*Area de prevención de atención a víctimas de trata de personas*), which is under the responsibility of the Secretariat for Childhood, Adolescence and the Family (SENNAF).

However, the Committee observes in this respect that the Committee on the Rights of the Child, in its concluding observations of 18 June 2010 on the application of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/ARG/CO/1, paragraph 39), expressed concern at the absence of a sustained intervention over a period of time for victims, in particular of trafficking. ***The Committee requests the Government to provide additional information on the concrete measures taken by the Service for the Prevention of and Assistance to Victims of Trafficking of Persons and the Office for Assistance and Support to Victims of Trafficking to prevent children becoming victims of commercial sexual exploitation or trafficking for that purpose, and to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour and to ensure their rehabilitation and social integration. In respect, it requests the Government to provide information on the results achieved in terms of the number of children who are in practice removed from this worst form of child labour and who have benefited from integration measures.***

*Article 8. International cooperation. MERCOSUR.* The Committee previously noted with interest the measures adopted in the context of MERCOSUR, and particularly the adoption of the Agreement on the introduction of a shared database on boys, girls and young persons in a vulnerable situation and the Agreement on regional cooperation for the protection of the rights of boys, girls and young persons in a vulnerable situation. It also noted that a regional strategy to combat the trafficking of children and young persons for purposes of sexual exploitation and their illegal trafficking is being prepared in MERCOSUR countries, with Argentina, Brazil, Paraguay and Uruguay as pilot countries.

The Committee notes the CGT's allegations that the Regional Plan for the Prevention and Elimination of Child Labour adopted in the context of MERCOSUR is not effective in practice. It notes the information provided in the Government's report by the National Commission for the Elimination of Child Labour (CONAETI), which indicates that a meeting was held in November 2009 in Montevideo to make progress with the implementation of the Regional Plan. In this respect, the Committee notes that a preliminary agenda was drawn up for the holding of a workshop on good practices for the prevention and elimination of child labour. It also notes the information provided in the Government's report of 11 March 2010 on the application of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/ARG/1, paragraph 289), according to which the SENNAF has coordinated action with a view to developing joint strategies of action against the sexual exploitation of children in the area known as the Triple Frontier, where the borders of Argentina, Brazil and Paraguay meet. Accordingly, the three countries signed a cooperation agreement on action to combat the sexual exploitation of children (paragraph 290), and an awareness-raising campaign was conducted (paragraph 291), following the conclusion of this agreement. Furthermore, in October 2008, the SENNAF reiterated the experience between the Argentinian city of La Quiaca and the city of Villazón in the Plurinational State of Bolivia, which are joined by the international La Quiaca bridge. ***The Committee requests the Government to continue providing information on the measures adopted and the results achieved in the context of the Regional Plan for the Prevention and Elimination of Child Labour in MERCOSUR and requests it to indicate whether the Regional Strategy to Combat the Trafficking of Children and Young Persons for Sexual Exploitation is currently being implemented. It also requests the Government to provide additional information on the common action taken in the context of the cooperation agreement to combat the sexual exploitation of children signed with Brazil and Paraguay, and on the measures adopted in practice to reinforce cooperation in the La Quiaca/Villazón region.***

The Committee is raising other points in a request addressed directly to the Government.

## Austria

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Article 7 of the Convention. Light work.* The Committee had previously noted that, by virtue of section 5(a)(1) of the Employment of Children and Adolescents Act (hereinafter ECYPA), children aged "12 years" may be employed, outside the hours specified for school attendance: (1) on activities in enterprises in which only members of the enterprise owner's family are employed; (2) in a private household; (3) in errand running; ancillary activities in sport and play areas, the gathering of flowers, herbs, mushrooms and fruit and other activities similar to these, provided that this applies to light and occasional activities and that work performed in an enterprise of a commercial nature or in an employment relationship is not included under subsection (3). The Committee also noted the Government's statement that, according to section 110(3) of the Provincial Labour Act, children under 12 years of age may be employed, under certain conditions, in occasional light work in enterprises in which only members of the owner's family are employed. The Committee noted that the ECYPA and the Provincial Labour Act contain provisions regulating the number of hours during which, and the conditions in which, light work may be undertaken in accordance with *Article 7(3)* of the Convention. The Committee reminded the Government that pursuant to *Article 7(1)* of the Convention, only children from 13 years of age may be permitted to perform light work, which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school, or their participation in vocational training programmes.

The Committee notes from the Government's information that following negotiations with the social partners to bring the ECYPA and the Agriculture Labour Act in line with *Article 7* of the Convention, draft legislation has been prepared and submitted for assessment (assessment draft 141/ME XXVI.GP – Ministerial draft). The Committee notes with *interest* that the draft proposes to raise the minimum age for light work and occasional work to 13 years. The Committee notes that the draft must be submitted to the Council of Ministers for processing and lastly to Parliament to be passed as a bill. ***The Committee expresses the firm hope that the assessment draft 141/ME XXVI.GP, fixing the minimum age for light work at 13 years of age will be adopted by Parliament at the earliest possible date. The Committee requests the Government to provide information on all progress made in this regard and to provide a copy of the amended legislation as soon as it has been adopted.***

*Part V of the report form. Practical application of the Convention.* The Committee notes the information in the Government's report on the breakdown of the violations concerning the employment of children and young persons, both by economic sector and by federal province in 2008–09. In 2008, a total of four and 1,155 violations concerning children and young persons, respectively, were detected; in 2009, these numbers were seven and 1,246, respectively. In both years, the vast majority of the violations detected were in the sectors of: hotels and restaurants; the repair of motor vehicles and consumer goods; and construction. In 2008, 515 of all violations concerned rest breaks, rest time, night rest periods, rest on Sundays, public holidays and weekly working hours; in 2009, the number of these violations was 597. The other violations detected concerned: the keeping of registers of children and young persons; prohibited and restricted work; and maximum working hours. ***The Committee requests the Government to continue providing information on the manner in which the Convention is applied, including, for example, statistical data on the employment of children and young persons and information on the number and nature of violations detected involving children and young persons.***

## Azerbaijan

### Minimum Age Convention, 1973 (No. 138) (ratification: 1992)

*Article 2(1) of the Convention.* 1. *Scope of application.* The Committee had previously taken note of section 7(2) of the Labour Code of 1999, which rules that “labour relations shall be established upon the execution of a written employment contract”, and section 4(1) declaring that “this Code applies to all enterprises, establishments, organizations as well as workplaces where an employment agreement exists”. The Committee had requested the Government to supply information on the measures taken to ensure the application of the Convention to all types of work outside an employment relationship.

The Committee notes the absence of information in the Government's report on this point. The Committee notes, however, that according to a survey conducted by the State Statistical Committee of the Republic of Azerbaijan in cooperation with ILO–IPEC, entitled: *Working children in Azerbaijan – The analysis of child labour and labouring children survey, 2005*, the majority of working children (about 65 per cent) are employed as unpaid family workers, while 25.1 per cent of children work on their own account and less than 10 per cent are wage workers. The survey further indicates that about 84.4 per cent of child labourers are found in the agricultural sector. ***Recalling that Convention No. 138 requires the fixing of a minimum age for all types of work or employment and not only for work under an employment contract, and observing that it has been raising this matter for several years, the Committee urges the Government to take the necessary measures to ensure that children carrying out an economic activity on their own account are granted the protection afforded by the Convention. In this regard, it requests the Government to envisage the possibility of taking measures to adapt and strengthen the labour inspection services so as to ensure that the protection envisaged by the Convention is provided to children who work on their own account or in the informal economy.***

2. *Minimum age for admission to employment or work.* The Committee had recalled that the minimum age of 16 years was specified under *Article 2(1)* of the Convention as regards Azerbaijan. It had noted with regret that the Labour Code, in section 42(3), allows a person who has reached the age of 15 to be part of an employment contract; section 249(1) of the same Code specifies that “persons who are under the age of 15 shall not be employed under any circumstances”. Moreover, the Individual Contracts of Employment Agreement Act, section 12(2), sets the minimum age for concluding an employment contract at 14 years.

The Committee notes the Government's information that pursuant to the amendments made to the Labour Code on December 2009 (Law of the Republic of Azerbaijan of 4 December 2009, No. 924-IIIQD), subsection (2) of section 249 shall be deleted. It notes, however, that this provision deals with admission of children of general vocational schools and who have attained the age of 14 years of age for industrial training. It also notes the Government's information that section 46(4) of the Labour Code which was amended in 2009 states that the contracts concluded with persons who have not reached the age of 15 years shall be invalid. The Committee had observed for a number of years that sections 42(3) and 249(1) of the Labour Code and section 12(2) of the Individual Contracts of Agreement Act and section 46(4) of the Labour Code as amended, permit a child of 14 or 15 years to conclude a contract of employment, even though the specified minimum age for admission to employment or work is 16 years. The Committee once again points out that the Convention allows and encourages the raising of the minimum age but does not permit lowering of the minimum age once specified. ***Observing that it has been raising this matter for several years, the Committee urges the Government to take***

***the necessary measures to ensure that no children under the age of 16 years is permitted to work, except for light work as permitted under Article 7 of the Convention.***

*Article 3(2). Determination of types of hazardous work.* The Committee had previously noted the Government's indication that a list of arduous and hazardous industries or occupations where the employment of persons under 18 years of age is prohibited was approved by Decision No. 58 of the Cabinet of Ministers of the Republic of Azerbaijan on 24 March 2000. The Committee notes the Government's indication that the list of hazardous work prohibited to children under 18 years and approved by Decision No. 58 of the Cabinet of Ministers shall be supplied to the Office in the near future. ***Observing that the list of hazardous types of work was adopted in 2000, the Committee expresses the firm hope that a copy of this list will be sent along with the Government's next report.***

*Article 7. Light work.* The Committee had previously noted that section 249(2) of the Labour Code allows youths who have reached the age of 14 to work after school hours in light duty work, which poses no hazard to their health, and upon the written consent of their parents. It had further noted that sections 91(2), 119(1) and 133(3) of the Labour Code lay down the conditions of work of persons under 16 years of age and sections 252 and 254 provide for the conditions of work of persons under 18 years of age. The Committee had recalled that according to *Article 7(3)* of the Convention, the competent authority shall determine the activities in which employment or work may be permitted as light work. ***Noting the absence of information in this regard, the Committee once again requests the Government to supply further information on the types of light work that are permitted for persons who have attained 14 years of age.***

*Article 9(1). Penalties.* Following its previous comments, the Committee notes the Government's indication that according to section 12(2) of the Labour Code as amended in 2009, an employer who violates the provisions related to the employment of persons who have not reached 15 years of age and the prohibition on engaging children in activities endangering their life, health or morality shall be brought to corresponding responsibility in accordance with the procedure established by law. It also notes the Government's reference to sections 310–313 of the Labour Code which deal with the liability for violating the rights defined in this Code, as well as the disciplinary, administrative and criminal actions for the violation of the labour law. ***The Committee requests the Government to indicate the provision which establishes penalties for the breach of the provisions giving effect to the Convention.***

*Parts III and V of the report form. Labour inspection and practical application of the Convention.* The Committee notes the Government's indication that, according to section 308 of the Labour Code, the Office of the Public Prosecutor, as well as the State Labour Inspectorate, exercise control over the strict application of the Labour Code. Furthermore, the public control over the observance of the labour legislation shall be carried out by the trade unions and the employers' organizations. The Committee notes, however, that the Committee on the Rights of the Child, in its concluding observations of 17 March 2006 (CRC/C/AZE/CO/2, paragraphs 61–62), expressed concern at the high number of working children in Azerbaijan, especially in rural areas, and that the regulations protecting children from exploitative and hazardous work are not consistently applied and respected. It also notes that according to the survey conducted in 2005 by the State Statistical Committee of the Republic of Azerbaijan in cooperation with ILO–IPEC, more than 156,000 children aged between 5 and 17 years are estimated to be engaged in some form of economic activity, out of which 84.4 per cent work in the agricultural sector, and about 67.6 per cent of working children are estimated to be engaged in hazardous work. ***The Committee expresses its concern over the number and situation of working children in Azerbaijan, as well as the weak enforcement of the Convention and accordingly urges the Government to redouble its efforts to improve this situation including through measures to strengthen the capacity and expand the reach of the labour inspection system. It requests the Government to provide information on the concrete measures taken in this respect and on the results achieved. The Committee once again asks the Government to supply data to give a general appreciation of the manner in which the Convention is applied, for instance, statistical data on the employment of children and young persons, extracts from the report of inspection services, and information on the number and nature of contraventions reported.***

***[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]***

## **Bahrain**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that, by virtue of section 355 of the Penal Code, it is an offence to print, import, export, own, possess, carry or display, with the intent of exploiting, distributing or showing any publications, drawings, pictures, films, symbols or such other items if they violate public morals. However, the Committee observed that the Penal Code does not prohibit the use, procuring or offering of a child for the production of pornography or pornographic performances.

The Committee notes the Government's indication that Sharia law is a main source of legislation in Bahrain. The Government indicates that the culture of the country refuses all illicit sexual activities as well as the exploitation of children, even if a particular offence is not specified in the Penal Code. Nonetheless, the Committee notes the Government's statement in its report to the Committee on the Rights of the Child (CRC) of 25 March 2010 that a draft law

on the rights of the child is currently before the Chamber of Deputies, including a chapter on the protection of children. The Government indicates that this chapter contains provisions on sexual offences (CRC/C/BHR/2-3, paragraph 508), though it is not specified if these provisions include the protection of children from use in the production of pornography. **Reminding the Government that pursuant to Article 1, the Government must take “immediate measures” to secure the prohibition of the worst forms of child labour, the Committee urges the Government to take immediate measures to explicitly prohibit, in national legislation, the use, procuring or offering of a child for the production of pornography or for pornographic performances, in conformity with Article 3(b) of the Convention. In this regard, the Committee encourages the Government to consider including a specific prohibition of this offence in the draft law on the rights of the child, currently before the Chamber of Deputies.**

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee previously observed that sections 2 and 3 of Law No. 4 of 1974 on controlling the use and circulation of narcotic substances and preparations prohibit the importing, exporting, producing, possessing, buying, selling, exchanging or disposing of narcotic substances. However, it noted that the use, procuring or offering of a child for the production and trafficking of drugs does not appear to be prohibited by national legislation.

The Committee notes the Government’s statement that the trafficking of drugs is prohibited in Bahrain and that the culture of Bahrain refuses the exploitation of children for this purpose. However, the Committee notes the Government’s statement in its report to the CRC of 25 March 2010, concerning the available support for delinquents, that the cases of delinquency noted among youth include the involvement of minors in the trafficking of drugs (CRC/C/BHR/2-3, paragraph 463). **Recalling that the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, constitutes one of the worst forms of child labour, the Committee strongly requests the Government to take immediate measures to ensure that this worst form is explicitly prohibited in the near future.**

*Clause (d). 1. Hazardous work.* The Committee previously noted that section 51 of the Labour Law states that juveniles aged under 16 years may be employed in industries and occupations other than those deemed to be hazardous or unhealthy and enumerated by an Order of the Minister of Health, in cooperation with the Minister of Labour and Social Affairs. However, the Committee noted the Government’s indication that the Labour Law would be amended to provide for the protection of children under 18 as required under the Convention. The Government indicated that ministerial orders would be promulgated in order to enact the new Labour Law, which was adopted by the Shoura Council and the Chamber of Deputies.

The Committee notes the Government’s statement that any new developments regarding ministerial orders addressing the employment of persons under 18 years will be communicated to the Committee. The Committee reminds the Government that, by virtue of *Article 3(d)*, work which, by its nature and the circumstances in which it is carried out, is likely to harm the health, safety or morals of persons under 18, constitutes one of the worst forms of child labour, and that pursuant to *Article 1*, the Government must take immediate measures to secure the prohibition of this worst form, as a matter of urgency. **Observing that the Government has been stating its intention to bring its labour legislation into conformity with Article 3(d) of the Convention since 2004, the Committee strongly urges the Government to take the necessary measures, without delay, to ensure the promulgation of the relevant ministerial orders, prohibiting the engagement of persons under 18 in hazardous work.**

*2. Self-employed, domestic, casual and agricultural workers.* The Committee previously observed that, pursuant to section 1 of the Labour Law, working persons not under the control and supervision of an employer, such as self-employed workers, were excluded from the scope of application of the Labour Law. It also noted that, pursuant to section 2 of the Labour Law, domestic servants, persons employed in temporary and casual work (for periods shorter than three months), and most persons employed in agricultural work were excluded from the Law’s application.

The Committee notes the Government’s statement that children do not work in these excluded sectors. The Government indicates that most self-employed workers in the country are taxi drivers, a job that children do not perform as driving licenses are only obtainable from the age of 18. The Government also indicates that domestic labour is not performed by the national labour force, and that agriculture is a small sector (representing 2 per cent of the labour force), though children may work with their parents in this sector during summer vacation. The Committee also notes the Government’s statement in its report to the CRC of 25 March 2010 that most agricultural work is performed by foreign workers (CRC/C/BHR/2-3, paragraph 501). In this regard, the Committee notes the Government’s statement that foreign workers under 18 may not enter the country, and are not issued work permits. The Committee further notes the information in a report on the worst forms of child labour in Bahrain of 10 September 2009, available on the website of the Office of the High Commissioner of Refugees ([www.unhcr.org](http://www.unhcr.org)) that immigration officials take measures to ensure that foreign workers entering Bahrain are 18 years or older. Nonetheless, the Committee notes the information from UNICEF that, between 1999 and 2008, approximately 5 per cent of children in Bahrain between the ages of 5 and 14 were engaged in child labour. The Committee observes that much of this work appears to be performed in sectors not covered by the Labour Law, noting the statement in the report of the International Trade Union Confederation, for the World Trade Organization General Council on the trade policies of Bahrain of 18 and 20 July 2007, entitled *Internationally recognized core labour standards in Bahrain* (ITUC Report) that children are reported to work in family businesses in addition to informal sector activities, as car washers, vendors and porters (page 6). In this regard, the ITUC Report emphasizes the need to introduce legal prohibitions to ensure that workers under 18 in these sectors do not perform hazardous work. **The**

**Committee therefore requests the Government to provide information on the measures taken or envisaged to ensure that children under 18 working in the informal sector and in family businesses are protected against work which is likely to harm their health, safety or morals.**

*Article 7(2). Effective and time-bound measures. Clause (d). Identify and reach out to children at special risk. Children engaged in begging.* The Committee notes the Government's statement in its report to the CRC of 25 March 2010 that, following a rise in begging and vagrancy in the country, including the exploitation of children for the purpose of begging, the Government took several measures to address this phenomenon (CRC/C/BHR/2-3, paragraph 352). The Government adopted Law No. 5 of 2007 on combating begging and vagrancy, section 4 of which provides for the placement of vagrants in a shelter specializing in the protection of persons living in the street (CRC/C/BHR/2-3, paragraph 502). The Government indicates that this shelter has the capacity to receive 80 persons, and houses persons for ten days while their case is evaluated. At the expiration of this period, if the person is a minor, they are transferred to the centre for the protection of minors. **The Committee expresses its concern at reports of the exploitation of children for the purpose of begging, and urges the Government to pursue its efforts to provide for the removal of these children and to provide for their rehabilitation and social integration. It requests the Government to provide information on the number of children reached through measures taken in this regard.**

*Part V of the report form. Application of the Convention in practice.* Following its previous comments, the Committee notes that the Committee on the Elimination of Discrimination Against Women, in its concluding observations of 14 November 2008, expressed concern at the existence of trafficking of women and girls into Bahrain for the purpose of sexual exploitation, and expressed regret at the lack of statistical data on this phenomenon (CEDAW/C/BHR/CO/2, paragraph 26). **The Committee expresses its concern at reports of child trafficking in Bahrain, and urges the Government to redouble its efforts to eliminate this worst form of child labour. It also requests the Government to take the necessary measures to ensure that data on the worst forms of child labour in the country, particularly child trafficking and the use of children for the purpose of begging, is made available. To the extent possible, all information provided should be disaggregated by sex and age.**

The Committee is raising other points in a request addressed directly to the Government.

## Bangladesh

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee had previously noted that sections 5(1) and 6(1) of the Suppression of Violence against Women and Children Act (SVWCA) prohibit the sale and trafficking of women (irrespective of their age) and children for purposes of prostitution or immoral acts. Noting that, by virtue of section 2(k) of the SVWCA, as amended in 2003, a "child" means a person under 16 years of age, it had observed that the SVWCA did not prohibit the sale and trafficking of boys between 16 and 18 years of age. The Committee had noted the Government's indication that it would take the necessary steps to amend the SVWCA in order to ensure that the sale and trafficking of all children under 18 years of age is prohibited.

The Committee notes from the Government's report that no developments have been made so far with regard to the amendments to the SVWCA. It once again notes the Government's indication that it will gradually take the necessary measures to amend the SVWCA in order to ensure that the sale and trafficking of all children under 18 years of age is prohibited. The Committee also observes that the provisions under the SVWCA cover only trafficking for sexual exploitation and do not prohibit the sale and trafficking of children, both boys and girls, for labour exploitation. It notes the information in a report of 14 June 2010 on trafficking of persons in Bangladesh, available on the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (Trafficking Report) that children, both boys and girls, are trafficked within Bangladesh for commercial sexual exploitation, bonded labour and forced labour. While some children are sold into bondage by their parents, some others are induced into labour or commercial sexual exploitation through fraud and coercion. The Committee once again reminds the Government that, under *Article 3(a)* of the Convention, the sale and trafficking of children under 18 years of age for labour or sexual exploitation is considered to be one of the worst forms of child labour and that, under the terms of *Article 1* of the Convention, immediate and effective measures must be taken to secure the prohibition and elimination of the worst forms of child labour *as a matter of urgency*. **In this respect, the Committee once again requests the Government to take immediate steps to ensure that the amendments to the SVWCA, which would prohibit the sale and trafficking of both boys and girls under 18 years for labour and sexual exploitation, are adopted in the very near future. It also requests the Government to provide information on any progress made in this regard.**

*Clause (d). Hazardous work. Child domestic workers.* The Committee had previously noted that, according to the World Confederation of Labour (WCL), child domestics worked in conditions that resembled servitude. It had also noted the Government's reply that forced labour is prohibited by virtue of article 34 of the Constitution and that child domestics were usually well treated and were not subject to forced or bonded labour. The Committee had nevertheless noted that, according to the National *Time-bound Programme* Framework (TICSA-II, 2006) (*TBP*), child domestics constituted a *high-risk* group who were outside the normal reach of labour controls and were scattered and isolated within the households in which they work. This isolation, together with the children's dependency on their employers, laid the



ground for potential abuse and exploitation. The long hours, low or no wages, poor food, overwork and hazards implicit in the working conditions affected the children's physical health.

The Committee notes the Government's information that a guideline to protect child domestic workers from the worst forms of child labour is under preparation. The Committee notes that, in its concluding observations of 26 June 2009, the Committee on the Rights of the Child (CRC) expressed concern that girls engaged as child domestic workers are more vulnerable to violence and exploitation (CRC/C/BGD/CO/4, paragraph 82). The Committee also notes that, according to a survey by the ILO entitled "Baseline Survey on Child Domestic Labour in Bangladesh, 2006", the number of child domestic workers in Bangladesh was estimated at 421,426, mostly girls, of which 147,943 were in Dhaka city alone and the rest in other urban and rural households. About 6 per cent of the child domestic workers were below the age of 8 years, 21 per cent below the age of 11 years and 74 per cent below the age of 17 years. The report further indicates that more than 99 per cent of the child domestics worked 7 days a week for exceedingly long hours, and more than 52 per cent of them did not receive any wages. The Committee expresses its *deep concern* at the number and situation of child domestic workers in the country. It reminds the Government that, pursuant to *Article 3(d)* of the Convention, work or employment in conditions that are hazardous are among the worst forms of child labour and are therefore to be eliminated as a *matter of urgency*, in accordance with *Article 1*. **The Committee accordingly urges the Government to take the necessary measures, in law and in practice, to protect child domestic workers under 18 years of age from hazardous work. In this regard, it requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons who employ children under 18 years of age in hazardous domestic work are carried out and that sufficiently effective and dissuasive penalties are applied in practice. It further requests the Government to take the necessary measures to provide for the withdrawal of child domestic workers from hazardous work and for their rehabilitation and social integration.**

*Articles 5 and 7(1). Monitoring mechanisms and penalties. Law enforcement agencies.* The Committee had previously noted that the police and other law enforcement agencies, as well as local governmental organizations, were involved in the fight against trafficking, and that the country had expanded anti-trafficking police units to every district to encourage victims to testify against traffickers and to compile data on trafficking. The Committee had further noted the Government's information that it had taken measures to provide special training to prosecutors, and to develop a trafficking course for the national police academy and the immigration officials to combat trafficking in persons.

The Committee notes the Government's information that it has initiated two projects, namely, the Community Based Working Child Protection Project (CBWCP) executed by the Ministry of Home Affairs, and the Actions for Combating Trafficking-in-Persons (ACT) executed by the International Organization for Migration (IOM) which aim to combat human trafficking, enhance preventive and protective measures, improve victim care and strengthen the Government's capacity to prosecute trafficking and trafficking-related crimes. It also notes that, according to the Trafficking Report, in 2009, the National Police Academy provided anti-trafficking training to 2,875 police officers. Moreover, 12 police officers from the Trafficking in Human Beings Investigation Unit received training on investigation techniques. The report further states that the Ministry of Home Affairs' Anti-trafficking Monitoring Cell collects data on trafficking arrests, prosecutions and rescues and coordinates and analyses local level information from regional anti-trafficking units. The Committee also notes the information contained in this report that during the period from 2008–09 there was some evidence of official complicity in human trafficking, as well as low-level government employees who were also complicit in trafficking. The report further indicates that politicians and regional gangs were also involved in human trafficking. In this regard, the Committee notes the information in a report on the worst forms of child labour in Bangladesh of 10 September 2009, available on the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (WFCL Report), that from April 2008 to February 2009, 166 traffickers were arrested in Bangladesh, of which 18 were convicted. The Committee expresses its *concern* at allegations of complicity and cooperation of law enforcement officials and other government officials with human traffickers. **The Committee therefore urges the Government to redouble its efforts to ensure that perpetrators of human trafficking and complicit officials are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, the Committee requests the Government to take the necessary measures to ensure that vigorous investigations and robust prosecutions of offenders are carried out, including by strengthening the role of the prosecutors, the police and the immigration officials. It requests the Government to provide information on the measures taken in this respect, and the results achieved, particularly the number of persons investigated, prosecuted, convicted and sentenced for cases involving victims under the age of 18.**

*Part V of the report form. Application of the Convention in practice.* The Committee had previously noted that the CRC, in its concluding observations, expressed regret that data on the extent of the sale of children, child prostitution and child pornography and on the number of children involved in these activities was very limited, mainly due to the absence of a comprehensive data collection system (CRC/C/OPSC/BGD/CO/1, paragraph 6). The Committee notes the Government's statement that the child labour surveys conducted in 1995–97 and 2001–03 indicated a reduction in child labour (of the age group of 5–14 years) from 18.3 per cent to 14.2 per cent, respectively. The Committee notes, however, that the CRC, in its concluding observations of 26 June 2009 (CRC/C/BGD/CO/4, paragraph 82), expressed concern at the continuing high incidence of child workers in five selected worst forms of child labour namely, welding, auto workshops, road transport, battery recharging and recycling, and work in tobacco factories. The CRC also expressed concern at the

lack of enforcement mechanisms of specific laws to protect child workers, the absence of mechanisms to monitor the working conditions of child workers, insufficient awareness amongst the public of the negative effects of child labour and its worst forms, and the very limited data on the number of children affected. *The Committee expresses its deep concern at the situation of children working in the abovementioned worst forms of child labour, and accordingly urges the Government to redouble its efforts to ensure in practice the protection of children from these worst forms. It also requests the Government to take the necessary measures to ensure that sufficient data on these worst forms of child labour, as well as child trafficking are made available. To the extent possible, all information provided should be disaggregated by sex and age.*

The Committee is raising other points in a request addressed directly to the Government.

## Belgium

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1988)**

*Article 3(3) of the Convention. Admission to hazardous work from the age of 16 years.* In its previous comments, the Committee noted that section 8 of the Royal Order of 3 May 1999 on the protection of young persons at work (Royal Order of 1999), prohibits the employment of young persons in the hazardous types of work listed under section 8(2) of the Order, namely work involving exposure to agents that are toxic, carcinogenic, cause hereditary genetic alterations, have harmful effects for the foetus during pregnancy or any other chronic harmful effect on human beings. Section 10 of the Order provides that this prohibition does not apply to “young persons at work” other than those who are student workers. Under section 2 of the Royal Order, the term “young person at work” means any working minor of 15 years of age or more who is not subject to full-time compulsory schooling, apprentices, trainees, pupils and students. The Committee noted the Government’s indication that authorization, by way of a dispensation, to perform hazardous work applies solely to “young persons at work” who are engaged in vocational training and provided that the following conditions are met: the work or presence of young persons in dangerous places must be essential to prevent their training from being interrupted or jeopardized; preventive measures must be taken; and the work must be performed in the company of an experienced worker. The Committee noted that the Code on Wellbeing at Work (Code), which incorporates all royal orders issued under the Act of 4 August 1996 concerning the well-being of workers in the performance of their work, also incorporates the Royal Order of 1999. It noted that the text of the Royal Order of 1999 constitutes Chapter I “Young persons at work” of Title XI “Specific Categories of Workers” of the Code, which will be incorporated in the form of a new royal order. Section 2(1) of the Royal Order of 1999, once incorporated in the Code, will become Title XI, section 2(1) of the Code. Furthermore, the Committee noted that this provision raises to 16 years the minimum age for admission to the work defined therein and that young persons engaged in tasks deemed to be hazardous, pursuant to section 8(2) of the Royal Order of 1999, will be able to work only as from the age of 16 years and in accordance with the conditions set out in section 10 of the said Order. The Committee noted, however, that the new Code, which will raise the minimum age for young persons at work to 16 years, does not as yet exist officially in the form of a royal order since it has been submitted for an opinion to the Higher Council for Prevention and Protection at Work and will thereafter be submitted to the Council of State for an opinion.

The Committee notes the Government’s indication that the Royal Order of 1999 prohibits young persons under 18 years of age from carrying out certain work and provides for occupational safety measures and the monitoring of the health of these young workers. However, it notes with *regret* that the report contains no information on the incorporation of the Royal Order of 1999 into the Code on Wellbeing at Work, which raises the minimum age for admission to work from 15 to 16 years. The Committee reminds the Government that, under *Article 3(3)* of the Convention, the national laws or regulations may, after consultation with the organizations of employers and workers, authorize the performance of hazardous work by young persons as from the age of 16 years on condition that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. *The Committee therefore urges the Government to take immediate and effective measures to ensure that its legislation is in conformity with the Convention by ensuring that the performance of hazardous work may not under any circumstances be authorized in respect of children under 16 years of age. In this regard, it once again expresses the firm hope that the new Code on Wellbeing at Work, which raises the minimum age for admission to work from 15 to 16 years, will enter into force as soon as possible. It requests the Government to provide information on any developments in this regard.*

## Bulgaria

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 5 of the Convention. Monitoring mechanisms. Social assistance service.* The Committee previously noted the Government’s information that the Social Assistance Agency (SAA) is an important party to the agreement towards the implementation of the National Strategy for Protection of the Rights of Children on the Street. The Committee further noted that the SAA conducts monthly monitoring of the activities of the Child Protection Departments with regard to child beggars and

street children, and that the SAA helps the Child Protection Departments in identifying unaccompanied children abroad or child victims of trafficking. The Committee noted with interest in the Government's report that, in late 2005, on a proposal from the State Agency for Child Protection (SACP) and with the cooperation of the International Organization for Migration, a coordination mechanism for referring and servicing cases of unaccompanied Bulgarian children and child victims of trafficking on their return from abroad was adopted. From the introduction in November 2005 of this coordination mechanism until July 2007, the SACP has worked on some 230 cases of unaccompanied Bulgarian children or child victims of trafficking from abroad, with the number of referent cases for the entire 2007 year being 102. From the start of 2008 until the date of the Government's report, the SACP has been working on 30 new such cases. The Committee further noted that in June 2008, the Agreement on monitoring child labour (Agreement), of April 2003, was renewed between the SACP and the General Labour Inspectorate – Executive Agency and the SAA has now also joined this agreement. The Agreement was drafted in accordance with the adopted ILO principles, the requirements of the European Agency on the Protection of Young People at Work and the Memorandum of Understanding between the Bulgarian Government and the ILO. Its principle objective is, through the creation of appropriate mechanisms for coordination and cooperation between the three institutions and other acceding parties, to increase the effectiveness of the activities of all partners from the governmental and non-governmental sector, as well as the social partners, on the monitoring of child labour. The top priorities of the Agreement are: (a) building a culture for preventing the involvement of children in the worst forms of child labour; (b) the mutual exchange of information on the issues of children's rights and the use of child labour; (c) the development of a legal basis for protecting the labour of children up to 18 years of age; and (d) the creation of a system for monitoring child labour on the whole territory of the country. The parties to the Agreement reported that the use of child labour in Bulgaria has been decreasing progressively, though still remains a challenge mostly in the small and medium-sized enterprises, as well as in the sectors of the informal economy and domestic farms. The parties further agreed to periodically revise the Agreement. **The Committee requests the Government to continue providing information on the number of unaccompanied children and child victims of trafficking identified and registered by the SAA or the SACP, the measures taken to protect such children and the results achieved.**

*Article 6. Programmes of action to eliminate the worst forms of child labour. National Action Plan against the Commercial Sexual Exploitation of Children.* In its previous comments, the Committee noted the Government's information that the main objective of the National Action Plan is to adopt effective measures against sexual exploitation leading to the elimination of child pornography, prostitution, sexual bondage, sexual tourism, trafficking and trading of children, and providing rehabilitative measures for child victims of such exploitation. The Committee noted in the Government's report that the main priorities of the SAA since its inception are the prevention of: violence; the worst forms of child labour; trafficking; and the sexual exploitation of children. The Committee noted with interest the following measures taken by the SACP. The SACP commenced development of a specialized web site on counteracting the commercial sexual exploitation of children. The main purpose of the web site is to provide thorough information on the problems of sexual and labour exploitation such as: national legislation; international standards; national documents; and practices. The web site also has a form for submitting information, through which 450 cases of children's rights violations were forwarded and for which actions are being taken immediately on carrying out inspections and, if needed, in referring the cases to the competent authorities. In 2007, the SACP has worked on 203 such received cases and, in the period from January to July 2008, 174 such cases were submitted, of which 150 are new. The Committee also noted in the Government's report that, since 2006, the SACP is a member of the public council under the telephone hotline for the fight against illegal and damaging content in the Bulgarian Internet space and, as such, receives information from the public concerning materials of a pornographic nature or concerning violence to children. Furthermore, on 11 May 2005, the Ethic Code for the prevention of trafficking and sexual exploitation of children in the field of tourism was signed by the SACP, the Animus Association, as well as representatives of the country's tourist industry. The aim of the Ethic Code, which is available on the SACP web site, is to introduce a new approach to fighting child trafficking by motivating the private sector, especially the representatives of the tourist industry, to introduce measures for the prevention of the sexual exploitation of children by Bulgarian and foreign tourists. Finally, the Committee noted the development of a National Telephone Hotline for Children, in November 2007, by the SACP and the Bulgarian representation of UNICEF. It provides crisis intervention, consultation, specialized information on children's rights, and redirects to suitable providers of services and child protection units and social protection units. **The Committee requests the Government to provide information in its next report on the impact of these various measures in preventing and eliminating the commercial sexual exploitation of children.**

*Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Social investment for children.* In its previous comments, the Committee noted the Government's information that, with the aim to enhance access to education for all children, including those from families with low incomes, the Government adopted amendments to the Family Benefits for Children Act (FACA), according to which a new type of allowance depending on the school attendance of children was introduced. "Social investment for children" for their upbringing, education, socialization and health care was also introduced by the FACA. The Committee requested the Government to provide information on the number of children who benefited from this programme. The Committee noted in the Government's report that, in the first six months of 2008, the monthly average of assistance, in the form of social investments under section 7 of the FACA, was provided to 423 families with 562 children, in the average monthly amount of 8,105 Bulgarian leva (BGN). For the same period of 2007, the assistance provided was to 328 families with 430 children and an average of BGN6,407 per month. The assistance granted covers total or partial expenses for things including: fees for crèches or kindergartens; canteen food; clothing and footwear; and school supplies. Monthly assistance also exists under section 8 of the FACA in the form of social investments for children. **The Committee requests the Government to continue providing information on the number of children who benefited from programmes such as the "social investment for children" programme.**

*Clause (b). Necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Child victims of trafficking.* The Committee noted in the Government's report that there are five crisis centres in the country. In the period from 2007 to July 2008, approximately 100 children have passed through these centres, which provide a complex of social services aimed at satisfying the daily needs and preparing the social integration of child victims of violence and trafficking. Starting 1 January 2007, the crisis centres fell under state jurisdiction and thus started receiving financing from the state budget. This, in part, amounted to a significant increase of the standards of social services offered, including those by the crisis centres and centres for work with street children. The Committee noted that the basic services provided by the crisis centres are: food and shelter; satisfying health needs; psychological support; life and social skills; participation of the child in a school form of education; and preparation for reintegration into the family or, if impossible, taking an adequate protection measure. The placement of the children in the crisis centres, which have a capacity to accept up to ten children each, is done by the child protection units, under the applicable legal provisions, for a term of up to six months, subject to the individual child's necessities. After their stay in the crisis centres, the children are directed to other services

and are actively monitored by child protection units in order to provide adequate support and to prevent a repetition of the same events to them, or other members of their family. The Committee noted with interest that child protection units have carried out monitoring and provided assistance in 35 cases in 2006, 37 cases in 2007, 31 cases in the first quarter of 2008 and in 32 cases in the second quarter of 2008. **The Committee requests the Government to continue providing information on the number of child victims of trafficking withdrawn from the worst forms of child labour and rehabilitated by the crisis centres.**

*Clause (d). Identify and reach out to children at special risk. Street children.* The Committee previously noted that, within the framework of the National Strategy for Protection of the Rights of Children on the Street for 2003–05, an agreement between the SACP, the Ministry of the Interior, and the SAA was signed to regulate the application of the measures for protecting child beggars. The Committee further noted that an action plan for work with begging children was developed and executed in five districts. The Committee noted in the Government's report that an important part of the activities of child protection units is work with street children. The first priority is given to working with the family in assessing the parents' capacity to take care of their children and supporting parents in raising and educating children. The emphasis is put on the individual particularities of the children, as per the methods approved by the SAA and the SACP, and is directed towards preventing children from finding themselves on the streets by developing social services in support of the family. There are currently nine functioning centres working with street children, whose methods, conditions and manners of providing services are approved by the SAA and the SACP who, together in turn, establish minimum services, activities and quality requirements, as well as material supplies, staffing and organization of activities for the centres. Furthermore, there is currently a total capacity of 89 places in five children's shelters, which are viewed as a last resort protection measure and are only called upon after exhausting all other options within the family environment. Finally, the Committee noted with interest that child protection units have mobile teams, comprised of police authorities, representatives of non-governmental organizations and local commissions, surveying the streets in order to identify street children. In the first half of 2008, 1,535 child protection unit mobile teams were operational and for the same time period, 61 newly registered cases of begging children were discovered. As of June 2008, 743 children were in the register of children in need of special protection. **The Committee requests the Government to continue providing information on the impact of these measures on protecting street children and child beggars from the worst forms of child labour and the results achieved.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Burkina Faso

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3, clause (a), and Article 7(1), of the Convention. Sale and trafficking of children and sanctions.* In its previous comments, the Committee noted that there is a high level of trafficking of children for labour exploitation both within the country and as a source of child labour for other countries. The Committee also noted with interest that, since the adoption and implementation of Act No. 038-2003/AN of 27 May 2003 defining and repressing the trafficking of children (Act No. 038-2003/AN of 27 May 2003), 31 cases of trafficking had been prosecuted in the 19 higher courts and 18 individuals had been sentenced to terms of imprisonment ranging from one to three years.

The Committee noted with interest the adoption of Decree No. 2008-332/PRES of 19 June 2008 promulgating Act No. 029-2008/AN of 15 May 2008 on combating trafficking in persons and similar practices (Act on combating trafficking in persons and similar practices). Under section 26 of this Act, Act No. 038-2003/AN of 27 May 2003 is repealed. The Committee took due note that sections 3 and 4 of the Act on combating trafficking in persons and similar practices provides for terms of imprisonment ranging from five to 20 years.

The Committee noted the information provided by the Government that it has continued and stepped up its efforts to combat the trafficking of children. It also noted the several court decisions handed down by the High Court between 2004 and 2007. The Committee noted that the individuals who have been prosecuted for the trafficking of children were found guilty and sentenced to terms of imprisonment ranging from two to 24 months, sometimes accompanied by a fine, and were ordered to pay costs. The Committee noted, however, that of the seven prison sentences handed down, six were suspended; one person was sentenced to two months' imprisonment and another to a fine of 50,000 CFA francs. The Committee reminded the Government that the trafficking of children is a serious crime and that, under *Article 7(1)*, of the Convention, the Government is obliged to take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect the Convention, including *the application* of sufficiently effective and dissuasive penal sanctions. **The Committee requests the Government to take the necessary measures to ensure that the penalties imposed on individuals found guilty of trafficking of children are sufficiently effective and dissuasive and that they are applied in practice. It requests the Government to provide information in this regard. The Committee also requests the Government to continue providing information on the application in practice of the Act on combating trafficking in persons and similar practices, including in particular, statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed.**

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of labour. 1. Sale and trafficking of children.* The Committee previously took due note of the information provided concerning the implementation in the country of the ILO–IPEC Programme on Combating Trafficking in Children for Labour Exploitation in West and Central Africa (LUTRENA) and noted, in particular, that 632 children had benefited from the project and from educational support. It requested the Government to continue providing information on the measures taken in the context of the implementation of the LUTRENA programme. The Committee noted with interest the information provided by the Government that 716 children have been intercepted and returned to their families with the support of the social, technical and financial partners, including the vigilance committees. It also noted the Government's indication that, to ensure better care for victims of trafficking and their reintegration into their families, transit centres have been equipped with facilities in the three provinces of Fada, Pama and Diapaga. The Committee also noted that financial assistance is given to families of child victims of trafficking for income-generating activities and the children are placed in workshops and various vocational training centres or reintegrated into the school system. Furthermore, the Wend Zoodo reception centre has been renovated and four literacy centres have been equipped with facilities. Finally, the Committee noted that the country is participating in phase V of the LUTRENA

programme. The Committee took due note of the measures taken by the Government to remove children from sale and trafficking and to ensure their rehabilitation and social integration, which it regards as a manifestation of its political will to eliminate this worst form of child labour. **The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken in the context of the implementation of phase V of the LUTRENA programme to remove child victims from sale and trafficking by indicating, in particular, the number of children who have actually been removed from this worst form of labour, and on the specific rehabilitation and social integration measures taken for these children.**

2. *Project for small-scale gold mines in West Africa.* In its previous comments, the Committee noted that Burkina Faso is participating in the ILO-IPEC project entitled "Prevention and elimination of child labour in artisanal gold mining in West Africa (2005-2008)" (the ILO-IPEC project on artisanal gold mining), the objective of which is to remove children from gold mines, while establishing structures to prevent child labour and to support local activities, particularly those aimed at enhancing the safety and boosting the income of adults working in the mines. The Committee noted that, according to the information contained in the 2007 ILO-IPEC activity report on the project in small-scale gold mines, more than 240 children had been prevented from being employed in hazardous work in gold mines and were receiving a school education.

The Committee noted with interest the detailed information provided by the Government concerning the ILO-IPEC project on artisanal gold mining which has been implemented on the gold-bearing site of Gorol Kadjè in Séno and the gold-bearing site of Ziniguima in Bam. It noted, in particular, that two small schooling programmes have been implemented which have allowed the schooling of 248 children, including 130 girls, namely 93 children on the Ziniguima site in Bam by the NGO Coalition in Burkina Faso for Children's Rights (COBUFADE) and 155 children on the Gorol Kadjè site in Séno by the NGO Action for the Promotion of Children's Rights in Burkina Faso (APRODEB). Overall, 657 children have been removed from the worst forms of labour in gold washing and have benefited from pre-school and school services, support in the form of school equipment, school clothing and afternoon snacks, and medical care. Furthermore, 16 groups of villagers have been created for income-generating activities in animal fattening, trading, dyeing and soap manufacture, including six groups of women and two groups of girls.

The Committee noted that two ILO-IPEC programmes are currently being implemented in the country, namely a programme on the rehabilitation and integration of child gold washers on the gold-bearing site of Gorol Kadjè through education and vocational training, and another which concerns support for the schooling of 310 children and the integration of 90 child workers, the protection of 120 child workers in the context of three young person clubs, support for income-generating activities for 90 mothers of gold-washing children and the mobilization of the community on the Ziniguima site. Finally, the Committee noted that a basic study on child labour in gold washing in Ziniguima and Gorol Kadjè is being carried out in the country. **The Committee requests the Government to continue its efforts to remove children from the worst forms of child labour in small-scale gold mines. It also requests it to continue providing information on the time-bound measures taken, particularly in the context of the implementation of the two ILO-IPEC programmes currently under way in the country, to provide the necessary and appropriate direct assistance for the removal of children from this worst form of child labour and for their rehabilitation and social integration. Furthermore, the Committee requests the Government to provide information on the basic study on child labour in gold washing in Ziniguima and Gorol Kadjè as soon as it has been completed.**

*Clause (e). Taking account of the special situation of girls.* The Committee previously noted that, according to ILO-IPEC information on the LUTRENA programme, internal trafficking, which accounts for 70 per cent of cases, mainly concerns girls who are engaged in domestic labour or working as street vendors in the country's major cities. It noted that girls, particularly those employed in domestic work, are often victims of exploitation, which takes on very diverse forms, and it is difficult to monitor their conditions of employment because of the unauthorized nature of this work. The Committee requested the Government to provide information on the measures taken in the context of the LUTRENA programme to protect girls against labour and sexual exploitation. The Committee noted the information provided by the Government concerning the measures it has taken in the context of the ILO-IPEC project on artisanal gold mining to take into account the situation of girls, in particular through financial assistance for income-generating activities and their insertion into training centres to learn a trade or their reintegration into the school system. The Committee noted, however, that no information is provided with regard to the measures taken in the context of the LUTRENA programme. **The Committee therefore requests the Government to provide information on the time-bound measures taken in the context of the implementation of phase V of the LUTRENA programme to protect girls from the worst forms of child labour, including, in particular, the number of girl victims of sale and trafficking for labour or sexual exploitation who have actually been removed from this worst form.**

*Article 8. International cooperation and assistance.* 1. *Regional cooperation.* The Committee previously noted that the Government has signed bilateral cooperation agreements on the cross-border trafficking of children with the Republic of Mali and multilateral cooperation agreements on combating the trafficking of children in West Africa. It requested the Government to provide information on the implementation of these agreements. The Committee noted the Government's indication that statistics will be provided as soon as they are available. **The Committee expresses the hope that the Government will be able to provide information in its next report and once again requests it to indicate whether the information exchanges with the other signatory countries have made it possible to: (1) apprehend and arrest persons operating in networks engaged in the trafficking of children; and (2) detect and intercept child victims of trafficking in the border areas.**

2. *Poverty elimination.* In its previous comments, the Committee noted the draft Decent Work Country Programme for Burkina Faso. It noted that the problems connected with child labour form part of the priorities of this country programme, including child labour in rural areas and in mines, and that the Government intends to take measures aimed at eliminating child labour in the context of poverty reduction. The Committee noted that the Government does not provide any information on this matter. **Noting once again that poverty reduction programmes contribute to breaking the poverty cycle, which is essential for the elimination of the worst forms of child labour, the Committee requests the Government to provide information on the measures taken in the context of the implementation of the Decent Work Country Programme to eliminate the worst forms of child labour, particularly as regards the actual reduction of poverty among child victims of sale and trafficking and those who carry out hazardous work in mines and quarries.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Burundi

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2(1) of the Convention. Scope of application.* In its previous comments, the Committee noted the indication by the International Trade Union Confederation (ITUC) that child labour constitutes a serious problem in Burundi, particularly in agriculture and informal activities in urban areas. It also noted the statement by the Government that the socio-political crisis experienced by the country had aggravated the situation of children, some of whom were obliged to perform work "illegally" to support their families, very frequently in the informal economy and in agriculture. The Committee noted that section 3 of the Labour Code, in conjunction with section 14, prohibits work by young persons under 16 years of age in public and private enterprises, including farms, where such work is carried out on behalf of and under the supervision of an employer.

In its report, the Government confirmed that the country's regulations did not apply to the informal sector, which consequently escapes any control. Nevertheless, the question of extending the application of the labour legislation to this sector was to be discussed in a tripartite context on the occasion of the revision of the Labour Code and its implementing texts. The Committee reminded the Government that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship, including own-account work. ***It once again expresses the firm hope that the Government will take the necessary measures to extend the scope of application of the Convention to work performed outside an employment relationship, particularly in the informal economy and in agriculture. The Committee requests the Government to provide information in this respect.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted the ITUC's indications that the war had weakened the education system due to the destruction of many schools and the death or abduction of a large number of teachers. According to the ITUC, the school attendance rate is lower and the illiteracy rate higher for girls. The Committee further noted that, according to a report of the International Bureau of Education (UNESCO) of 2004 relating to data on education, Legislative Decree No. 1/025 of 13 July 1989 reorganizing education in Burundi does not provide for free and compulsory primary education. Entry into primary education is around the age of 7 or 8 years and lasts six years. Children therefore complete primary education around the age of 13 or 14 years and then have to pass a competition to enter secondary education. The Committee further noted that in 1996 the Government had prepared a Global Plan of Action for Education designed to improve the education system, among other measures, by reducing inequalities and disparities in access to education and achieving a gross school attendance rate of 100 per cent by the year 2010.

The Committee duly noted the information provided by the Government in its report with regard to the various measures adopted in the field of education. It noted that, under article 53(2) of the Constitution of 2005, the State is under the obligation to organize public education and promote access to such education. It further noted that basic education is free of charge and that the number of children attending school tripled during the 2006 school year. In 2007, primary schools would be constructed and other mobile and temporary schools would be established. Furthermore, coordination units for girls' education had been established and over 1,000 teachers recruited. ***The Committee once again encourages the Government to pursue its efforts in the field of education and to provide information on the impact of the above measures in terms of increasing the school attendance rate and reducing the drop-out rate, with special attention to the situation of girls. It also requests the Government to indicate the age of completion of compulsory schooling and the provisions of the national legislation which determine this age.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Cameroon

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

*Article 1 of the Convention. National policy.* In its previous comments, the Committee noted a communication from the General Confederation of Labour – Liberty of Cameroon (CGT–Liberté) observing that the National Plan to Combat Child Labour (National Plan) has never been formally adopted. It also noted the information from the Government that inter-ministerial consultations are being held to update and finalize the National Plan.

The Committee notes with *regret* the information sent by the Government in its report on the Worst Forms of Child Labour Convention, 1999 (No. 182), that the National Plan has still not been drawn up. It also notes that implementation of the Plan is to start after a legal and institutional framework has been set up. ***Noting that the Government has been referring since 2006 to the elaboration of the National Plan to Combat Child Labour, the Committee urges the Government to take the necessary measures to ensure that the Plan is adopted and implemented at the earliest possible date. It requests the Government to provide information on progress made to this end.***

*Article 2(1) and Part V of the report form. Minimum age of admission to employment or work and application of the Convention in practice.* The Committee noted previously that there are no exemptions for light work to the minimum age of 14 years for admission to work. It also noted that according to UNICEF statistics for the years 2000–06, 31 per cent of children aged between 5 and 14 years in Cameroon are working. It likewise noted that an ILO–IPEC action programme entitled "Survey and development of a database on child labour" started up in March 2007. According to the summary of this programme, the premature entry of children into the labour market remains a worrying phenomenon in Cameroon, among other reasons because the people live in a state of poverty. For example, a basic survey on child labour in commercial agriculture, conducted in 2004 in the major cocoa-producing areas, reveals that 30 per cent of children under 14 years of age are involved in cocoa-production activities. The summary nonetheless indicates that there is a lack of statistical data on child labour problems in Cameroon and that most statistical sources were not designed to deal

specifically with child labour. Consequently, in 2007 the Government conducted a modular survey on child labour, through the National Institute of Statistics (INS), the aim being to compile a fuller survey with nationwide coverage.

The Committee notes that the Government has provided some of the statistics compiled by the National Report on Child Labour in Cameroon conducted by the INS in cooperation with ILO–IPEC and published in December 2008. The results of this survey show that in 2007, 41 per cent of children aged from 5–17 years – i.e. 2,441,181 – work in Cameroon. The report indicates that children’s participation in economic activities increases with age and that 51 per cent of the 10–14 age group is engaged in work. Of the economically active 5–17 year-olds, 85.2 per cent are used in agriculture, fisheries, forestry and harvesting, and 4.4 per cent in hazardous work. Furthermore, 79.3 per cent of working children are employed in unpaid jobs as family workers. The Committee notes the information supplied by the Government to the effect that no reports by the inspection services refer to the use of children in enterprises. ***The Committee again expresses its deep concern at the large number of children under 14 years of age in Cameroon who work and accordingly urges the Government to take the necessary measures to ensure that work by children under the minimum age for admission to employment is effectively abolished, in particular by stepping up labour inspection in the informal economy.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that there are no legal or regulatory provisions establishing the age for compulsory schooling. It also noted that according to the 2006 Multiple Indicator Cluster Survey conducted by the INS in collaboration with UNICEF, around 44 per cent of children who have reached the statutory age of entry to the first year of primary school, i.e. six years, are actually enrolled. The survey also indicates that the net primary school attendance rate is 64 per cent for 6 year-olds and that it gradually increases with age, reaching 90 per cent for 11 year-olds. Furthermore, 35 per cent of children of secondary school age are still in primary school. The Committee also noted that only 38 per cent of children aged between 12 and 18 attend a secondary or higher education establishment.

The Committee notes the information from the Government to the effect that the age of completion of compulsory education is 14 years and that primary schooling is free. It also notes the information supplied by the Government in the report it submitted to the Committee on the Rights of the Child on 3 April 2008 (CRC/C/CMR/2, paragraph 204), that a sectoral education strategy to help facilitate access to education for young girls was adopted in 2002. Various measures have been taken in this context to promote literacy and increase the enrolment of girls (CRC/C/CMR/2, paragraphs 204–205). The report also indicates that school aid is provided to destitute children and children from indigent families (CRC/C/CMR/2, paragraph 195).

The Committee takes due note of the measures taken by the Government in the field of education. It observes, however, that according to the UNESCO statistics for 2008, the situation remains worrying. For example, 12 per cent of children of compulsory schooling age do not attend school and the primary school repeat rate is 17 per cent. The Committee further notes that according to UNESCO’s Education For All Global Monitoring Report 2009, in Cameroon children who work suffer a 30–67 per cent disadvantage in terms of school attendance. The National Report on Child Labour in Cameroon reveals that up to the age of 14 educational retardation and school dropout rates are higher among children performing work to be abolished than among other children. It also indicates that 39.8 per cent of children between 10 and 14 years of age study and work at the same time. The Committee further notes that in its concluding observations of February 2010 (CRC/C/CMR/CO/2, paragraph 65), the Committee on the Rights of the Child expressed concern at the low budgetary allocation for education and the significant gender and regional disparities in access to education, particularly in the Far North, North, Adamaoua, East and Southern regions. The Committee also notes the concern expressed by the Committee on the Rights of the Child at the insufficient number of trained teachers, the poor quality of education and the lack of learning materials and equipment. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to redouble its efforts to improve the running of the education system so as to allow children under 14 years of age access to basic compulsory schooling, particularly in the most affected regions of the country. It also asks the Government to provide information on progress made in this respect and on results obtained, particularly under the sectoral education strategy. The Committee also asks the Government to indicate the provisions of national laws or regulations that prescribe the age of completion of compulsory schooling.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

The Committee notes the Government’s reply to the communication of the General Confederation of Labour–Liberty of Cameroon (CGT–Liberté), dated 17 October 2008, and the Government’s report.

*Article 3 of the Convention. Worst forms of child labour. Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities.* In its previous comments the Committee noted that Cameroon’s legislation did not appear to contain provisions prohibiting the use, procuring or offering of children under 18 years of age for the production of pornography or pornographic performances. It further noted that Act No. 2005/015 of 20 December 2005, to combat the trafficking of children, contains no provisions expressly prohibiting the use, procuring or offering of children for illicit activities.

The Committee notes the Government’s information that these prohibitions will be taken into account in the draft Child Protection Code. It notes with ***regret*** that this Code has been in the process of adoption since 2006. The Committee

reminds the Government that, according to *Article 3(b) and (c)* of the Convention, the use, procuring or offering of a child for the production of pornography or pornographic performances and for illicit activities are considered as the worst forms of child labour and that, according to *Article 1*, immediate and effective measures must be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labour. ***Consequently, the Committee urges the Government to take the necessary steps to ensure that the Child Protection Code is adopted in the near future and that it contains provisions prohibiting the use, procuring or offering of children under 18 years of age for the production of pornography or pornographic performances, and the use, procuring or offering of persons under 18 years of age for illicit activities, including the production and trafficking of drugs, as defined in the relevant international Conventions. Provision must also be made for penalties for the abovementioned offences. The Committee requests the Government to provide information on the progress made in this regard and to provide a copy of the Code as soon as it has been adopted.***

*Articles 5 and 7(1). Monitoring mechanisms and sanctions. Law enforcement agencies.* The Committee noted previously that a vice squad had been established at the Interpol National Central Bureau (NCB-Interpol) in Yaoundé. It also noted that, in addition to the monitoring carried out by the vice squad, a telephone number has been made available to encourage the public to report abuse anonymously, and NCB-Interpol has set up a round-the-clock answering service to receive the calls. Furthermore, three contact officers are on permanent standby to carry out investigations. The Committee nonetheless noted CGT-Liberté's comment on the absence of any extracts from reports or documents regarding the operation of the vice squad.

The Committee notes the Government's reply to CGT-Liberté's observation that the vice squad is operating well but, for security reasons, no information can be disclosed. It further notes from the information in the Government's report that extracts of the vice squad's report will be sent to the Office later. The Government also states in its report that it has no information on the exact number of children identified as victims of trafficking by the NCB-Interpol reporting system or on police investigations. The Committee notes, however, from a report entitled "2008 Findings on the Worst Forms of Child Labour", published on the website of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), that the police arrested three traffickers attempting to traffic seven children for the purpose of labour exploitation. According to the same report, the Government of Cameroon has made an effort to monitor its borders for trafficking. However, the Committee notes the information in a report entitled "Trafficking in Persons Report 2010 – Cameroon", also published on the website of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), that the Government of Cameroon did not show evidence of increasing efforts to convict and punish trafficking offenders or to identify and protect victims of trafficking. In the course of the reporting period, the authorities conducted investigations into 26 cases of human trafficking, none of which resulted in a prosecution. The report also indicates that there were signs of some officials' involvement in trafficking. Furthermore, judges, law enforcement officials and social workers do not enforce Act No. 2005/015 because they are unfamiliar with it. Indeed, there is no system to provide them with copies of new laws. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of 18 February 2010 (CRC/C/CMR/CO/2, paragraph 75), expressed regret at the low level of enforcement and implementation of Act No. 2005/015, as well as the lack of data and remedial action. The Committee expresses its *deep concern* at the low level of enforcement of Act No. 2005/015 and at the allegations of involvement of law enforcement officials in human trafficking. ***The Committee urges the Government to redouble its efforts to ensure that anyone engaging in the sale and trafficking of children under the age of 18 and any state official involved in such acts is prosecuted and that sufficiently effective and dissuasive sanctions are applied in practice. In this regard, the Committee requests the Government to take the necessary steps to ensure that thorough investigations and robust prosecutions of offenders are carried out, in particular by building the capacity of law enforcement agencies through the dissemination of Act No. 2005/015. It requests the Government to provide information on the measures taken to this end and on the results obtained, particularly in terms of the number of investigations and prosecutions carried out.***

*Article 6. Programmes of action.* In its previous comments the Committee noted the completion of the LUTRENA project in Cameroon and accordingly asked the Government to take steps to secure the adoption of a national policy to combat the trafficking of children for the purpose of exploiting their labour, in accordance with the recommendations in the study carried out by ILO-IPEC-LUTRENA in 2005.

The Committee notes that the Government has sent no information on this matter. It notes, however, from the Government's second report to the Committee on the Rights of the Child (CRC/C/CMR/2, paragraphs 222 and 223) that the Government refers to a national plan of action to combat child labour and trafficking in children and a plan of action to combat the sexual exploitation of children, which were drawn up in October 2005. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations (CRC/C/CMR/CO/2, paragraph 73) of 18 February 2010, welcomed the approval in July 2009 of the National Plan to Combat Trafficking and Sexual Exploitation. ***The Committee accordingly requests the Government to provide information on the measures taken under the National Plan to Combat Trafficking and Sexual Exploitation adopted in July 2009, and to provide a copy of this Plan.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these forms of child labour and ensuring their rehabilitation and social integration.* 1. *Sale and trafficking of children.* With reference to its previous comments, the Committee notes the Government's replies to CGT-Liberté's observations stating that there are many reception, transit and accommodation



centres in various parts of the country and that the territorial officers have always set up ad hoc transit and accommodation centres when they have to deal with a convoy of trafficked persons. It also notes the information in the Government's report that there is a plan to set up a national network for combating the trafficking of children and child labour, made up of representatives of the various state authorities, as part of the transfer of ownership of the WACAP and LUTRENA projects, now under way.

The Committee notes the information in the Trafficking in Persons Report 2010 that the system for referring the victims of trafficking to transit and shelter facilities involves cumbersome administrative procedures. The report also states that in August 2009 the Ministry of Social Affairs began working with UNICEF to draft a manual that would show well-respected families in local communities how to create foster homes that provide shelter, food, health care and education to trafficking victims. This new system to protect such victims through the provision of foster care is to start up in 2010. The Committee further notes that in its written replies to the list of issues raised by the Committee on the Rights of the Child in its examination of the second periodic report (CRC/C/CMR/Q/2/Add.1, paragraph 59), the Government places action to combat the trafficking and exploitation of children among its urgent and high priority issues. ***The Committee requests the Government to redouble its efforts to prevent children under 18 years of age from falling victim to sale and trafficking and to remove them from these worst forms of child labour, taking care in particular to simplify the administrative procedure for placing child victims of trafficking in transit and shelter facilities. The Committee also asks the Government to provide information on the number of children actually removed from this worst form of child labour and placed in transit and shelter facilities and foster families. It further asks the Government to provide information on the rehabilitation and social integration measures taken to provide child victims of sale and trafficking with access to free basic education and occupational training. Lastly, the Committee requests the Government to continue to provide information on the implementation and functioning of the national network to combat the trafficking of children.***

2. *Hazardous work and exploitation of child labour in cocoa plantations.* The Committee noted previously that a system to monitor child labour in plantations has been set up and that a number of children were prevented from working on cocoa plantations or withdrawn from such work under the WACAP project. Noting that the WACAP project had ended in Cameroon, it asked the Government to take steps to follow up on these prevention and withdrawal measures, particularly for children working on cocoa plantations.

The Committee notes the Government's information that, under the WACAP and LUTRENA projects, 5,413 children were rescued from trafficking. ***Noting that the Government's report contains no information on the follow-up to the WACAP project, it urges the Government to take immediate and effective measures to prevent children under 18 years of age from working in cocoa plantations and to have them withdrawn therefrom. It also asks the Government to take measures for their rehabilitation and social reintegration, in particular, by affording them access to free compulsory basic education and to vocational training. Lastly, it asks the Government to supply detailed information on the measures taken to this end and on the results obtained.***

*Clause (d). Children at special risk.* 1. *HIV/AIDS orphans.* In its previous comments the Committee noted that according to the UNAIDS 2008 Report on the Global AIDS Epidemic, the number of children orphaned because of HIV/AIDS appeared to have increased to 300,000 in 2007. It accordingly asked the Government to step up efforts to prevent the employment of children in the worst forms of child labour.

The Committee notes the information provided by the Government in its report to the Committee on the Rights of the Child (CRC/C/CMR/2, paragraph 31) of April 2008 that, with the involvement of the Global Fund to Fight AIDS, Tuberculosis and Malaria, an initiative under the authority of the Ministry of Social Affairs aims to provide access for 300,000 orphans and vulnerable children (OVCs) to basic social services by 2010. It notes, however, from the same report that the Government has noted an aggravation of the HIV/AIDS pandemic, which has resulted in an increase in the number of OVCs. Indeed, in its report of March 2010 submitted in the context of follow-up to the Declaration of Commitment on HIV/AIDS, the Government indicates that in 2009 there were 327,600 HIV/AIDS orphans in Cameroon. It further notes that efforts undertaken remain insufficient, and that the promotion of education for OVCs must be continued. The Committee also notes that, in its concluding observations (CRC/C/CMR/CO/2, paragraph 45), the Committee on the Rights of the Child expressed concern about the limited availability of residential care facilities and other forms of alternative care for abandoned children and orphans, as well as the limited quality of care in institutions. It likewise expressed concern about the lack of an adequate policy and insufficient human, technical and financial resources for alternative care. ***Expressing its concern at the increase in the number of HIV/AIDS orphans, the Committee urges the Government to redouble its efforts to ensure that children orphaned by HIV/AIDS are not engaged in the worst forms of child labour. It asks the Government to provide information on the measures taken and the results obtained under the National Programme for Support to Orphans and Vulnerable Children (PNS-OVC), with particular reference to the provision of access to free compulsory basic education for OVCs.***

2. *Street children.* Further to its previous comments, the Committee takes note of the statistics sent by the Government in its report showing that, between 2008 and 2009, 904 street children of 4 to 18 years of age were identified by the Yaoundé and Douala social centres. Of the 469 children identified in 2009, 119 were returned to families, 63 were enrolled in school and 62 were placed in institutions. The Committee notes the information supplied by the Government in its report of April 2008 to the Committee on the Rights of the Child (CRC/C/CMR/2, paragraphs 233 and 235) that in

Cameroon there are 10,000 children living and/or working in the streets countrywide, particularly in big cities such as Yaoundé, Douala and Ngaoundéré. It further notes that, in its written replies to the list of issues raised by the Committee on the Rights of the Child (CRC/C/CMR/Q/2/Add.1, paragraph 59), the Government places action to combat the street children phenomenon among the issues it deems to be of high priority and in need of urgent attention. Furthermore, according to information given by the Government to the Committee on the Rights of the Child, a new project to combat the phenomenon of street children is scheduled to start up in March 2010. **Considering that street children are particularly exposed to the worst forms of child labour, the Committee encourages the Government to pursue its effort to identify, withdraw and reintegrate street children. It asks the Government to provide information on the measures taken and the results obtained under the project to combat the phenomenon of street children.**

*Part V of the report form. Application of the Convention in practice.* With reference to its previous comments, the Committee notes the statistics published in the National Report on Child Labour in Cameroon conducted by the National Institute of Statistics (INS) in cooperation with ILO-IPEC and published in December 2008. The results of the abovementioned survey show that in 2007 2,441,181 children aged between 5 and 17 years (41 per cent) worked in Cameroon. The report also shows that 266,594 children (4.4 per cent) in this age group are affected by hazardous work. Furthermore, the percentage is nearly twice as high in urban as in rural areas and the phenomenon is particularly marked in cities such as Douala and Yaoundé. The Committee also notes that, according to the report on the worst forms of child labour, most working children are to be found in the urban informal sector. The Committee nonetheless observes that, among the worst forms of child labour, only hazardous work is dealt with by the National Report on Child Labour. It takes note of the concern expressed by the Committee on the Rights of the Child in its concluding observations (CRC/C/CMR/CO/2, paragraph 19) about the lack of reliable data, inter alia, on street children and child victims of trafficking or sexual exploitation. **The Committee expresses deep concern at the number of children employed in hazardous work and accordingly urges the Government to take immediate and effective measures to ensure that children are protected from this worst form of child labour in practice. It also asks the Government to provide statistics on the nature, extent and trends of worst forms of child labour, particularly as regards the sale and trafficking of children and street children. It further requests the Government to provide information on the number and nature of offences reported, investigations, prosecutions, convictions and penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex and age.**

The Committee is raising other points in a request addressed directly to the Government.

## Central African Republic

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 1 of the Convention and Part V of the report form. National policy and the application of the Convention in practice.* In its previous comments, the Committee noted a study by the Ministry of the Economy, Planning and International Cooperation of 2003 on the situation of children in the country. According to this study, 5.2 per cent of boys and 5.6 per cent of girls between the ages of 6 and 9 years are engaged in work. The study also shows that boys work, in particular, in the private wage sector (boys account for 68.5 per cent of children working in this sector), the para-public wage sector (66.7 per cent), for an employer (72.7 per cent) and as apprentices (60.2 per cent), while the number of girls is greater in own-account work (girls account for 56.9 per cent of children working in this sector) or as family helpers (53.5 per cent). The Committee also noted the Government's indication that a study to identify and classify types of child labour, carried out in collaboration with UNICEF, was in the process of being validated.

The Committee noted that, according to UNICEF statistics for 2007, 57 per cent of children between the ages of 5 and 14 years are engaged in work in the Central African Republic (44 per cent of boys and 49 per cent of girls). It noted the Government's indication that, in the context of the adoption of the new Act No. 09.004 issuing the Labour Code of the Central African Republic in January 2009 (Labour Code of 2009), the Labour Department has worked on the preparation of texts to implement the Code. The Government indicated that a national policy for the progressive abolition of child labour and to increase the minimum age for admission to employment or work will be prepared once the implementing texts have been issued. The Committee expressed once again its *deep concern* at the situation of young children who work in the country out of personal necessity. **It therefore urges the Government to take the necessary measures to ensure that the national policy for the progressive abolition of child labour is adopted in the very near future and that programmes of action are implemented in the sectors in which child labour is the most problematic. It requests the Government to provide information in its next report on the progress achieved in this respect. It also once again requests the Government to provide a copy of the study to identify and classify child labour.**

*Article 2(1). Scope of application and minimum age for admission to employment or work. Self-employed work.* In its previous comments, the Committee noted the information provided by the Government that most children are used in the sectors of the informal economy, such as diamond workshops, portage or diving in search of diamonds. The Government indicated that the juvenile courts and the Children's Parliament guarantee the protection envisaged by the Convention with respect to children engaged in an economic activity on their own account. The Committee noted that the Labour Code of 2009 is not applicable to self-employed workers (section 2), but only governs professional relationships between workers and employers derived from labour contracts (section 1). **Noting that the Government's report does not contain any information on this subject, the Committee requests it once again to provide information on the manner in which the juvenile courts and the Children's Parliament ensure the application of the protection envisaged by the Convention in respect of children who work without an employment relationship, in particular when they work on their own account or in the informal economy. In this respect, it**

once again requests the Government to envisage the possibility of adopting measures to adapt and strengthen the labour inspection services so as to secure this protection.

*Family enterprises.* The Committee noted previously that, under section 2 of Order No. 006 of 21 May 1986 determining the conditions of employment of young workers, the types of work and the categories of enterprises that are prohibited for young persons and the age limit up to which this prohibition applies (Order No. 006 of 1986), children under 14 years of age may be employed, even as apprentices, in establishments in which only family members are engaged. The Committee noted that section 166 of the Labour Code of 2009 provides that no one may be apprenticed who is not at least 14 years of age. Furthermore, section 259 provides that children may not be employed in any enterprise, even as apprentices, before the age of 14 years, unless an exception is issued by order of the minister responsible for labour taking into account the opinion of the National Standing Labour Council. **The Committee requests the Government to indicate whether exceptions have been authorized by the minister responsible for labour under section 259 of the Labour Code of 2009.**

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that the age of completion of compulsory schooling is 14 years. It also noted the Government's indication to the Committee on the Rights of the Child that, pursuant to section 6 of Act No. 97/014 of 10 December 1997 respecting education policy, school attendance is compulsory from 5 to 15 years and that the texts to be issued under this Act are being prepared. The Committee also noted the adoption of the Plan of Action on Education for All (NPA-EFA) in 2005, the objective of which is to increase the school attendance rate, reduce the school drop-out rate and ensure the completion of the full cycle of primary education by all children. The Committee further noted that, according to UNICEF statistics for 2006, the net school enrolment rate for primary education was 44 per cent for boys and 37 per cent for girls, while the figures for secondary education were 13 per cent for boys and 9 per cent for girls. The Committee also noted that, according to the Education for All Global Monitoring Report 2008, published by UNESCO under the title "Education for All in 2015: Will we make it?", in view of the lack of data, it was impossible to make projections for the achievement of the goals established by the NPA-EFA for the Central African Republic for 2015. However, the study indicates that 20 per cent or more of primary school students are repeating their grade and that girls repeat grades more than boys.

The Committee observed that, according to UNICEF statistics for 2007, the school attendance rates at the primary and secondary levels remain a matter of great concern: the net enrolment rate at primary school is 53 per cent for boys and 38 per cent for girls, and the figures for secondary education are 13 per cent for boys and 9 per cent for girls. The Committee, however, noted that the Government has not provided any information on this subject in its report. The Committee therefore once again expressed its **deep concern** at the low rate of school enrolment in both primary and secondary education, and particularly at the disparity between the two sexes, to the detriment of girls, and the fairly high rate of repeating school years, which affects girls in particular. It once again observed that poverty is one of the primary causes of child labour and that, when combined with a deficient educational system, it prevents the development of the child. **Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to improve the functioning of the education system in the country so as to enable children to attend compulsory basic education or to be integrated into an informal school system. In this respect, it once again requests the Government to provide information on the measures adopted in the context of the NPA-EFA of 2005 to increase the school enrolment rate and reduce the school drop-out rate, so as to prevent children under 14 years of age from working. The Committee requests the Government to provide information in its next report on the results achieved. Finally, the Committee once again asks the Government to provide a copy of Act No. 97/014 of 10 December 1997 on education policy.**

*Article 3(1) and (2). Minimum age for admission to hazardous types of work and determination of these types of work.* With reference to its previous comments, the Committee noted that, under the terms of section 263 of the Labour Code of 2009, the worst forms of child labour, that is work by any person under 18 years of age (section 3), are prohibited throughout the Central African Republic. Section 262 provides that the worst forms of child labour include work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. The Committee noted the Government's indication in its report that section 261 of the Labour Code of 2009 provides that a joint order of the Minister of Labour and the Minister of Public Health, issued taking into account the opinion of the National Standing Labour Council, shall determine the nature of the types of work and the categories of enterprises prohibited for children and the age limit up to which this prohibition applies. The Committee however observed that no list of these hazardous types of employment or work appears to have been published up to now. The Committee reminded the Government that, by virtue of *Article 3(2)* of the Convention, the hazardous types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. **The Committee therefore requests the Government to take the necessary measures to ensure that a list determining the hazardous types of employment or work that are prohibited for persons under 18 years of age, in accordance with section 261 of the Labour Code of 2009, is adopted in the near future. It requests the Government to provide information on the progress achieved in this respect.**

*Article 9(3). Keeping of registers by employers.* With reference to its previous comments, the Committee noted that, under the terms of section 331 of the Labour Code of 2009, the employer shall always keep an up to date employment register, the first part of which shall contain data relating to the persons and the contracts of all workers engaged in the enterprise. The employment register has to be kept at the disposal of labour inspectors, who may require its production at any time. However, the Committee noted that section 331 also provides that certain enterprises or establishments, as well as certain categories of enterprises or establishments, may be exempted from the obligation to keep an employment register by reason of their situation, their small size or the nature of their activity, by order of the Ministry of Labour, issued taking into account the views of the National Standing Labour Council. The Committee once again reminded the Government that *Article 9(3)* of the Convention does not envisage such exceptions. **Noting that the Labour Code of 2009 has not taken this issue into account, the Committee urges the Government to take the necessary measures to ensure that all employers are required to keep a register indicating the names and ages or dates of birth, duly certified wherever possible, of persons employed by them or working for them who are under 18 year of age. It requests the Government to provide information in its next report on the progress achieved in this respect.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* The Committee previously noted that the Secretary-General of the United Nations, in his report of 21 December 2007 on children and armed conflict (A/62/609-S/2007/757, paragraphs 29–32), referred to many cases of the recruitment of children by the rebel group *Union des forces démocratiques pour le rassemblement* (UFDR), which controls parts of the north-east of the country. During UFDR attacks on the positions of the armed forces of the Central African Republic (FACA) and the French army in Birao in March 2007, former students of the Birao secondary school were identified among the rebels. Many of the children between the ages of 12 and 17 years who participated in these attacks lost their lives. Furthermore, according to the report, a UNICEF mission in June 2007 confirmed that there were approximately 400 to 500 children associated with the rebel groups of the *Armée pour la restauration de la République et la démocratie* (APRD) and the *Front démocratique du peuple centrafricain* (FDPC), which were participating in operations in the north-western region. The APRD and the FDPC are increasingly resorting to the forced recruitment of children in their areas of influence. The Committee noted in this respect that the national legislation does not appear to contain provisions prohibiting and penalizing the forced recruitment of young persons under 18 years of age for use in armed conflict and it therefore requested the Government to take measures as a matter of urgency for the adoption of such legislation.

The Committee noted with satisfaction that sections 262 and 263 of the new Act No. 09.004 issuing the Labour Code of the Central African Republic (Labour Code of 2009), adopted in January 2009, provide that all forms of slavery or practices similar to slavery affecting young persons under 18 years of age, as well as forced or compulsory labour, including forced or compulsory recruitment for their use in armed conflict, are prohibited throughout the territory of the Central African Republic. The Committee further noted that fines and terms of imprisonment are envisaged in the event of violations of this provision (section 393).

However, the Committee noted that, according to more recent information provided by the Secretary-General of the United Nations in his Report of 3 February 2009 on children and armed conflict (S/2009/66, paragraphs 26 to 36), the APRD recently identified 250 children for release and reintegration, but it may well be that the children associated with the APRD are more numerous. In November 2008, 100 children had been identified, most of whom were between the ages of 12 to 17 years, with some cases of children of 9 and 10 years of age. The Secretary-General also reports that many children were abducted and recruited in the south-west of the country following the four attacks by the Lord's Resistance Army (LRA) in February and March 2008 on villages in the Obo area. A joint mission of the United Nations, the United Nations Peace Building Support Office in the Central African Republic, the Office for the Coordination of Humanitarian Affairs, the Department of Safety and Security and UNICEF found that some of the attackers were reportedly under the age of 15 years. According to 35 adults who had been abducted and were later released by the LRA, the 55 children who were abducted during the attacks are now used as soldiers or for auxiliary tasks, and the girls are used as sexual slaves. The Committee further noted that the Representative of the Secretary-General in his Report on the situation of human rights of internally displaced persons of 17 March 2008 (A/HRC/8/6/Add.1, paragraph 67), indicates that he observed children among the rebels patrolling the territories under their control and that something under 1,000 children are reported to be involved.

The Committee further noted the indication by the Secretary-General that an Amnesty Law was promulgated on 13 October 2008 covering violations committed by Government security and defence forces and rebels between March 2003 and October 2008 (S/2009/66, paragraph 6). The amnesty is subject to conditions, including the cantonment, demobilization and disarmament of fighting forces within 60 days of its promulgation. Considering this short timeframe, which was challenged in particular by the APRD, an incremental approach was adopted early in November 2008, with demobilization activities to begin early in 2009. On 25 October 2008, the Government of the Central African Republic released from detention 12 fighters from the APRD, the UFDR and the FDPC, in accordance with its obligations under the agreement (S/2009/66, paragraph 6).

The Committee accordingly observed that the forced recruitment of children for use in armed conflict still exists in the country and that the situation remains fragile. It once again expressed *deep concern* at the current situation, particularly since the persistence of this worst form of child labour gives rise to other violations of the rights of the child, such as murders and sexual violence. It once again reminded the Government that, under the terms of *Article 1* of the Convention, member States are under the obligation to take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***The Committee therefore requests the Government to take immediate and effective measures to bring an end to the practice of the forced recruitment of young persons under 18 years of age by armed groups, particularly in the north-east and north-west of the country. With reference to the Security Council, which in resolution No. 1612 of 26 July 2005 recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children", the Committee urges the Government to take immediate measures to secure in practice the protection of young persons under 18 years of age against forced recruitment for their use in armed conflict, and to ensure that investigations are undertaken and grave charges brought against those committing violations, and that sufficiently effective and dissuasive penalties are imposed upon persons found guilty of having used young persons under 18 years of age in armed conflict. It requests the Government to provide information in this respect.***

*Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and to ensure their access to free basic education and, wherever possible and appropriate, to vocational training. Child soldiers.* In its previous comments, the Committee noted that, according to information from UNICEF, the Government, the UFDR and UNICEF signed an agreement on 16 June 2007 to reintegrate children connected with armed groups in the north-east of the country. In this respect, it noted that, according to the Report of the Secretary-General of the United Nations of 21 December 2007 on children and armed conflict (A/62/609-S/2007/757, paragraphs 29 to 32), in the context of an agreement signed on 16 June 2007, a first group of approximately 200 children were released. In April and May 2007, over 450 children associated with the UFDR, 75 per cent of whom were boys aged between 13 and 17 years, were demobilized. According to the report, a last group of between 450 and 500 children are reported to have been released and to have returned to their communities since September 2007, although this information has not been verified. With regard to children associated with the APRD and FDPC rebel groups, which are both active in the north-western region, the report indicates that in March and June 2007 the APRD requested assistance from the United Nations Country Team to demobilize child soldiers. An informal dialogue was commenced with the APRD to prevent the recruitment of children and to demobilize and reintegrate those who are in its ranks with a view to their reintegration into society. However, formal negotiations are hampered by the insecurity in the north-western region of the country.

The Committee further noted that, according to the UNICEF Humanitarian Action Report 2008, the conflict has resulted in internal displacements, with over 610,000 suffering from the conflict. The Committee also noted that UNICEF intends to improve access to basic education for 113,000 conflict-affected children through an extensive back-to-school campaign across the

country's northern prefectures. UNICEF also intends to facilitate the reintegration of 1,000 child soldiers into their families and communities.

The Committee noted that, according to the Report of the Secretary-General of the United Nations of 3 February 2009 on children and armed conflict (S/2009/66, paragraph 53), strategic partnerships for the prevention of the recruitment and for the release and reintegration of children in areas controlled by the APRD and the UFDR have recently been concluded with four humanitarian NGOs. This community-based programme envisages support for the release and reintegration of hundreds of children associated with armed groups in the northern areas. Three transit interim care centres are currently being built in the north-western districts and an emergency site to receive released children is already operational in the north-west. The Committee however noted the indication by the Secretary-General that, while there have been some positive developments regarding the anticipated release of children from the APRD and the UFDR, the deadlock in the peace negotiations and the withdrawal of the major parties to the conflict from the Comprehensive Peace Dialogue in August 2008 stalled the implementation of the commitments to release children. According to the Secretary-General, up to now, relatively few children have actually been released and there may also have been new recruitment.

The Committee therefore once again observed that, despite the Government's collaboration with UNICEF, the current situation of the country remains a cause of grave concern. ***The Committee therefore requests the Government to redouble its efforts and to continue its collaboration with UNICEF and other organizations with a view to improving the situation of child victims of forced recruitment who are used in armed conflict. It hopes that the Government will negotiate an end to armed conflict so that all children used in armed conflict are demobilized and reintegrated, particularly in the north-east and north-west of the country. The Committee further asks the Government to provide information on the number of child soldiers removed from armed groups and reintegrated through appropriate assistance for their rehabilitation and social integration, including through care centres. It requests the Government to provide information in this respect in its next report.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Chad

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* With reference to its previous comments, the Committee noted that, under section 14 of Ordinance No. 01/PCE/CEDNACVG of 16 January 1991 reorganizing the armed forces of Chad [Ordinance No. 1 of 16 January 1991], the age of recruitment is 18 years for volunteers and 20 years for conscripts.

The Committee noted that, according to the report of the United Nations Secretary-General of 7 August 2008 on children and armed conflict in Chad (S/2008/532, for the period July 2007–June 2008), the political, military and security situation in the country remains highly volatile, owing to the continuation of armed conflict between the Chad armed forces and armed rebel groups, the presence in eastern Chad of foreign rebel groups, cross-border raids by the Janjaweed militia and continuing inter-ethnic tensions. The Committee noted that, according to the Secretary-General's report, the Government of Chad and the three main rebel groups, namely the *Union des forces pour la démocratie et le développement* (UFDD), the *Rassemblement des forces pour le changement* (RFC) and the *Concorde nationale tchadienne* (CNT), signed a peace agreement on 25 October 2007 which provided for an immediate ceasefire. However, despite the signature of this agreement, fighting has continued and all the parties concerned have continued to recruit and use children in the conflict.

The Committee noted that the Secretary-General's Report showed that the forced recruitment and use of child soldiers in the conflict in Chad is related to the regional dimension of the conflict. The Toroboro or Sudanese armed groups allied with the Government of Chad are recruiting children from two refugee camps, at Tréguine and Bredjing, during the rainy season. Furthermore, heavy recruitment also occurs on the basis of needs in Darfur. The Sudanese rebel movement Justice and Equality Movement (JEM) continues to recruit in and around refugee camps, notably Oure Cassoni (Bahai). According to information in the Secretary-General's report, between 7,000 and 10,000 children are associated with the armed forces and armed groups. The Committee noted that the Working Group on Children and Armed Conflict, in its conclusions of December 2008 (S/AC.51/2008/15), expressed grave concern that all parties to the conflict continue to recruit and use children and called for measures to be taken to prosecute the perpetrators and put an end to impunity.

The Committee noted that the situation in Chad has been unstable for many years and that it remains fragile. The Committee also noted that, despite the fact that Ordinance No. 1 of 16 January 1991 provides that the age of recruitment is 18 years for volunteers and 20 years for conscripts, the recruitment of children for use in armed conflict is continuing in practice. In this regard, it noted that no penalties are laid down for violations of this prohibition. The Committee expressed ***deep concern*** at the current situation, especially as the persistence of the worst forms of child labour leads to other violations of the rights of the child, such as abduction, death and sexual violence. It reminded the Government that under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, members States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***The Committee requests the Government to take the necessary measures as a matter of urgency to stop in practice the forced recruitment of children under 18 years of age by armed forces and groups and immediately undertake the full demobilization of all children. With reference to Security Council resolution 1612 of 26 July 2005, which recalls the "responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children", the Committee urges the Government to take immediate steps to ensure that perpetrators are investigated and prosecuted and that penalties which are sufficiently effective and dissuasive are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. It requests the Government to supply information in this respect.***

*Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration, including access to free basic education and vocational training.* Children who have been enlisted and used in armed conflict. Further to its previous comments, the

Committee noted that, according to the report of the United Nations Secretary-General of 7 August 2008 on children and armed conflict in Chad (S/2008/532), the Government of Chad signed an agreement with UNICEF on 9 May 2007 to ensure the release and sustainable reintegration of all child soldiers associated with armed forces and groups in the country. According to the Secretary-General's report, since the agreement was signed, 512 child soldiers have been released to UNICEF, which has provided support at five transit centres. So far 265 children have voluntarily returned to or been reunited with their families, and 220 have been placed in schools and 85 in professional activities. Most of the demobilized children were associated with non-governmental armed groups. Very few children associated with the Chadian armed forces have been released. According to the Secretary-General's report, negotiations are under way for placing the demobilized children in vocational training institutions and providing them with gainful employment. Some NGOs which are partners of UNICEF are currently working on the reintegration programme. Moreover, the encouraging start of disarmament, demobilization and reintegration activities in Chad is likely to lead to the release of another estimated 2,500 children associated with armed forces and groups.

The Committee also noted that, according to the Secretary-General's report, Chad undertook to release as a matter of priority children associated with armed groups held in detention. Moreover, it decided that an inter-ministerial task force would be established to coordinate and ensure effective reintegration of children. The Committee on the Rights of the Child, in its concluding observations of February 2009 (CRC/C/TDC/CO/2, paragraph 71), urged the Government to take the necessary measures immediately to facilitate contact between armed groups operating in Chad and the United Nations in order to promote the demobilization of children and prevent the recruitment of children, particularly in refugee camps. In this regard, the Committee on the Rights of the Child urges the Government to extend the disarmament, demobilization and reintegration programme, placing particular emphasis on the demobilization and reintegration of girls.

The Committee noted the measures taken by the Government to demobilize and reintegrate child soldiers, particularly through collaboration with UNICEF. It noted, however, that the current situation in the country remains a source of concern. ***The Committee therefore requests the Government to intensify its efforts and continue its collaboration with UNICEF and other organizations in order to improve the situation of child victims of forced recruitment for use in armed conflict. Moreover, the Committee requests the Government to take effective and time-bound measures to ensure that child soldiers removed from armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training, wherever possible and appropriate. It requests the Government to supply information in this respect.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## China

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1999)***

The Committee notes the Government's report and the communication of the International Trade Union Confederation (ITUC) dated 1 September 2010.

*Article 2(3) of the Convention.* 1. *Compulsory schooling.* The Committee previously noted that the law fails to guarantee funding for compulsory education, thus forcing or allowing many schools, particularly in rural regions, to collect tuition and other fees. However, the Committee noted that in 2007, the State Council made more funds available for rural compulsory schooling including providing tuition to all rural students of compulsory school age and increased subsidies to boarding school students from poor rural families. The Committee also noted that the Compulsory Education Law states that no miscellaneous fees should be charged for compulsory education and that the State Education Inspection and Supervision Group is responsible for monitoring the enforcement of the Law. The Committee noted that these measures resulted in a rise in the level of universal education across the country. However, the Committee noted the information in the UNESCO *Education for All: Global Monitoring Report* of 2008 that a well-structured inspection system on quality education was still in the early stages of development (2008/ED/EFA/MRT/PI/82, page 8).

The Committee notes the information in the communication submitted by the ITUC of 1 September 2010 which indicates that, in March 2010, a new ten-year reform plan for the overhaul and improvement of the education system began. Nonetheless, the ITUC states that, according to statistics from the China Education and Research Network, the number of overall primary schools has decreased, as has enrolment at both the primary and secondary levels. The ITUC also refers to UNICEF figures indicating that approximately 1 million children drop out of school each year due to poverty (particularly ethnic minorities and girls) and that two-thirds of non-enrolled school-age children in China are females. The ITUC states that girls are the first to drop out when economic pressures affect their families, and that girls are more often found to be working in factories. The ITUC indicates that the increase in drop-outs, and the corresponding increase in child workers, are due to increasing school fees. The ITUC's allegations reference cases where children were brought to work in factories by their parents in order to pay for their school fees.

The Committee also notes the information contained in the Government's report that the net entrance rate for primary school has increased to 99.54 per cent. The Government also indicates that since the autumn 2008 semester, urban students have been exempted from tuition and incidental fees for compulsory education, similar to the programme operating in rural areas. Students whose families are entitled to minimum living standards are given free textbooks and boarding school students receive livelihood subsidies. The Government further indicates that the balanced development of compulsory education within regions is a strategic focus for the Government that it aims to achieve by 2020. In this regard, the Committee notes that in 2010, the Government issued the "National Mid- and Long-Term Reform on Education and Development Programme (2010–20)", which includes specific compulsory education targets, measures to increase the guaranteed level of resource funds and initiatives to raise the quality of education at all levels. In addition, the

Government indicates that various local governments have taken steps to improve access to education in rural areas, such as increasing the infrastructure of rural schools, minimizing gaps in the conditions between schools and guiding teachers towards rural, remote and poor areas. The Committee also notes the Government's indication that it engages in the monitoring of provinces, cities and counties to review the effect given to the policies exempting students from tuition and incidental fees (in both rural and urban areas). This monitoring included school inspections in five provinces and autonomous regions, and indicated that these local governments had been correctly implementing the national policies. The Committee further notes the Government's statement that it has, since 2008, been carrying out monitoring work on progress towards the balanced development of compulsory education in 72 counties across the country. The Government states that the results of this monitoring work are submitted to the administrative department on national education for reference when formulating education policy, though the Committee observes that this information is not included in the Government's report.

The Committee notes the statement in the report of the UNICEF Executive Board entitled "Report of the field visit to China by members of the Bureau of the Executive Board" of 14 May 2010 that despite efforts made by the Government in the education sector, challenges remain, especially in western areas, including disparities in the quality of, and access to, education and the numbers of children out of school (E/ICEF/2010/CRP.11, paragraph 20). Lastly, the Committee notes the information in the compilation report of 16 December 2008 prepared by the Office of the High Commissioner for Human Rights for the Universal Periodic Review of China that the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child each called upon China to eliminate all miscellaneous and other "hidden" fees for primary education (A/HRC/WG.6/4/CHN/2, paragraph 38). **Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to pursue its efforts to ensure that, in practice, all children have access to free compulsory education, paying particular attention to girls and children from ethnic minorities and in rural areas. In this regard, the Committee requests the Government to take the necessary measures to considerably strengthen the mechanisms that monitor the enforcement of the Compulsory Education Law and the policies on exemptions for tuition and other fees. It requests the Government to continue to provide information on measures taken in this regard and to provide information from the monitoring and evaluation exercises conducted to monitor these policies.**

2. *Education for children of internal migrant workers.* In its previous comments, the Committee noted the ITUC's allegations that, according to the *hukou* system (household registration), migrant workers' children, who travel with their parents to a city where they have no right to register as permanent residents, are not allowed access to schooling provided by the local governments. The Committee also noted that migrants started to organize their own schools, but that these schools were of variable quality. The Committee further noted the Government's statement that it had developed a variety of policy measures to ensure equal access to compulsory education for these children, including a 2005 circular explicitly providing that the policy in place for urban students would similarly apply to the children of migrant workers from rural areas and a 2006 State Council document aiming to ensure equal access to compulsory schooling for the children of migrant workers. The Government indicated that in 2006 the Compulsory Education Law was revised to provide that, "[l]ocal governments shall provide equal access to compulsory education for school-aged children living with their parents or guardians who are working or residing in places other than their registered permanent residences", following which localities established basic regimes to ensure access to compulsory education for migrant children.

The Committee notes the statement in the ITUC communication that at present, different regions provide different measures for the children of migrant workers, and these plans may shift according to the whim of the local government, resulting in a failure to provide stable education to these children. However, the Committee also notes the Government's statement that the restrictions linked to household registration have begun to change and that various levels of governments have taken measures to ensure that children of migrant workers receive compulsory education with local students, such as establishing budgets based on the total number of children accepted (not just the number of officially registered local children). In addition, the Government states that more support has been given to schools in areas with greater numbers of children of migrant workers and that subsidies have been given to provinces where progress has been made on this issue. Nonetheless, the Committee notes the information in the UNESCO 2010 report entitled *Education for All: Global Monitoring Report* (UNESCO EFA report) that, while the Government has introduced reforms, the *hukou* system continues to hinder access to education for the children of migrant workers. Even with requiring city authorities to accommodate holders of rural registration with temporary residence and employment permits, the children of many migrants continue to face restricted opportunities for education. The UNESCO EFA report indicates that only two-thirds of Beijing's 370,000 migrant children were enrolled in public schools. The UNESCO EFA report also indicates that school budgets continue to be based on the number of official students registered by authorities, and that while individual schools can accept unregistered children, their parents must typically pay a fee to compensate for the lack of government funds, therefore making education inaccessible. The UNESCO EFA report further indicates that the unauthorized migrant schools are of questionable quality and some have been forced to close. **The Committee expresses its serious concern about the lack of accessible compulsory education for the children of migrant workers and urges the Government to redouble its efforts to ensure that these children have equal access to free basic education. It requests the Government to continue to provide information on the results achieved, particularly on the number of children of migrant workers**



*who were effectively provided with compulsory education through the measures taken, and estimates on the number of these children who remain out of school.*

*Article 3(1). Hazardous work. Hazardous work performed through work-study programmes.* The Committee previously noted the situation of schoolchildren performing manual work at schools to compensate for the shortage of funds for their schooling. However, the Committee noted that the “Regulations on the Management of Safety in Middle Schools, Primary Schools and Kindergartens” (MEO23) was issued in 2006, which provided that schools are not allowed to organize pupils to take part in hazardous activities such as fabricating fireworks or involving toxic chemicals.

The Committee notes the Government’s statement that it attaches great importance to the safety of work in primary and middle schools, and that it has taken several measures in this respect. The Government indicates that it has strengthened awareness of safety issues (through education, training activities and drills), holding a national safety education day for primary and middle school students and disseminating 300,000 copies of the “Guidelines of Safe Work for Primary and Middle Schools”. The Committee also notes the Government’s indication that it has provided training to improve the capacity of school management with regard to safety and crisis response and has established a school safety inspection system to diagnose and remedy safety risks, to prevent future accidents.

However, the Committee notes the ITUC’s allegation that, although efforts have been made to curb the abuse of work-study programmes (programmes where children engage in work through their schools), these programmes are often used by employers to justify illegally low wages and used by schools to generate profit. The ITUC communication also states that, through these work study programmes, children are exposed to excessive working hours and unsafe workplaces, and provides examples of schoolchildren being brought to work in the grape-processing and cotton industries by their teachers. The ITUC further asserts that although some work-study schemes are limited to seasonal agricultural work, improving school facilities or making small handicrafts, many of these school programmes have resulted in children working in dangerous and labour-intensive industries such as agriculture, construction and factories for long hours and under harsh conditions. The Committee expresses its *concern* at the continued engagement of schoolchildren under 18 in hazardous types of work within the context of work study programmes. ***It accordingly urges the Government to strengthen its efforts to strictly enforce the prohibition of hazardous work contained in the MEO23 in order to ensure that persons under 18 years of age are not engaged in hazardous work through work-study programmes, even where safety and security measures are in place. Furthermore, noting an absence of information on this point in the Government’s report, the Committee once again requests the Government to provide information on the number and nature of infringements of the MEO23 detected by the competent ministry, as well as the penalties applied.***

*Article 9(1) and Parts III and V of the report form. Penalties, labour inspectorate and application of the Convention in practice.* In its previous comments, the Committee noted the ITUC’s indication that the extent of child labour remains difficult to assess due to a lack of official reporting on cases and the lack of transparency in statistics. The Committee also noted the comments of the All-China Federation of Trade Unions (ACFTU) urging the Government to make more of an effort with regard to law enforcement supervision. In this regard, the Committee noted the Government’s indication that the issue of child labour is dealt with through the investigation of complaints, routine inspections, in-focus operations and annual labour inspection schemes. The Committee also noted the establishment of a labour supervisory framework at the provincial, municipal and county levels.

The Committee notes the ITUC’s allegations that child labour has increasingly been reported in the footwear industry and in smaller workshops producing textiles, shoes and related products. The ITUC’s allegations contain many examples of the use of child labour, while stating that there is a lack of official published national data on the extent of child labour. The ITUC indicates that reliable and transparent data would be essential to formulate policies to address this problem. The Committee also notes the statement in the ITUC communication that while the growing number of labour inspectors represents a significant start towards proper enforcement, the numbers are still insufficient to cover all companies in China. Furthermore, the ITUC once again states that the chances of discovering child labour are slim given the shortage of labour inspectors and the extensive collusion between private businesses and local officials. The ITUC indicates that inspections continue to be of little value due to the common practice of informing factory owners in advance, so that on inspection days, working children are kept hidden or given the day off.

The Committee notes the information in the Government’s report that, by the end of 2009, the labour supervisory framework consisted of 3,291 organs of labour security and inspection (an increase in 20 units since 2007), and employed 23,000 full-time labour inspectors (1,000 more inspectors than in 2007), and 25,000 part-time inspectors. The Government indicates that active measures have been taken to prevent and investigate the illegal recruitment of children for employment and that, in the course of inspection activities, emphasis has been given to the provisions of national legislation regarding the prohibition of child labour and the protection of young workers. The Government also indicates that since 2006, special activities have been organized jointly with the ACFTU in this regard, including different types of inspections. The Committee takes due note of the efforts taken by the Government, including the increase in the number of labour inspectors, but expresses its *concern* regarding reports of collusion between inspectors and private businesses and regarding the lack of data available on the prevalence of child labour in the country. ***The Committee recalls that, pursuant to Article 9(1) of the Convention, all necessary measures shall be taken by the competent authority to ensure the effective enforcement of the provisions of the Convention, and urges the Government to take the necessary measures to address the issue of collusion between labour inspectors and enterprises to ensure thorough investigations***



*into possible cases of child labour. In this regard, it requests the Government to provide information on the types of violations detected by the labour inspectorate, the number of persons prosecuted and the penalties imposed. The Committee also requests the Government to pursue its efforts to strengthen the capacity of the labour inspectorate, particularly with regard to the inspection of small enterprises. Lastly, the Committee urges the Government to take the necessary measures to ensure that sufficient up-to-date data on the situation of working children in China is made available, including, for example, data on the number of children and young persons below the minimum age who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work.*

The Committee is raising other points in a request addressed directly to the Government.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

The Committee notes the Government's report and the communication of the International Trade Union Confederation (ITUC) dated 1 September 2010.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted that section 240 of the Criminal Law of 1997 prohibits the trafficking of women and children. It also noted the allegations of the International Confederation of Free Trade Unions, now the ITUC, that China is a source, transit and destination country for international human trafficking in women and children. The Committee noted the implementation of the ILO-IPEC "Preventing trafficking in girls and young women for labour exploitation within China" project (CP-TING Project), in collaboration with the All-China Women's Federation (ACWF), and the "Mekong Subregional Project to Combat Trafficking in Children and Women" (TICW Project). The Committee also noted that the State Council approved a new National Plan of Action against Trafficking in Women and Children (2008–12) (NPAT 2008–12) in 2007. However, the Committee noted the indication from several sources that the phenomenon of trafficking for the purposes of forced physical labour and prostitution was worsening.

The Committee notes the ITUC's allegations that there has been an increasing number of girls trafficked out of China to work as sex workers in Australia, Burma, Canada, Malaysia, Japan, Taiwan, the Philippines, the Middle East and the United States.

The Committee notes the Government's statement that the NPAT 2008–12 has been implemented in an effective manner, and has contributed to the reduction of the trafficking of women and children at the grassroots level. In this regard, the Government indicates that, in October 2008, the first Anti-Trafficking Inter-Ministerial Joint Meeting (IMJM) took place and that, in March 2009, the Ministry of Public Security, and other departments and agencies jointly issued the "Rules for the Implementation of the NPAT (2008–12)". The Committee further notes the ILO-IPEC information that the TICW Project Phase II was completed in 2008, and that its remaining activities were incorporated into the CP-TING Project. In this regard, the Committee notes that phase II of the CP-TING Project was launched on 17 March 2010. Phase II includes concrete actions to strengthen the implementation of provincial Plans of Action against trafficking, equip vulnerable youth with life skills before they migrate for work, set up trafficking prevention mechanisms and safe migration services and support referral services for vulnerable women and children. The Committee nonetheless notes the information in the report entitled "Child Trafficking in East and South-East Asia: Reversing the Trend", published by the UNICEF East Asia and Pacific Regional Office in August 2009 (UNICEF Trafficking Report) that trafficking occurs in every province in China, with most victims trafficked to the provinces of Guangdong, Shanxi, Fujian, Henan, Sichuan, Guangxi and Jiangsu (page 31). The UNICEF Trafficking Report further indicates that internal trafficking is more prevalent than cross-border trafficking, although the Committee notes the information in another UNICEF document (entitled "Protection and Community Services", available on the UNICEF website ([www.unicef.org](http://www.unicef.org))) (UNICEF Protection Report) that cross-border trafficking appears to be on the rise. ***The Committee therefore requests the Government to redouble its efforts, within the framework of the NPAT 2008–12, to combat and eliminate both internal and cross-border trafficking of persons under 18. It requests the Government to continue to provide information on the measures taken in this regard, and on the results achieved.***

2. *Forced labour. (i) Forced labour in re-education through labour camps.* The Committee previously observed that China's prison system includes re-education through labour and juvenile criminal camps, and noted that records indicate that all prisoners, including persons under 18, are subject to hard labour. It noted the ITUC's allegations that, although the legislation calls for separate places for minors, in practice, due to limited spaces available, many minors are incarcerated with the adult population. The ITUC indicated that, pursuant to procedures inside the criminal justice system, children may be sent to labour camp re-education programmes. The Committee noted that the Committee on Economic, Social and Cultural Rights expressed grave concern about the use of forced labour as a corrective measure, without charge, trial or review, under the "Re-education through labour" programme (E/C.12/1/Add.107, paragraph 23) and that the Conference Committee on the Application of Standards emphasized the seriousness of such violations of Convention No. 182. In this regard, the Committee noted the Government's statement that, under the relevant legislation, any form of forced labour involving juvenile delinquents is banned. The Government indicated that, since 2006, the juvenile delinquent rehabilitation institutions have made efforts to increasingly conduct teaching in a classroom format and enhance training in vocational skills. In this regard, section 26 of the "Platform on re-education and reform of prisoners" of 2007 provides that the labour performed should focus on the acquisition of skills, and that the duration of

labour shall not exceed four hours per day or 20 hours per week. In addition, the Ministry of Justice promulgated the “Regulations on the administration of juvenile delinquent rehabilitation institutions” which provide that children under the age of 16 are exempt from participation in productive labour. The Committee expressed its concern that these Regulations only exempt children under *16 years of age* from productive labour.

The Committee notes the statement in the ITUC communication that there is little concrete evidence available on the new direction of this re-education through labour institutions (pursuant to section 26 of the “Platform on re-education and reform of prisoners”), such as low labour intensity activities and a maximum number of hours a week, and that statistics on the activities in these schools remain minimal. However, the ITUC does indicate that the number of these re-education-through-labour institutions is being reduced. The ITUC states that there appear to be no specific regulations which guide the exact procedures through which minors are sent to these schools, and expresses the view that the use of these schools is in contravention of the Convention.

The Committee notes the information in the Government’s report that section 75 of the prison law states that the execution of criminal punishments on juvenile delinquents shall be based on education and reform, that this labour shall conform to the characteristics of minors, and the main objective of this labour is to acquire an elementary education. The Government expresses the view that the labour assigned to juvenile delinquents is not forced labour, but a kind of skills training and education. The Government indicates that, by the end of 2008, there were 74 special schools for the purpose of education and rectification, with 9,631 students nationwide. Pursuant to section 25 of the Law on the Protection of Minors, students are only sent to these schools for continued education if disciplinary measures in regular schools (or by guardians) prove ineffective in rectifying undesirable behaviour. Section 25 states that the staff of these schools shall show concern and provide good care for students, and that these schools shall provide an ideological and cultural education, including education in vocational skills. The Government states that this labour and vocational and technical training aims to improve the employability and earning capacity of the juveniles, to avoid recidivism. The Government further states that juveniles are housed separately from adult inmates, in reformatories that attend to the psychological and physiological needs of the minors and that all provinces have established separate juvenile delinquent rehabilitation institutions, which provide classroom education, psychological services, vocational and technical education (following the completion of compulsory schooling) and family visits. The Committee notes the Government’s statement that juvenile delinquent institutions consist of juveniles who shall be rehabilitated through education (those under 16) and juveniles who will be re-educated through labour (those between 16 and 18).

(ii) *Forced labour in work–study programmes (school-related or contracted work programmes)*. The Committee previously noted the ITUC statement that many schools force children to work in order to make up school budgets. Under these programmes, pupils are obliged to work to “learn a skill”, but often they perform regular work in labour-intensive unskilled positions for long periods of time. In parts of the country, children are found to be working, during school hours, in assembling fireworks, beadwork, or other cottage industry-type production, as well as harvesting the yearly cotton harvest (particularly in the Xinjiang Uyghur autonomous region). However, the Committee noted the Government’s indication that the “Provisional Rules of the State Council on work–study programmes for middle and primary schools” prohibited hard work and heavy labour for middle and primary school students in the work–study context, and that the types of work performed by the students were within their capacities. The Committee nonetheless echoed the concern expressed by the Conference Committee on the Application of Standards about the situation of children under 18 performing forced labour through work–study programmes.

The Committee notes the information in the ITUC communication that large numbers of rural schools have contracted out classes of students to work in factories or in the fields in labour-intensive tasks for long periods of time. The ITUC indicates that schools from the poorer inland provinces make direct contacts with the factories to send the students who work (during breaks as well as during term time) to raise funds, and that the majority of the children involved are between the ages of 11 and 15. The ITUC indicates that, following the 2006 government directive on safety standards, some children in the Xinjiang Uyghur autonomous region were directed to marginally less taxing types of work, such as harvesting of beetroots, tomatoes and other vegetables on state farms and the collection of recycling. In 2008, the local education department prohibited children between the ages of 6 and 14 from participating in the cotton harvest, and provided increased funding to the schools that had previously harvested cotton. However, the ITUC states that this directive was not enforced at the local level and children were still forced to participate in the 2008 harvest. The ITUC reiterates that participation in this harvest is mandatory, that children may face fines for working too slowly or failing to meet production quotas, and that the behaviour during the harvest is reflected in school marks.

The Committee notes the Government’s statement in its report submitted under the Minimum Age Convention, 1973 (No. 138) that it attaches great importance to the safety of work in primary and middle schools, but observes an absence of information on measures taken to protect children engaged by their schools in external enterprises, or measures taken to address mandatory participation in these types of work. However, the Committee notes the statement in the UNICEF Trafficking Report that reports indicate that several schools force students to work in factories under the veil of “work–study”.

Therefore, the Committee expresses its *serious concern* at the compulsory nature of the work performed by children under 18 in re-education through labour programmes and by schoolchildren under the age of 18 within the context of work–study programmes. The Committee reminds the Government that, by virtue of *Article 3(a)* of the Convention, all

forms of forced or compulsory labour are considered to be among the worst forms of child labour in which persons under 18 years of age may not be engaged and that, pursuant to *Article 1* of the Convention, governments must take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. **Accordingly, the Committee strongly urges the Government to take immediate and effective measures to ensure that children under 18 years of age are not, under any circumstance, forced to work within the framework of re-education through labour programmes or work-study programmes. With regard to re-education through labour programmes, the Committee urges the Government to take the necessary measures to ensure that the “Regulations on the administration of juvenile delinquent rehabilitation institutions” are extended to exempt children between 16 and 18 years from productive labour in these institutions. The Committee further requests the Government to provide information on the concrete steps taken to eradicate these types of forced or compulsory labour, and on the results achieved.**

*Article 5. Monitoring mechanisms. Labour inspectorate.* The Committee previously noted that the labour inspectorate is responsible for monitoring the implementation of the provisions concerning child labour. It noted the ITUC’s allegations that despite national legislation banning child labour and its worst forms, there remained a serious gap between legislation and implementation, and that children worked in hazardous types of work, such as the fireworks industry, brick kilns and glass-making industries. The All-China Federation of Trade Unions (ACFTU) also stated that, while the legislation prohibiting the use of child labour is complete, the illegal use of child labour still exists. The Committee further noted the establishment of a labour supervisory framework, consisting of three-tiered organizations at the provincial, municipal and county levels.

The Committee notes the statement in the ITUC communication that, while the increase in the number of labour inspectors is a significant step towards adequate enforcement, there remains not enough labour inspectors to properly monitor the number of enterprises in the country. Furthermore, the ITUC reiterates that the detection of child labour is unlikely, due to this shortage of labour inspectors and the extensive collusion between private enterprises and local officials. The ITUC indicates that it is quite common for factory owners to receive advance warning concerning upcoming inspections, allowing these owners to hide working children or give these children the day off, which renders these inspections meaningless. The ITUC states that the commonplace practice of advance warning of labour inspections indicates the almost endemic nature of official corruption at the local level, and that increased resources in anti-corruption efforts have not decreased this problem. The ITUC communication states that the existence of child labour, including the worst forms of child labour, remains high, due in part to the lack of proper enforcement of legislation. However, the ITUC communication also references progress in some areas, stating that authorities have increased efforts to improve safety in the fireworks industry, and to address the use of child labour in this industry. The ITUC also states that the increase in detection of cases of forced labour (and the sale of children for this purpose) may be due to increased investigations in this area (but that it may reflect a rise in this phenomenon).

The Committee notes the information in the Government’s report that, by the end of 2009, the labour supervisory framework had grown to include 3,291 organs of labour security and inspection (an increase in 20 units since 2007), and employed 23,000 full-time labour inspectors (1,000 more inspectors than in 2007), and 25,000 part-time inspectors. The Government also indicates that, in collaboration with the ACFTU and other institutions, it launched nationwide supervision operations on, inter alia, rectifying illicit employment and combating related criminal activities, in addition to inspections focused on the implementation of legislation related to the prohibition of child labour. The Government further states that joint inspection activities have been undertaken with the departments of public security and occupational safety and health, and that the briefing of these multi-department efforts has been published and disseminated. The Committee further notes the Government’s indication that labour inspections have been reorganized to be carried out based on a grid system. The Government indicates that this system has permitted the gradual expansion of the coverage of labour inspections, including to rural areas. The Committee welcomes the Government’s efforts to strengthen and expand the capacity of the labour inspectorate, but must express its **concern** regarding allegations of endemic corruption and collusion between labour inspectors and private businesses, which compromise the functioning of labour inspection and the detection of child labour, including its worst forms. **The Committee accordingly urges the Government to take the necessary measures to strengthen the functioning and the capacity of the labour inspection system with regard to the detection of cases of child labour and its worst forms. In this regard, the Committee requests the Government to redouble its efforts to address the corruption within the labour inspection system, to eliminate the practice of advance warnings and to ensure thorough investigations into possible cases of the worst forms of child labour. The Committee requests the Government to provide information on concrete measures taken in this regard in its next report.**

*Article 7(1). Penalties. 1. Trafficking.* The Committee previously noted that section 240 of the Criminal Law provides penalties for the sale and trafficking of children. It also noted the ITUC’s allegation that, despite efforts by the Chinese authorities to stem the problem of trafficking in women and children, grassroots authorities had generally failed to take effective action, emphasizing that the problem lay in the implementation of the law and not in the legislation itself.

The Committee notes the ITUC’s statement that domestic laws do not provide adequate sanctions for trafficking-related crimes. The ITUC states that, while buying trafficked children carries a sentence of three years’ imprisonment, the vast majority of buyers are not prosecuted, particularly if the child is not harmed and the buyer cooperates with the police. The ITUC’s allegations also indicate that, in some cases, factory personnel who employ trafficked juveniles do not receive administrative or penal sanctions following the rescue of the children. The ITUC also indicates that there is a lack of

transparency in reporting and investigations. Furthermore, the ITUC states that Chinese police and local authorities collude with traffickers in the Tibet Autonomous Region near the Nepal border, to recruit girls and women to work as escorts and prostitutes, resulting in approximately 10,000 sex workers in the city of Lhasa. In addition, the ITUC communication indicates that the corruption of officials, and their collusion with criminal groups (despite anti-corruption measures taken) has severely hindered anti-trafficking efforts.

The Committee notes the information in the Government's report that between June 2008 and May 2010, courts at all levels sentenced 5,308 persons in 3,266 cases for trafficking in women and children, and 217 persons in 137 cases for buying trafficked women and children. The Committee observes that the Government does not provide information on whether criminal sanctions were imposed on those convicted. The Committee reminds the Government that, by virtue of *Article 7(1)* of the Convention, the Government is required to take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the application of penal sanctions. ***The Committee expresses its deep concern at allegations of complicity of law enforcement officials with human traffickers and accordingly urges the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of perpetrators of the trafficking of children (including the buyers of persons under 18), and complicit government officials, are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, it requests the Government to provide information on the number of persons (including governmental officials) investigated, convicted and sentenced for cases of trafficking involving victims under the age of 18, and the penal sanctions imposed.***

2. *Forced labour.* The Committee previously observed that, pursuant to section 244 of the Criminal Law, a person committing the offence of forced labour may be sentenced only to a fine. The Committee considered that this penalty was not sufficiently dissuasive to the extent that it may merely consist of a fine. It reminded the Government that, by virtue of *Article 7(1)* of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of the penal sanction of imprisonment.

The Committee notes the information in the ITUC's allegations that, following the discovery of the forced labour of children in the Shanxi brick kilns, authorities indicated that dozens of officials would be punished. However, only six lower level officials were subsequently punished, receiving only warnings or demotions, and no criminal charges were laid. The ITUC states that the failure of the Government to properly bring the perpetrators of the crime of forced labour to justice does not bode well for the eradication of this worst form of child labour. The ITUC further indicates that the charges brought against the brick kiln owners were primarily based on the issues of poor working conditions and lack of pay, as opposed to charges of slavery and forced labour.

The Committee once again notes with *regret* the lack of information in the Government's report on this point. ***It urges the Government to take the necessary measures to ensure the application of the penalty of imprisonment for an offence as serious as one involving forced labour, to ensure that persons who force children under 18 years of age to work are prosecuted and that effective and dissuasive penalties are applied, as a matter of urgency.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Beggars and homeless children.* The Committee previously noted the issuance of the "Opinions on strengthening the work on adolescent vagrants" which stipulates the duties of various departments in combating the phenomenon of child begging and protecting and rehabilitating homeless or begging minors. The Committee also noted that the Criminal Law was amended in 2006 to prohibit any person from organizing, by means of violence and coercion, disabled persons or minors under 14 years of age, to beg. However, the Committee echoed the observation of the Conference Committee on the Application of Standards that large numbers of child beggars still exist.

The Committee notes the statement in the ITUC's allegations that some abducted women and children in the country are forced to engage in begging. The ITUC indicates that, in 2009, 20 children (between the ages of 8 and 16) who had been abducted and forced into pickpocket gangs in southern China were rescued. These children were forced to beg, and were physically punished when they failed to earn the amount expected.

The Committee notes the detailed information in the Government's report regarding its recent initiatives to reach vagrant children. The Government indicates that between 2008 and 2010, the Government invested 470 million yuan renminbi (CNY) for the construction of 327 homeless relief and protection centres, through the implementation of the "Eleventh Five-Year Plan on the Establishment of a Relief and Protection System for Vagrant Minors". The Ministry of Civil Affairs will additionally invest over CNY30 million in the construction of 40 relief and protection centres. The Government indicates that it has worked to implement the "Basic Norms on Relief and Protection Institutions for Homeless Children", which requires that these children receive services including daily life care, education, skills training, psychological counselling and behavioural correction, to promote the permanent removal of these children from vagrancy. The Government further indicates that, between June 2008 and June 2010, the Ministry of Civil Affairs held ten workshops for staff of relief and protection agencies, on themes such as relief for (and protection of) vagrant minors, informal education and aid for homeless children. In 2009, the Ministry of Civil Affairs compiled a "Guide on Aid and Protection of Vagrant Children", which summarized best practices on the protection of these children. Lastly, the Committee notes that, in September 2009, the Ministry of Public Security, the Ministry of Civil Affairs and the Ministry of Health launched a special rectification operation against child begging and forced juvenile delinquency.

Nonetheless, the Committee notes the information from the UNICEF Protection Report that the number of China's urban street children is growing and that, based on the number of children passing through protection centres, the Ministry of Civil Affairs estimates that there are around 150,000 such children. The UNICEF Protection Report states that many of these children come from migrant families, or migrated by themselves from rural areas, and that these children are particularly vulnerable to risks. While noting the numerous measures taken by the Government, the Committee recalls that street children are particularly vulnerable to the worst forms of child labour. *It accordingly urges the Government to pursue its efforts to protect homeless children and child beggars from these worst forms and to provide for their rehabilitation and social integration and to ensure that programmes are open to child participation. The Committee requests the Government to continue providing information on the progress made in this regard, and the results achieved.*

The Committee is raising other points in a request addressed directly to the Government.

## Macau Special Administrative Region

### **Minimum Age Convention, 1973 (No. 138) (notification: 2000)**

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee had previously noted the Government's indication that in order to eliminate child labour, the Government had introduced a 15-year free education system which would last until the age of 18 years. It had also noted the Government's indication that the new legislative draft of the Labour Law contains more specific stipulations concerning the elimination of child labour and provides for better protection to children and young persons. The Committee notes with *interest* that the Labour Relations Law No. 7/2008 (Labour Law of 2008), which was adopted by the Legislative Assembly on 5 August 2008, came into force on 1 January 2009.

*Article 3(1) and (2). Minimum age for admission to, and determination of, types of hazardous work.* The Committee had previously noted the Government's indication that the draft Labour Law specifically stipulates the places and types of dangerous work to which the admission of minors under 18 years will be prohibited or subjected to restrictions. The Committee notes with *satisfaction* that according to section 29 of the Labour Law of 2008, an employer shall not employ a minor to perform: (1) domestic work; (2) overtime work; (3) work during the period from 9 p.m. to 7 a.m. of the following day; (4) work at places where admission is forbidden to under-18s; and (5) work on the list of prohibited occupations for minors, approved by dispatch of the Chief Executive. It notes that pursuant to subsection (5) of section 29, the Government adopted the Chief Executive's Dispatch No. 343/2008, approving the list of occupations with restricted conditions for minors, and the Chief Executive's Dispatch No. 344/2008, approving the list of prohibited occupations for minors. The Committee also notes that the first part of the List No. 343/2008 contains the types of work that involve either physical or chemical elements that might affect minors such as: work exposed to ultraviolet radiation, very high or low temperature, high noise levels and vibration, and other corrosive, irritant or inflammable substances; the second part contains the types of work that because of their nature involve certain physical or mental risk, for example, dangerous operations, demolishing work or work whose rhythm causes tension or pressure; and the third part involves the type of workplaces that may put minors at risk, for example, where fierce or venomous animals are kept, laboratories, hospitals, slaughter houses, etc. List No. 344/2008 enumerates work involving physical and chemical factors; work processes that involve certain dangerous materials such as asphalt, resin and other hydrocarbon-based polymer products; work with dangerous machines; workplaces such as confined spaces, in compressed air, underwater, at dangerous heights; and other establishments such as health clubs, billiard saloons, bars and amusement game centres. Moreover, according to the provisions of section 85(2) of the Labour Law of 2008, an employer employing minors to work in violation of the provisions of section 29 shall be punished with a fine of 10,000 patacas (MOP) (about US\$1,250) to MOP25,000 (about US\$3,100).

*Article 7(1) and (3). Light work.* The Committee had previously observed that according to the provisions of the draft Labour Law, children between 14 and 16 years of age may undertake light work activities in public or private entities during the school holidays in the summer. However, these provisions did not determine the hours and conditions under which such work may be undertaken. The Committee notes the Government's statement that concerning the working hours for minors, the Labour Law of 2008 has made a general provision in this regard, irrespective of whether the employee concerned is an adult, or whether it involves full-time employment or only short-term work during summer holidays. Accordingly, section 33 of the Labour Law of 2008, stipulates that the normal working hours shall not exceed eight hours a day and 48 hours a week, with a break period of not less than 30 consecutive minutes so that the employee will not work more than five consecutive hours. Furthermore, section 33(2) stipulates that the employee shall have a total of not less than 12 hours of rest per day.

*Part V of the report form. Practical application of the Convention.* The Committee notes that according to section 31(1) of the Labour Law of 2008, the employer must notify the Labour Affairs Bureau of the conclusion of a labour contract with a minor, within 15 days from the date of its conclusion. In this regard the Committee notes the Government's indication that during the period from 1 January 2009 to 31 May 2010, the Labour Affairs Bureau received notifications from 66 employers for hiring 642 minors. The Committee further notes the statistical information provided by the Government on the number of violations detected by the Labour Affairs Bureau with regard to the employment of

minors. According to this data, during the period from June 2008 to May 2010, 70 cases involving 110 minors were detected of which most of the violations were with regard to failing to notify the Labour Affairs Bureau within 15 days of hiring the minors, hiring of minors without a written medical certificate and hiring of minors without a written authorization from their legal representative. The Committee further notes the Government's statement that the Labour Affairs Bureau has dealt with all these violations by levying corresponding fines against the violating employers. It also notes the Government's reference to a court decision against an employer who engaged a minor child of less than 16 years without obtaining prior proof that the latter possess the necessary physical condition as required to perform that work. The employer was sentenced to pay a fine of MOP2,500 (about US\$315).

## Colombia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

The Committee notes the Government's report. It also notes the comments of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT) of 30 August 2010 and the General Confederation of Labour (CGT) of 10 September 2010.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted the adoption of the "National strategy to prevent and eliminate the worst forms of child labour and protect young workers (2008–15)" (National strategy against the worst forms of child labour), drawn up in cooperation with ILO–IPEC and UNICEF. It noted that programmes of action would be developed to implement the national strategy. It further noted the adoption of the "National Development Plan (2006–10)", which aims in particular to reduce poverty and reduce child labour. The Committee noted that the measures taken by the Government enabled the percentage of working children to be reduced between 2001 and 2005.

The Committee notes the CTC's and CUT's comment that the national policy to eliminate child labour is not effective, since it is based on helping families in situations of extreme poverty by providing them with conditional cash transfers. However, these subsidies are not sufficient to remove these families from poverty and further action is needed. The CTC and CUT further point out that the real percentage of working children in 2007 is 14.3 per cent (1,628,300 children), since in addition to the 6.9 per cent of children working (786,576), account should be taken of the 7.4 per cent (841,733) performing household chores for 15 hours or more daily. Children were prevalently found to be working in the agricultural sector (36.4 per cent).

The Committee notes the Government's information that, in the framework of the National Development Plan, the regional competent authorities committed themselves to give priority to projects targeting children and adolescents involved in child labour. As regards the implementation of the National strategy against the worst forms of child labour and the National plan for the eradication of child labour and the protection of young workers (National plan against child labour), the Government indicates that the percentage of working children between 5 and 17 years decreased from 8.9 per cent in 2005 to 6.9 per cent in 2007. The percentage of working boys is higher than that of working girls (9.4 per cent compared to 4.2 per cent). The Government further indicates that the next statistics on child labour will be included in the household-based survey of the fourth trimester of 2009 and results will be available in the second trimester of 2010. The Committee notes the Government's information that 32 provinces were assisted in their strategies to eliminate child labour through the project "Strengthening direct intervention for the prevention, disincentive and progressive eradication of child labour and protection of young workers". While taking due note of the efforts made by the Government, the Committee must express its *concern* at the large number of children found to be working, especially in the agricultural sector and in household chores. ***The Committee strongly encourages the Government to continue its efforts to combat child labour and requests it to provide information on any measures taken in the context of the National strategy against the worst forms of child labour, the National plan against child labour and the National Development Plan, indicating in particular the programmes of action to be implemented and the results achieved. It also requests the Government to continue providing information on the application of the Convention in practice, including, for example, statistical data relating to the employment of children between 5 and 15 years of age, and extracts of the reports of the inspection services.***

*Article 2(1). Scope of application.* In its previous comments, the Committee indicated that its understanding was that the provisions of the Children and Young Persons' Code regulating the employment of children and young persons apply in the context of an employment relationship. The Government indicated that, as far as the Department of Cundinamarca was concerned, permission to work was also given to young persons working in a context other than an employment relationship. The Committee noted that this information concerned only one department and not the whole of the country.

The Committee notes the CTC's and CUT's comment that the newly established labour inspection model only covers young persons with a work permit. No inspections are carried out with regard to children and young workers who work outside an employment relationship. Therefore, children and young persons who work in the informal sector or who are self-employed do not enjoy the protection afforded by the Convention.

The Committee notes the Government's information that the preventive inspection model aims to promote actions to protect children and young persons who work as a vulnerable category of workers. Currently, the number of labour

inspectors has increased from 289 to 424. The Committee observes that the Government provides no information on whether inspections cover children and young persons working outside an employment relationship. The Committee further notes that, according to the National strategy against the worst forms of child labour, most working children are occupied in agriculture, mainly in harvesting coffee, sugar cane, fruit and vegetables, trade, services and industry. It once again recalls that the Convention applies to all sectors of economic activity and that it covers all forms of employment and work, whether or not there is an employment contract and whether or not the work is paid. ***The Committee requests the Government to take the necessary measures to ensure that children who are not bound by an employment relationship, such as those who are self-employed or who work in the informal economy, are granted the protection afforded by the Convention. In this regard, it requests the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspection services in order to ensure that inspections cover children and young persons who are self-employed or work in the informal economy.***

*Article 2(3). Compulsory education.* In its previous comments, the Committee noted that the Committee on the Rights of the Child (CRC), in its concluding observations of June 2006 (CRC/C/COL/3, paragraph 76), expressed its concern that the Government still did not have a national education strategy focusing on the rights of the child, and that the ethnic education policy (bilingual education) for indigenous communities was limited in scope and often applied without the persons concerned being sufficiently consulted. It noted that, according to the Education for All (EFA) Global Monitoring Report 2008 published by UNESCO, entitled *Education for all by 2015: Will we make it?*, while Colombia was on course to achieve the goal of universal primary education for all by 2015, the country might not achieve the goal of gender parity in secondary education, to the detriment of boys. It further noted the Government's information on the various action programmes implemented in the country to improve the working of the education system in Colombia, particularly those relating to groups at risk of dropping out of school. Finally, it noted that, in the context of the implementation of the National strategy against the worst forms of child labour, educational measures would be adopted, particularly with regard to the most vulnerable groups in the population.

The Committee notes that the CTC and CUT express their concern at the lack of measures to integrate children belonging to vulnerable groups, such as Afro-Colombian and indigenous people into education. They also recall that, in its concluding observations of 7 June 2010 (E/C.12/COL/CO/5, paragraph 29), the Committee on Economic, Social and Cultural Rights was concerned that access to free and compulsory education was not fully ensured. The CTC and CUT further stress that in 2007, 42.5 per cent of child labourers between 5 and 17 years did not attend school. Children from rural areas constituted the largest group not attending school.

The Committee notes the Government's information that regarding children between 5 and 14 years, the goal of universal primary education for all is being achieved since the net enrolment rate was 92.01 per cent in 2009. The Government indicates that the main objective of the education strategy is to integrate more vulnerable groups into education. As a result of the measures taken in this regard, as of 2009, 526,044 displaced children and 361,348 children from indigenous groups were integrated into primary and secondary schools. The Committee notes the Government's information that statistical data on the number of children and adolescents who work are checked against data on school enrolment. In the case in which it is found that children who work do not attend school, the education departments are directed in the framework of the National strategy against the worst forms of child labour to integrate these children into school. Of the 14,152 children and adolescents who were found working, 3,798 did not attend school; 1,799 of them were integrated into school in 2009. The Government indicates that various initiatives are carried out to assist children who work and study in order to keep them in schools. These measures especially focus on child and adolescent workers and displaced children. They include: (a) the conditional cash transfer programme "Familias en acción", which provides grants to poor households with children, on the condition, inter alia, that children aged between 7 and 18 attend no less than 80 per cent of school classes during the school year; (b) "jornadas escolares complementarias", which address the causes of school drop-outs and offer students alternatives for taking advantage of complementary education. In the first trimester of 2009, 1,938,626 students participated in "jornadas escolares complementarias". The Committee notes that, according to data for 2008 from the UNESCO Institute of Statistics, the primary-school enrolment rate is 90 per cent both for girls and boys and the secondary-school enrolment rate is 75 per cent for girls and 68 per cent for boys, thus reflecting a rate increase compared with 2007. ***In view of the fact that compulsory education is one of the most effective means of combating child labour, the Committee requests the Government to continue its efforts to improve the functioning of the education system in the country. In this regard, it requests the Government to supply information on the measures taken, within the framework of the National strategy against the worst forms of child labour, to increase school attendance rates at both primary and secondary levels and further reduce gender disparity in access to education, particularly at the secondary level, by giving special attention to boys and to the most vulnerable groups in the population, such as children in rural areas and displaced children, Afro-Colombian and indigenous children.***

*Article 3(3). Hazardous work from the age of 16 years.* The Committee previously noted that, under the terms of section 4 of Resolution No. 01677 of 20 May 2008, young persons between 15 and 17 years of age who completed technical training with the National Apprenticeship Service (SENA) or institutes accredited for this purpose may be authorized to work in an activity for which they have been trained and may be able to freely exercise this occupation, art or trade, on condition that the contractor respects the terms of Decree No. 1295 of 1994 and Decree No. 933 of 2003, Resolution No. 1016 of 1989 and Resolution No. 2346 of 2007, and also Decision No. 584 of 2004 of the Andean

Committee for Occupational Safety and Health Authorizations. While observing that both conditions laid down by *Article 3(3)* of the Convention were respected by section 4 of Resolution No. 01677, the Committee understood that under this provision young persons between 15 and 17 years of age who have completed their apprenticeship or technical training with the SENA or institutes accredited for this purpose may perform the types of hazardous work prohibited by section 2 of the resolution.

The Committee notes the Government's information that children between 15 and 17 years of age need the written authorization of the labour inspectorate to work. The ministry will analyse in each case whether there is any moral or physical hazard for the minor before issuing the permit. The Government further recalls that Resolution No. 01677 prohibits hazardous work for all children under 18 years. The Committee observes that it is still unclear whether pursuant to section 4 of Resolution No. 01677, young persons between 15 and 17 years of age may perform the types of hazardous work listed in section 2 of the resolution. ***The Committee requests the Government to clarify whether under section 4 of Resolution No. 01677, young persons between 15 and 17 years may perform the types of hazardous work prohibited for children under 18 years listed in section 2 of the resolution. If so, it requests the Government to take the necessary measures to ensure that only young persons from 16 years who have received adequate specific instruction or vocational training may be allowed to perform types of hazardous work, in conformity with Article 3(3) of the Convention.***

*Article 9(1). Penalties.* The Committee previously noted that Resolution No. 01677 of 20 May 2008 does not contain any provision providing for penalties for violations of section 2 concerning the prohibition on employing young persons under 18 years of age in hazardous work.

The Committee notes the Government's information that non-compliance with legislation regarding minors is punishable by fines of between one and 100 minimum wages. ***The Committee requests the Government to indicate the provisions of national legislation which lay down such penalties and to provide information on their application in practice.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)**

The Committee notes the Government's report. It also notes the comments of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT) of 30 August 2010.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee observed that, despite the prohibition on the forced or compulsory recruitment of children for use in armed conflict laid down by the national legislation and the measures taken by the Government to address the issue of forced recruitment of children for use in armed conflict, children were still being forced to join illegal armed groups or the armed forces.

The Committee notes the CTC's and CUT's comment that one of the reasons why the forced recruitment of children for use in armed conflict continues is that no dissuasive penalties have been inflicted on offenders. Moreover, enforcement agencies lack the necessary training as regards both the human rights of child victims of forced recruitment in armed forces and the protection that should be afforded by the State to children separated from illegal armed groups. The CTC and CUT also underline that dialogue with illegal armed groups to stop recruiting children under 18 years in armed conflict and to demobilize those currently recruited, is lacking.

The Committee notes that, according to the report of the United Nations Secretary-General on children and armed conflict of 28 August 2009 (S/2009/434) (report of the Secretary-General), the Government of Colombia has adopted extensive measures to prevent the recruitment of children (such as developing an "early warning system" for monitoring imminent risks of violations of human rights and creating an inter-sectoral commission for the prevention of recruitment and use of children by illegal armed groups) and reintegrate former child victims of forced recruitment in illegal armed groups into their communities (paragraphs 52–72). Despite these measures, in the reporting period (January–December 2008) illegal armed groups continued to recruit children for use in armed conflict. For example, in January 2008 a 16-year old child was recruited by the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* (FARC–EP) in Tame, department of Arauca; in May 2008, 40 members of the FARC–EP, half of them between 13 and 17 years of age, were seen in the department of Cauca; between February and March 2008, three 15-year-old indigenous girls were recruited by FARC–EP, two in Toribío, department of Cauca and one in the rural area of Pasto, department of Nariño. In August 2008, seven children who had been members of the *Ejército de Liberación Nacional* (ELN) surrendered to the army in Cumbal, Nariño. Moreover, the illegal armed groups that emerged after the demobilization of the *Autodefensas Unidas de Colombia* (AUC) (such as *Autodefensas Campesinas Nueva Generación*, *Aguilas Negras* and *Ejército Revolucionario Popular Antiterrorista de Colombia*) reportedly continued to recruit children. Furthermore, both FARC–EP and ELN continued child recruitment campaigns in schools (paragraphs 15–22). In addition, some members of the armed forces continued to use children for intelligence activities. In February 2008, it was reported that the national police used a 12-year-old boy as an informant; the boy received death threats from FARC–EP and was eventually killed by an unidentified assailant (paragraph 23). It was also reported that, as a result of their forced recruitment for use in armed conflict, children suffered from serious violations by illegal armed groups and some individual members of the state forces, such as murder, injuries, abductions, rapes and other forms of sexual violence (paragraphs 27–51). Cases of children killed by FARC–EP and ELN were reported in the departments of Antioquia, Arauca, Guaviare, Huila, Meta,



Nariño, Putumayo and Valle del Cauca. Cases were also reported of children being killed for refusing to join the illegal armed groups (paragraphs 27–29). Moreover, according to the Attorney-General's Office, as of November 2008, among the 50 cases of extrajudicial executions under investigation, there are 51 child victims. In October 2008, a transitional commission was established to carry out an administrative investigation and to analyse the problem of extrajudicial executions: as a result, the President decided to dismiss 27 national army officers from service (paragraphs 34–35).

The Committee notes that, according to the report of the Secretary-General, estimates of the number of children participating in illegal armed groups range from 8,000 according to the Ministry of Defence, to 11,000 according to non-governmental sources. As of December 2008, the Special Investigative Unit for Women, Adolescents and Children within the Attorney-General's Office conducted investigations in 141 cases involving 634 child victims – 485 boys and 149 girls. Three guilty verdicts were handed down as of December 2008. Moreover, within the framework of the Justice and Peace Act No. 975 of 2005 (the law under which the members of demobilized self-defence groups are brought to trial), 2,133 child victims were identified. Out of the 3,284 former members of AUC who currently participate voluntarily in the depositions provided for by the Justice and Peace Act, 23 so far have confessed to the recruitment and use of a total of 654 children within their ranks, and the Attorney-General's Office is verifying 366 additional cases. However, less than 400 children were handed over in the collective demobilizations of AUC. According to the report of the Secretary-General, despite those positive advances, impunity for grave violations against children, as well as obtaining consolidated information and following up on convictions and proceedings, remain major challenges in Colombia (paragraphs 59–61).

The Committee observes that, despite the further measures taken by the Government, children are still being forced to join illegal armed groups. It once again expresses its *deep concern* at the persistence of this practice, especially as it leads to other grave violations of the rights of children, such as murder, sexual violence or abduction. ***In this regard, the Committee requests the Government to take immediate and effective measures to put a stop in practice to the forced or compulsory recruitment of children for use in armed conflict and proceed with the full and immediate demobilization of all children. With reference to Security Council resolution 1882 of 4 August 2009, which recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children", the Committee once again urges the Government to ensure that thorough investigations and robust prosecutions of offenders are undertaken and that sufficient effective and dissuasive penalties are imposed on any person found guilty of recruiting or using children under 18 years of age for the purpose of armed conflict. It requests the Government to supply information in this regard.***

*Article 6. Programmes of action. Inter-sectoral commission for the prevention of recruitment and the use of children by illegal armed groups.* The Committee notes the Government's information that the inter-sectoral commission for the prevention of recruitment and the use of children by illegal armed groups was created by Decree No. 4690 of 2007. It is in charge of coordinating the actions of ten governmental institutions, each of which has responsibilities in prevention and recruitment. The Committee notes that, according to the report of the Secretary-General, as a result of the technical support provided by the inter-sectoral commission in 50 municipalities in 26 departments, 40 municipalities and two departments adopted specific action plans to prevent child recruitment by illegal armed groups (paragraph 65). ***The Committee requests the Government to provide information on the implementation of the plans of action adopted to prevent the forced recruitment of children for use in armed conflict following the intervention of the inter-sectoral commission for the prevention of recruitment and the use of children by illegal armed groups.***

*Article 7(2). Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour. Child soldiers.* The Committee previously noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 21 December 2007 (A/62/609-S/2007/757, paragraphs 113 to 120), positive efforts were made by the Government in the demobilization of combatants from the AUC. It noted that 3,326 children previously associated with illegal armed groups benefited, through the Colombian Family Welfare Institute (ICBF), from the government initiative to prevent the recruitment of children by armed groups and reintegrate them into their communities.

The Committee notes the CTC's and CUT's observation that, notwithstanding the significant efforts of the ICBF to protect children separated from illegal armed groups, the programme should extend its geographical coverage. Moreover, the collaboration of the health, education, justice and labour sectors with the ICBF should be strengthened. Measures and strategies at the national level to adequately reintegrate child victims are lacking, especially as regards programmes aimed at promoting access to education for former child victims thus ensuring that their needs are taken into account and that they stay in schools or have access to vocational training programmes. Psychological assistance to child victims is also lacking.

The Committee notes that, according to the report of the Secretary-General, as of December 2008, the programme launched by ICBF assisted 3,876 children separated from illegal armed groups, of whom 2,146 were separated from FARC–EP, 1,042 from AUC, 538 from ELN and 150 from other groups. Of that number, 73 per cent were boys and 27 per cent were girls. During the reporting period (January–December 2008) the ICBF data indicates that a total of 314 children were separated from FARC–EP, 65 from ELN and 13 from the *Ejército Revolucionario Guevarista*. In addition, 23 children were separated from other groups, including the *Autodefensas Campesinas Nueva Generación*, *Aguilas Negras* and *Rastrojos*. In August 2008, the *Ejército Revolucionario Guevarista* handed over seven children to the ICBF. The number of children separated from illegal armed groups was greater in 2008 than in 2006 and 2007

(paragraphs 67–70). The Committee notes that, according to the report of Colombia of 21 October 2009 submitted under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/COL/1), the model implemented by ICBF for the protection of children and young persons demobilized from illegal armed groups was strengthened between 1 June 2006 and 31 May 2007 and now involves four distinct phases: identification and diagnosis, treatment, consolidation, and monitoring and follow-up. Each of the four phases entails specific action to restore rights through assistance provided through transition homes, specialized care centres, juvenile centres, foster families or family-based support systems. As of 30 June 2008, 516 children were in this programme (paragraphs 258–264). ***The Committee strongly encourages the Government to continue its efforts to remove children from armed conflict and ensure their rehabilitation and social integration. In this regard, it requests the Government to continue to supply information on the number of children under 18 years of age who have been rehabilitated and reintegrated into their communities as a result of these measures.***

The Committee is raising other points in a request addressed directly to the Government.

## Congo

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Sale and trafficking of children.* In its previous comments, the Committee noted the Government's statement that there is child trafficking between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work. According to the Government, the children are forced to work all day in harsh conditions by their host families, and are subjected to all kinds of hardships. The Committee noted that sections 345, 354 and 356 of the Penal Code lay down penalties for anyone found guilty of the forcible or fraudulent abduction of persons including young persons under 18 years of age. It requested the Government to indicate to what extent sections 345, 354 and 356 of the Penal Code have been implemented in practice. ***The Committee requests the Government once again to supply information on the application of sections 345, 354 and 356 of the Penal Code in practice, including, in particular, statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children.* In its previous observations, the Committee noted the Government's statement acknowledging that the trafficking of children between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work is contrary to human rights. It also noted that the Government has taken certain measures to curb child trafficking, including: (a) the repatriation by the Consulate of Benin (airport) for minors (young person under 18 years of age) to have administrative authorization to leave the territory of Benin. The Committee asked the Government to provide information on the impact of the measures taken with regard to the rehabilitation and social integration of children following their withdrawal from labour. It noted that the Government's report does not contain any information on this subject. ***The Committee requests the Government once again to supply information on the time-bound measures taken to remove young persons under 18 years of age from this worst form of child labour and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the impact of these measures.***

*Part V of the report form. Application of the Convention in practice.* The Committee noted that, according to the concluding observations of the Committee on the Rights of the Child on the initial report of the Congo of October 2006 (CRC/C/COG/CO/1, paragraph 85), a study of the root causes and repercussions of trafficking is due to be conducted in the country. ***The Committee requests the Government to supply information on the results of this study and to supply a copy of it once it has been prepared.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Costa Rica

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1976)**

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* The Committee previously noted the statistics contained in the report on the results of the national study on work by children and young persons in Costa Rica, published in June 2003 by the National Statistical and Census Institute and the Ministry of Labour and Social Security, in collaboration with ILO-IPEC and the Statistical Information and Monitoring Programme on Child Labour (SIMPOC), according to which 49,200 children under 15 years of age were working in Costa Rica. It noted that the second National Action Plan for the prevention and elimination of child labour and the special protection of young workers was reviewed and formulated in 2007 to bring it into line with the new Government policies, and particularly the National Development Plan (2006–10). The Committee also observed that according to the information contained in an ILO-IPEC report of June 2008 on the third phase of the project entitled "Elimination of child labour in Latin America" (ILO-IPEC report of June 2008), there was a slight reduction in work by young persons. However, the statistics on child labour provided by the Government only concern the Central Region of Costa Rica and do not give an overall view of the problem in the country.

The Committee notes the information provided in the Government's report on the implementation of the National Action Plan for the prevention and elimination of child labour and the special protection of young workers. It notes that a system to follow up and evaluate the National Action Plan was developed during the course of 2009. The results of this evaluation were due to be presented during the course of 2010 and will make it possible to provide more precise information on the impact of the measures adopted in the context of the Action Plan. While awaiting these results, the Committee observes that between August 2008 and January 2009 the measures adopted in the context of the Action Plan included the provision of economic support for 300 child workers with a view to maintaining them in the education system through the programme "Avanceamos". Moreover, awareness-raising activities on the risks and consequences of child labour have been carried out with 50 entrepreneurs in the agricultural sector and 2,297 fishers.

The Committee also notes the Government's indication that the household survey envisaged in 2009 does not allow measurement of the extent of work by children between the ages of five and 12 years, nor does it provide information on the characteristics of work by children and young persons. A specific module on child labour has therefore been adopted, which should be applied in practice during the course of 2010. The Committee nevertheless notes the statistics provided in the Government's report concerning the violations reported by the labour inspectorate in 2008 and 2009. It observes that in 2008 the labour inspectorate detected 186 cases of child labour in Costa Rica, and 168 in 2009. The majority of these cases were reported in the Central Region, namely in San José, Heredia and parts of Cartago. The 2008 statistics also show that the sectors with the largest number of cases identified are commerce (43 per cent) and services (19 per cent). ***The Committee requests the Government to provide detailed information on the impact of the measures taken in the context of the National Action Plan for the prevention and elimination of child labour and the special protection of young workers as soon as the results of the evaluation become available. It also expresses that firm hope that statistics disaggregated by sex and age group and on the nature, extent and trends of work by children and young persons below the minimum age will be provided in the near future.***

*Article 2(1). Minimum age for admission to employment or work.* In its previous comments, the Committee noted a contradiction between, on the one hand, section 89 of the Labour Code, which establishes a minimum age of 12 years for admission to employment and, on the other, sections 78 and 92 of the Code of Children and Young Persons, which sets this minimum age at 15 years, in accordance with the minimum age specified when the Convention was ratified. The Government indicated that, in the legal system in Costa Rica, the principle is applied whereby a standard contained in a special law has priority over that set out in a general law. Moreover, the principle also applies that the most favourable standard and the most beneficial conditions must be implemented. Accordingly, in the present case, the Code of Children and Young Persons has precedence over the Labour Code. While noting this information, the Committee observes that, in view of the child labour statistics involving children under 15 years of age in the country, it would be desirable for the provisions of the Labour Code to be brought into line with those of the Code of Children and Young Persons.

The Committee notes the Government's indication that it will undertake to provide information on any review of the national legislation in this respect. ***The Committee firmly encourages the Government to take the necessary legislative measures to harmonize the provisions in the national legislation respecting the minimum age for admission to employment or work. It requests the Government to continue providing information on any progress achieved in this respect.***

*Article 3(2). Determination of hazardous types of work.* Further to its previous comment, the Committee notes with ***interest*** the Government's indication that the Bill to prohibit young workers from performing hazardous and unhealthy types of work has been included on the agenda of the Commission on Childhood and Youth of the Legislative Assembly. ***The Committee expresses the firm hope that this Bill will be adopted in the very near future and requests the Government to provide a copy as soon as it has been adopted.***

***Finally, the Committee notes that a Bill on the employment of young persons is currently being examined by a special commission of the Social Affairs Commission of the Legislative Assembly. It requests the Government to continue providing information on the progress achieved in this respect and to supply a copy of the Bill as soon as it has been adopted.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the communication of the International Trade Union Confederation (ITUC) of 26 August 2009, as well as the Government's reply dated 22 October 2009.

*Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous work. Child domestic work.* The Committee notes the allegations made by the ITUC that nearly 6 per cent of the 113,500 children working in Costa Rica are employed in domestic work. It notes that the ITUC's comments refer to the ILO-IPEC study of 2002 entitled "Child domestic labour in Central America and the Dominican Republic", which revealed that one girl in every four under 18 years of age who works is engaged in the domestic sector in Costa Rica. According to the ITUC, these children work long days, are paid little if at all, are often the victim of physical and sometimes sexual violence, are exposed to hazardous working conditions and often have no access to education. Furthermore, child domestic workers are isolated since their activities are carried out within the private sphere, which makes them extremely vulnerable to all forms of abuse. However, the Committee notes that, according to the ITUC's comments, a Bill prohibiting young workers from carrying out hazardous and unhealthy work was submitted to the legislative assembly in 2005 and includes provisions regulating

child domestic work. Furthermore, a Bill on domestic work was also submitted to the legislative assembly in the same year.

The Committee notes the Government's reply to the ITUC's allegations, which indicates that, under the Code of Childhood and Adolescence (section 94), it is prohibited to employ children under 15 years of age (sections 78 and 92) and children aged between 15 and 18 years may not be engaged in activities that jeopardize their own safety or that of other persons placed under their responsibility. Furthermore, the working time of children aged between 15 and 18 years is limited to six hours per day or 36.6 hours per week (section 95). Furthermore, the Committee notes the Government's indication concerning the drafting of the Bill on domestic work and its forthcoming adoption. It also notes that the Bill prohibiting young workers from carrying out hazardous and unhealthy work contains provisions on child domestic work.

The Committee notes with *interest* the adoption of Act No. 8842 of 13 August 2010 amending the Code of Childhood and Adolescence, which provides that domestic work by children aged between 15 and 18 years is prohibited in the following conditions: (i) if the young person must sleep at the workplace; (ii) if the work requires the young person to look after children, elderly persons or disabled persons; and (iii) if the work consists of supervision (section 94bis). Furthermore, it notes that the Bill prohibiting young persons from carrying out hazardous and unhealthy work envisages the prohibition of child domestic work carried out in these same conditions. ***The Committee requests the Government to take the necessary measures to ensure that children under 18 years of age who are engaged in domestic work benefit from the protection guaranteed by the national legislation in practice and, in this regard, it requests the Government to provide statistics on the number and type of violations observed and the penalties applied. Furthermore, it expresses the hope that the Bill prohibiting young persons from carrying out hazardous and unhealthy work will be adopted very soon and that it will contain provisions on child domestic work. The Committee requests the Government to provide information on any progress made in this regard.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Child domestic workers.* The Committee notes the information provided by the Government in its reply to the allegations made by the ITUC. It notes in particular that an awareness-raising campaign was conducted on child domestic work between 2003 and 2006 through the television and radio media. According to the Government, four programmes have also been created in collaboration with the NGO World Vision with the aim of identifying and providing assistance for 120 child domestic workers. ***Considering that children engaged in domestic work are particularly exposed to the worst forms of child labour, the Committee requests the Government to redouble its efforts to protect these children from the worst forms of child labour by taking specific measures to provide the necessary and appropriate direct assistance to remove these children from hazardous work and ensure their rehabilitation and social integration. It requests the Government to provide detailed information on the measures taken to that end. Furthermore, the Committee requests the Government to provide information on the results achieved in the context of the abovementioned programmes, including the number of children who have benefited from these measures.***

The Committee is raising other points in a request addressed directly to the Government.

## Côte d'Ivoire

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2003)**

*Article 2(1) and (4) of the Convention. Scope of application.* The Committee previously noted that, under section 23(8) of Act No. 95/15 of 12 January 1995 (Labour Code), children may not be employed in an enterprise, even as apprentices, before the age of 14 years, unless an exemption is provided for by means of regulations. It noted that, under this provision, the minimum age for admission to employment or work applies only to an employment relationship and that consequently no minimum age for admission to employment or work is laid down for children who perform an economic activity outside this employment context, especially in the informal sector or on a self-employed basis.

The Committee notes the Government's indication that the letter and spirit of the Labour Code applies to any type of employment relationship, including the informal sector. It also notes the information provided by the Government under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the Labour Code extends to professional relationships, whether remunerated or not, and that the employment contract does not need to be in written form. However, it notes that the Government recognizes that self-employed persons do not benefit from this protection, but that numerous provisions of the bill prohibiting the trafficking of children and the worst forms of child labour ensure the protection of children working on a self-employed basis.

While noting the adoption of Act No. 2010-272 of 30 September 2010 prohibiting the trafficking of children and the worst forms of child labour, the Committee observes that this Act aims to prohibit and combat the worst forms of child labour defined in accordance with Article 3 of Convention No. 182, and does not therefore cover all categories of work and employment. ***The Committee therefore requests the Government to provide information on the measures taken in practice to ensure that children working on a self-employed basis are afforded the protection provided for by the Labour Code.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, according to UNICEF statistics for 2000–06, the net school attendance rate at primary level was 57 per cent for girls and

66 per cent for boys, while at secondary level, it was 22 per cent for girls and 32 per cent for boys. The Committee further noted that, according to the 2008 *Education for All: Global Monitoring Report* published by UNESCO entitled “Education for All by 2015: Will we make it?”, Côte d’Ivoire is one of four countries which are at serious risk of not achieving the objective of universal primary education for all by 2015 and the country is unlikely to achieve gender parity in primary and secondary education.

The Committee notes the measures taken by the Government to improve the functioning of the education system and increase the school attendance rate, at both primary and secondary levels. These measures include the lifting of restrictions relating to the wearing of school uniforms, the distribution of free school textbooks in public schools and establishments, free access to preparatory classes and reduced registration fees in secondary schools, as well as the introduction and improvement of school canteens in order to provide cheaper catering for pupils. The Committee also notes the information provided by the Government concerning the implementation of an awareness-raising policy designed to increase the school attendance rate of girls in urban and rural environments, in partnership with UNICEF and local non-governmental organizations.

The Committee takes due note of these measures designed to increase the school attendance rate. However, it notes that, according to UNICEF statistics for 2003–08, the net school attendance rate at primary level has not increased. It also notes that, although section 1 of Act No. 95-696 of 7 September 1995 concerning education (the Education Act) provides that all citizens are guaranteed the right to education, no provision guarantees the compulsory nature of schooling or lays down the age of completion of compulsory schooling. *Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to adopt legislation introducing compulsory schooling and establishing the age of completion of compulsory schooling so as to prevent children from engaging in work. It encourages the Government to continue taking effective measures to improve the functioning of the education system, in particular by increasing the school attendance rate at both primary and secondary levels, paying particular attention to gender disparities in access to education. Furthermore, it once again requests the Government to intensify its efforts to combat child labour by strengthening measures enabling working children to enter the formal or informal school system or take up vocational training, providing that minimum age criteria are respected.*

*Article 6. Apprenticeships.* The Committee previously noted that sections 12.2–12.11 of the Labour Code govern apprenticeships. It also noted that section 23.8 of the Code prohibits children from being employed in an enterprise, even as apprentices, before the age of 14 years, unless an exemption is provided for by regulations. Furthermore, it noted that, under section 3 of Decree No. 96-204 of 7 March 1996 concerning night work, children under 14 years of age engaged in an apprenticeship or in pre-vocational training may not undertake work under any circumstances during the limitation period for night work or in general during the period of 15 consecutive hours from 5 p.m. to 8 a.m. The Committee requested the Government to indicate whether exemptions provided for by section 23.8 of the Labour Code have been adopted by regulation allowing children under 14 years of age to embark on an apprenticeship.

The Committee notes the information provided by the Government that the texts implementing section 23.8 of the Labour Code have not yet been enacted to allow children under 14 years of age to embark on an apprenticeship and that an exemption to that effect will probably be envisaged in the context of the reform of the Labour Code. *Recalling once again that, under Article 6 of the Convention, the age for admission to work in enterprises in the context of an apprenticeship programme is 14 years, the Committee urges the Government to take the necessary measures to harmonize the Labour Code and Decree No. 96-204 of 7 March 1996 with the Convention and to establish a minimum age of 14 years for embarking on an apprenticeship.*

*Article 9(1). Penalties.* In its previous comments, the Committee noted that Order No. 2250 of 14 March 2005 establishing the list of hazardous types of work prohibited to children under 18 years of age does not provide for any penalty for violations of section 1. The Committee also noted that a bill prohibiting the trafficking of children and hazardous child labour was being drawn up.

The Committee notes with *satisfaction* that, under section 19 of Act No. 2010-272 of 30 September 2010, anyone who has a child in their care or supervises a child if they are in charge of the child’s education or his or her intellectual or professional development, who knowingly forces or allows that child to carry out hazardous work, shall be liable to a prison sentence of between one and five years. Furthermore, section 6 provides that hazardous work shall mean work included on the list established by Ministry of Labour Order No. 2250 of 14 March 2005.

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted that, according to a national survey on child labour undertaken in 2005, children are mainly employed in agriculture (cereal, coffee, or cocoa crops), commercial activities and industry. According to this study, 19 per cent of children are involved in harmful activities. Moreover, 83 per cent of economically active children engage in harmful activities and 17 per cent in hazardous types of work. Furthermore, one in five children involved in harmful activities is engaged in a hazardous type of work.

The Committee notes the Government’s indication that a new national survey was undertaken in 2008. However, the results of that survey have not yet been validated and have therefore not been provided. The Committee also notes the information provided by the Government that, according to the household standard of living survey carried out in 2008

(ENV 2008), 71.6 per cent of economically active children are employed in agriculture and 97.1 per cent are engaged in activities harmful to their health. Furthermore, the Committee notes that, according to the national child labour survey carried out in 2005, the majority of children forced to carry out harmful activities are under 15 years of age. Thus, 89.7 per cent of children engaged in harmful activities are under 15 years of age. Furthermore, the survey shows that more children are involved in these types of activities in rural areas compared to urban areas and that 328,000 children were affected in 2005. It also notes that, according to UNICEF statistics for 1999–2008, 35 per cent of children aged between 5–14 years in the country are working. *While noting the adoption of new legislative provisions prohibiting and punishing the performance of hazardous work by children under 18 years of age, the Committee observes that many children under the minimum age for admission to employment are engaged in harmful activities and hazardous work and therefore requests the Government to redouble its efforts to improve the child labour situation in the country, particularly the situation of children working in cocoa production and hazardous types of work. Furthermore, it requests it to provide the results of the 2008 national survey as soon as they have been validated. Finally, the Committee requests the Government to continue providing information on the application of the Convention in practice, including, for example, statistics disaggregated by gender and age concerning the nature, extent and trends of the work of children and young persons working below the minimum age specified by the Government at the time of ratification, and extracts from the reports of the inspection services.*

The Committee is raising other points in a request addressed directly to the Government.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour.* Further to its previous comments, the Committee notes with *satisfaction* the adoption of Act No. 2010-272 of 30 September 2010 prohibiting the trafficking and worst forms of child labour. It notes that section 4 of the Act prohibits the worst forms of child labour, which are defined in conformity with this provision of the Convention. *The Committee requests the Government to provide information on the application in practice of Act No. 2010-272 of 30 September 2010, including statistics on the number and nature of the violations reported, investigations, prosecutions, convictions and penal sanctions applied.*

*Clause (a). Sale and trafficking of children.* The Committee previously noted that sections 370 and 371 of the Penal Code criminalize the abduction of minors. However, it noted that, according to a study carried out by ILO/IPEC/LUTRENA in 2005 entitled “The trafficking of children for the exploitation of their work in the informal sector in Abidjan, Côte d’Ivoire”, these provisions are inadequate to combat the trafficking of children for economic exploitation as they only cover cases of the abduction of minors, whereas the internal or cross-border trafficking of children in Côte d’Ivoire is based on traditional networks for the placement of children and therefore occurs with the consent of the children’s parents or guardians.

In this respect, the Committee notes that sections 21 and 22 of Act No. 2010-272 of 30 September 2010 establishes penalties ranging from 10 to 20 years of imprisonment. It also observes that, in accordance with sections 2 and 3, the Act applies to all children under 18 years of age residing or staying on the territory of Côte d’Ivoire.

The Committee notes that, according to the “Trafficking in persons report 2010 – Côte d’Ivoire”, published on the website of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), Côte d’Ivoire is primarily a country of destination for children and women subjected to trafficking in persons. Trafficking within the country’s borders is more prevalent, with victims primarily trafficked from the north of the country to the more economically prosperous south. The great majority of boys who are victims of trafficking are from Ghana, Mali, Burkina Faso, Benin and Togo and are exploited in the agricultural sector, particularly in cocoa plantations. Girls from Ghana and Nigeria are also exploited as domestic workers and for prostitution. While taking due note of the new legislative provisions which prohibit and penalize the sale and trafficking of children, the Committee observes that this worst form of labour is a problem in practice. *Recalling that under the terms of Article 3(a) of the Convention, the sale and trafficking of children under 18 years of age for economic or sexual exploitation is one of the worst forms of child labour and that, under the terms of Article 1, immediate and effective measures shall be taken as a matter of urgency to secure the prohibition and elimination of this worst form of child labour, the Committee requests the Government to take the necessary measures to ensure in practice the protection of children under 18 years of age against sale and trafficking, in accordance with Act No. 2010-272 of 30 September 2010.*

*Articles 3(d) and 4(1). Hazardous work. Gold mines.* In its previous comments, the Committee noted that child labour in mines is one of the 20 types of hazardous work covered by section 1 of Order No. 2250 of 14 March 2005 and is prohibited for children under 18 years of age. It observed that, although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice.

The Committee notes the Government’s indication that many multinational enterprises are entering this sector and are provided with a list of conditions drawn up by the Ministry responsible for mining and energy, which prohibits the use of child workers. According to the Government, these companies do not employ children. However, the Government’s report indicates that the exploitation of child labour has been reported on mining sites under concession to private persons. It also notes that the Government and its development partners undertook awareness-raising campaigns while awaiting the application of Act No. 2010-272 of 30 September 2010. In this respect, the Committee observes that, under section 19 of this Act, persons who supervise or are in charge of a child and who cause the child to, or knowingly allow, the child to

perform hazardous work may be liable to a penalty of up to five years of imprisonment. ***The Committee therefore requests the Government to take immediate and effective measures to bring an end to the practice of child labour in mines, in accordance with the prohibition set out in law.***

*Articles 5 and 7(1) of the Convention. Monitoring mechanisms and penalties.* In its previous comments, the Committee noted that 14 persons had been arrested and imprisoned in 2008 for child trafficking and it requested the Government to provide the court decisions in their cases.

The Committee notes the Government's indication that the 14 persons arrested and imprisoned in 2008 for the trafficking of children have not yet been convicted. It also notes the Government's indication that the Sub-directorate to Combat the Trafficking of Children and Juvenile Delinquents of the national police organized several training workshops and seminars between 2006 and 2009 to strengthen the technical capacities of the officers and agents of the defence and security forces in relation to combating the trafficking and worst forms of child labour. According to the Government's report, the major objective of these measures is to enable them to be more effective in the identification of child victims of trafficking and the worst forms of labour. The Committee accordingly notes that, between June 2006 and June 2009, the national police services identified and intercepted 321 child victims of trafficking, including 124 cases of trans-border trafficking.

However, the Committee notes that, according to the report on the trafficking of persons referred to above, the police in Côte d'Ivoire demonstrate a weak understanding of the trafficking of children. During raids on brothels, the police tend to consider children working there in voluntary prostitution rather than as potential victims of trafficking. Furthermore, no training to reinforce the capacities of the agents and law enforcement officers and immigration for the identification and treatment of victims of trafficking was provided during the period covered by the report. The report also indicates that only one person was convicted of the trafficking of children, namely a Nigerian woman who was convicted in May 2009 to a sentence of three years of imprisonment by the court of Daloa for exploiting two young girls for the purposes of prostitution. The report adds that on two occasions, in February and June 2009, child traffickers intercepted by the police managed to escape, thereby evading conviction. ***The Committee therefore urges the Government to redouble its efforts to ensure that persons engaging in the sale and trafficking of children under 18 years of age are prosecuted and that sufficiently effective and dissuasive penalties are applied, under the terms of Act No. 2010-272 of 30 September 2010. In this respect, the Committee requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out, particularly by strengthening the capacities of the authorities responsible for the enforcement of the law. It requests the Government to provide any court rulings given against the traffickers imprisoned in 2008, as well as the ruling of May 2009 of the court of Daloa.***

*Article 6(1). Programmes of action to eliminate the worst forms of child labour. National Plan of Action to combat the trafficking and worst forms of child labour.* The Committee notes the information provided by the Government in its report under the Minimum Age Convention, 1973 (No. 138), according to which a National Plan of Action (2007–09) to combat the trafficking and worst forms of child labour (National Plan of Action) was adopted in 2007. The objective of the National Plan of Action is to reduce the incidence and, in due course, eradicate trafficking and other worst forms of child labour in Côte d'Ivoire. It is articulated around five strategic axes of intervention, aiming in particular to reinforce activities for the prevention and removal, reintegration and repatriation of child victims of trafficking and other worst forms of child labour, as well as the reinforcement of the human, material and structural capacities of the actors involved in the implementation of the Plan of Action. However, the Committee notes the Government's indication that very few activities have been undertaken up to now that are directly related to the National Plan of Action due to the lack of financing. Furthermore, most of the action taken on the issue of child trafficking and child labour is focused on the cocoa sector, including the establishment of a system to monitor child labour in cocoa plantations (SSTE), covering several administrative departments of the production zone. Finally, the Committee observes that, according to the strategic document of the National Plan of Action, Phase I of the Plan, which was initially to have lasted for 18 months, has still not been implemented and the time frame for the envisaged activities has not been followed. ***The Committee urges the Government to take immediate and effective measures to ensure the implementation in practice of the National Plan of Action. It requests the Government to continue supplying information on its implementation, with an indication of the action taken and the results achieved, particularly with regard to the number of children working in the cocoa sector who are in practice removed from cocoa plantations, as well as the rehabilitation and social integration measures adopted for those children.***

*Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children.* With reference to its previous comments, the Committee notes with *interest* the Government's indication that, in the context of the implementation of the ILO/IPEC/LUTRENA project, the measures adopted have resulted in the removal and placement in school of 840 children aged between 5 and 17 years, of whom 44 were victims of trafficking, during the period covered by the report. Furthermore, around 200 persons who are active in combating the trafficking of children received training, including 30 members of volunteer host families on caring for and supporting child victims of trafficking. The LUTRENA project also provided support for the formulation of the National Plan of Action to combat trafficking and the worst forms of child labour. The Committee also notes the Government's indication that 145 child victims of trafficking received support from the National Committee to Combat the Trafficking and Exploitation of Children (CNLTEE) in 2007, while

the numbers were 46 in 2008 and 9 in 2009. **While noting that the LUTRENA project was completed on 31 March 2010, the Committee strongly encourages the Government to continue taking immediate and effective measures for the removal of child victims of sale and trafficking, and requests it to continue providing information on the number of children who have in practice been removed from this worst form of child labour. The Committee also requests the Government to provide detailed information on the specific rehabilitation and social integration measures adopted to ensure the access of child victims of sale and trafficking to free basic education and vocational training.**

*Article 8. International cooperation.* In its previous comments, the Committee noted that Côte d'Ivoire had signed the multilateral cooperation agreement of 27 July 2005 to combat the trafficking of children in West Africa, as well as the regional multilateral cooperation agreement to combat the trafficking of children in West and Central Africa in July 2006. The Committee previously requested additional information on the measures adopted for the implementation of these multilateral agreements.

The Committee notes the Government's indication that the cooperation resulting from these agreements is only operational in the form of repatriation operations for child victims of trafficking. It also notes that this cooperation does not include the exchange of information intended to identify child trafficking networks and arrest the persons engaged in these networks. Furthermore, it notes from the 2010 report on trafficking that the Ministry of the Family, Women and Social Affairs undertook repatriation operations for 20 child victims of trafficking from Burkina Faso, Benin, Ghana and Togo during the period covered by the report. The Committee observes that a third follow-up meeting on the 2005 multilateral agreement was held in July 2008 in Niamey, Niger. **In view of the prevalence of trans-border trafficking in the country, the Committee strongly encourages the Government to take concrete and effective measures for the implementation of the multinational agreements signed in 2005 and 2006, and particularly for the establishment of a system for the exchange of information to facilitate the identification of child trafficking networks and for the arrest of the persons engaged in those networks. It also requests the Government to provide information on the results of the third follow-up meeting held in Niamey in July 2008.**

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that, according to a national survey of child labour conducted in 2005 in the country, it is estimated that 1.1 per cent of children between the ages of 5 and 17 years are victims of internal trafficking, while 10.4 per cent of child victims of trafficking are victims of trans-border trafficking, and that 52 per cent of them are from Burkina Faso and 31 per cent from Ghana. The towns most affected by trafficking are Bas Sassandra, Nzi, Comoé and Abidjan. It also noted that 17 per cent of economically active children are involved in hazardous types of work.

The Committee notes the Government's indication that, according to the national survey conducted in 2002 on the situation of child labour in the cocoa sector, over 600,000 children between the ages of 6 and 17 years are involved in this type of production, among whom 127,000 are engaged in work that is considered to be hazardous. It further notes the Government's indications that a survey on the living standards of households was conducted in 2008 (ENV 2008). The results of the survey have not yet been validated. However, the Committee observes that, according to the information supplied in the Government's report under Convention No. 138, the results of the ENV 2008 survey show that two children out of 1,000 are victims of trafficking, and that 97.1 per cent of economically active children are engaged in activities that are harmful for their health. **While taking due note of the adoption of the new legislative provisions prohibiting and penalizing the worst forms of child labour, the Committee observes that a large number of children are victims of trafficking and are engaged in hazardous activities and it therefore urges the Government to pursue its efforts to ensure the protection in practice of children against these worst forms of child labour. It also requests it to provide the statistics gathered in the context of the ENV 2008 survey as soon as the results have been validated. To the extent possible, all information provided should be disaggregated by sex and age.**

The Committee is raising other points in a request addressed directly to the Government.

## Croatia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1991)**

*Article 2(1) of the Convention. Scope of application.* In its previous comments, the Committee had requested the Government to take the necessary measures to ensure that the protection afforded by the Convention is also applicable to children who work without an employment relationship, in particular when they are self-employed. In this regard, it had asked the Government to adapt and strengthen the labour inspection services with regard to self-employed children or children working in the informal sector. The Committee notes with *satisfaction* the Government's indication that a new Labour Act No.149/2009 has come into force from 1 January 2010 (new Labour Act). It notes that according to section 17 of the new Labour Act, a person under 15 years of age or a person of 15 years of age or above and under 18 years of age, attending compulsory education must not be employed. The Committee further notes that section 18(1) of the new Labour Act stipulates that the legal capacity of minors to conclude employment contracts commences at the age of 15 years. The Committee finally notes that according to the statistical information provided by the Government on the number and nature of infringements discovered by the labour inspectorate, no cases of the self-employment of children under the age of 15 years were detected.

The Committee is raising other points in a request addressed directly to the Government.



## Democratic Republic of the Congo

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report. It also notes the detailed discussion held in the Committee on the Application of Standards during the 98th Session of the International Labour Conference in June 2009.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices.*

1. *Sale and trafficking of children for sexual exploitation.* Further to its previous comments, the Committee notes that section 174(j) of Act No. 06/018 of 20 July 2006, amending and supplementing the Decree of 30 January 1940 issuing the Congolese Penal Code, provides that any act or transaction relating to the trafficking or exploitation of children or any other person for sexual purposes in return for remuneration or any other benefit shall be punished by penal sanction ranging from ten to 20 years. It also notes that Act No. 9/001 of 10 January 2009 respecting the protection of children establishes a penalty of from ten to 20 years of penal servitude for both the sale and trafficking of children (section 162), and for the sexual slavery of a child (section 183). Nevertheless, the Committee observes that the Government's report does not provide information on the application in practice of the legislation respecting the sale and trafficking of children for sexual exploitation. It further notes that, in its concluding observations of 10 February 2009, the Committee on the Rights of the Child (CRC/C/COD/CO/2, paragraph 10), while welcoming the adoption of Act No. 09/001 of 10 January 2009, expressed concern that the enacted laws are not always followed by the issuance of appropriate decrees for implementation, that law enforcement mechanisms are weak and that no activities have been carried out to raise awareness of these laws which are, consequently, not applied or implemented. Furthermore, the Committee notes that, in its conclusions, the Committee on the Application of Standards noted that, although the law prohibited the trafficking of children for labour or sexual exploitation, it remained an issue of serious concern in practice and, accordingly, called on the Government to take immediate and effective measures to eliminate the trafficking of children under 18 in practice. ***The Committee joins the Committee on the Application of Standards in urging the Government to renew its efforts and to take immediate and effective measures to ensure the elimination of the sale and trafficking of children under 18 years of age for sexual exploitation, thereby ensuring the application in practice to section 147(j) of the Penal Code and Act No. 09/001 of 10 January 2009. In this respect, it once again requests the Government to provide statistics on the number and nature of the infringements reported, investigations, prosecutions, convictions and penalties imposed under the above legal texts.***

2. *Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted that article 184 of the transitional Constitution provides that no one shall be recruited into the armed forces of the Democratic Republic of the Congo or take part in war or hostilities unless they have reached the age of 18 years at the time of recruitment. It also noted that the Government had adopted Legislative Decree No. 066 of 9 June 2000 concerning the demobilization and reintegration of vulnerable groups present within the fighting forces. The Committee further noted that, according to the two reports of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo of 28 June 2007 (S/2007/391) and on children and armed conflict of 21 December 2007 (A/62/609–S/2007/757), the number of children recruited by the armed groups and armed forces had fallen by 8 per cent, which can be attributed in particular to the progress made in the implementation of the National Programme for the Disarmament, Demobilization and Reintegration of Children, the integration of the army, the reduction in the number of combat zones and the action taken by child protection networks against the recruitment of children.

The Committee takes due note of the fact that Act No. 09/001 of 10 January 2009, provides in section 87 for a penalty of penal servitude of from ten to 20 years for the enrolment or use of children under 18 years of age in armed forces and groups and the police. However, the Committee notes the Government's indication that, despite the progress achieved in the suppression of the enrolment of children, the persistence of combat areas is increasing the risk of enrolment. According to the Government's report, this is occurring in Ituri and in the two Kivu provinces, where recent cases of the abduction of children have been reported.

The Committee also notes the report of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo of 9 July 2010 (S/2010/369, paragraphs 17–41), for which the period covered extends from October 2008 to December 2009. According to this report, 1,593 cases of the recruitment of children (1,519 boys and 74 girls) were reported over the period under consideration, including 1,235 in 2009, which is a slight fall in relation to 2008 (1,522 cases reported). Nevertheless, the Committee observes that the Armed Forces of the Democratic Republic of the Congo (FARDC) appear to have the largest number of children in their ranks. Indeed, according to the report of the Secretary-General, 42 per cent of the total number of cases of recruitment reported have been attributed to the FARDC, and 594 new cases of the recruitment of children have been identified in their ranks by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), principally in the eastern region. The report reveals the existence of evidence confirming that hundreds of children associated with armed groups have been integrated into the FARDC without being concealed or hidden by their commander, particularly in North Kivu, where accelerated integration operations for armed groups into the national Congolese army have been undertaken in the absence of any coordination with institutions for the protection of children or supervision by these institutions. Accordingly, the number of children present in the ranks of the FARDC is reported to have increased spectacularly in 2009 due to the children present in the units that have been integrated, who represent 78 per cent of the cases of the recruitment of children in the FARDC. The

Committee notes from the report of the Secretary-General that children recently integrated into the FARDC have been transferred to regions that are distant from their place of recruitment to participate in the “Kimia II” operation (a joint FARDC–MONUC operation) or in military operations in Haut-Uélé. Furthermore, the Presidential Guard is reported to have recruited at least 35 children before and during deployment in Haut-Uélé. With regard to the geographical location of this phenomenon, the Committee notes the information contained in the report of the Secretary-General indicating that the province of North Kivu has the great majority of cases reported in 2009 (82 per cent). Cases have also been identified in North Katanga and in the two Kasai provinces, where no cases had been reported in 2008. According to the report, the use of child recruitment in areas not affected by the conflict may principally be explained by the high recruitment quotas imposed on FARDC commanders.

The Committee also notes with *concern* that, according to the report of the Secretary-General, the number of incidents involving the killing and maiming of children has increased, mainly in zones of military operations. The majority of the incidents reported are attributed to the Lords’ Resistance Army (LRA). However, nine cases of murders and 11 cases of maiming have also been attributed to elements of the FARDC. Furthermore, according to the Secretary-General, sexual violence against children continues to be a subject of serious concern. A significant increase in the number of abductions of children has also been observed over the period covered by the report. These are principally carried out by the LRA, although seven cases of the abduction of children by FARDC brigades have also been reported. The abducted children state that they were mainly used for combat, forced labour or were subject to sexual abuse.

The Committee observes that the Committee on the Rights of the Child in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 67), expressed grave concern that the State, through its armed forces, bears direct responsibility for violations of the rights of the child and that it had failed to protect children and prevent such violations. The Committee of Experts also notes the observation by the Committee on the Rights of the Child that children have been arrested, detained and tried in military courts for military offences and other crimes allegedly committed while they were in the armed forces or groups, instead of being treated as victims (CRC/C/COD/CO/2, paragraph 72).

The Committee observes that, despite the adoption of Legislative Decree No. 066 of 9 June 2000 concerning the demobilization and reintegration of vulnerable groups present within the fighting forces, and of Act No. 09/001 of 10 January 2009, which prohibits the enrolment and use of children under 18 years of age in armed forces and groups and the police, children continue to be recruited and forced to join rebel armed groups and the regular armed forces of the Democratic Republic of the Congo. The Committee expresses *deep concern* at the persistence of this practice and the increase in the number of children recruited by the FARDC. It also once again expresses its *grave concern* at the practice of the detention of children for presumed association with armed groups and their judgement by military tribunals, which constitutes a flagrant violation of international standards. ***The Committee urges the Government to take immediate and effective measures as a matter of urgency to ensure that children under 18 years of age are not forcibly recruited into the ranks of the armed forces of the Democratic Republic of the Congo and requests it to provide information on the measures taken in this regard. With reference to Security Council Resolution No. 1906 of 23 December 2009, in which it “demands that all armed groups immediately stop recruiting and using children and release all children associated with them”, the Committee urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of any persons, including officers in the regular armed forces, who forcibly recruit children under 18 years of age for use in armed conflict, are carried out and that sufficiently effective and dissuasive penalties are applied to them in practice, in accordance with Act No. 09/001 of 10 January 2009. It requests it to provide information on the number of investigations conducted, prosecutions and convictions against such persons.***

*Article 3(d). Hazardous work. Mines.* In its previous comments, the Committee noted the comments by the Confederation of Trade Unions of the Congo according to which young persons under 18 years of age are employed in mineral quarries in the provinces of Katanga and East Kasai. It noted that the United Nations Special Rapporteur, in her report of April 2003 on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/2003/43, paragraph 59), noted that military units are recruiting children for forced labour, especially for the extraction of natural resources. The Committee observes that, although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice and it therefore requested the Government to supply information on the measures which will be taken by the labour inspectorate to prohibit hazardous work by children in mines and to provide information on the effective application of the legislation on the protection of children in practice against hazardous work in mines.

The Committee notes that the Government’s report does not provide information on this subject. It observes that, in the context of the Conference Committee on the Application of Standards, the Worker member of the Democratic Republic of the Congo indicated that the labour inspectorate is not effective in view of the lack of staff and resources, and that it does not therefore have the capacity to address the problem of children working in mines. ***The Committee joins the Committee on the Application of Standards in urging the Government to take the necessary measures to reinforce the capacities of the labour inspectorate with a view to ensuring that children under 18 years of age engaged in hazardous types of work in mines benefit from the protection afforded by the national legislation. In this respect, it once again requests the Government to provide information on the application of provisions concerning this worst form of child labour, particularly through the communication of statistics on the number and nature of the offences reported and the penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration.*

1. *Sale and trafficking of children for sexual exploitation.* The Committee noted previously that the Government has established a multi-sectoral cooperation and action framework to prevent and respond to violence inflicted upon women, young persons and children, and that this framework includes the ministries responsible for human rights, women and the family and for social affairs, United Nations agencies, including UNICEF and UNDP, as well as NGOs. The action taken in this context includes the adoption of laws on sexual violence, awareness raising so that victims report their aggressors, psychological and social support for victims, medical treatment through the creation or reinforcement of health centre facilities to provide suitable care for victims, and legal support through the creation of legal advice centres. The Committee requested the Government to provide information on the impact of these measures. ***Noting the absence of information in the Government's report on this subject, the Committee once again asks the Government to provide concrete information on the number of child victims of sale and trafficking for sexual exploitation who have in practice been removed from this worst form of child labour and on the specific measures adopted to ensure their rehabilitation and social integration.***

2. *Child soldiers.* In its previous comments, the Committee noted that the operational framework for children associated with armed forces and groups envisaged by the National Programme for Disarmament, Demobilization and Reintegration had been launched in May 2004, and that around 30,000 children, including those who had been released before the adoption of the operational framework, were separated from the armed forces and groups between 2003 and December 2006. The Committee however noted that the issue of registering girls and removing them from the armed forces is a sensitive matter. The fear of being socially excluded if they are found to have been associated with armed forces or groups means that girls prefer to return discreetly to civilian life. The Committee also noted that programmes for the economic reintegration of children are hampered by the lack of possibilities available to improve their economic situation and the financial problems arising from a lack of long-term support mechanisms under the Programme. As a result, the children are at risk of being re-enlisted in the armed forces or groups. With regard to measures for psychological rehabilitation, the Government also acknowledged that the transitional support structures are deficient.

The Committee notes that, according to the report of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo of 9 July 2010 (S/2010/369, paragraphs 30 and 51–58), the number of children released in 2009 more than tripled in comparison with 2008, particularly in the province of North Kivu. Between October 2008 and the end of 2009, some 3,180 children (3,004 boys and 176 girls) left the ranks of the armed forces and groups or fled and were admitted to reintegration programmes. However, the Committee notes with ***concern*** the information provided in the report of the Secretary-General according to which on many occasions the FARDC has refused access to the camps to child protection institutions seeking to verify the presence of children in their units and that the commanders refuse to release children.

The Committee also observes that there are many obstacles to effective reintegration, such as the constant insecurity and the continued presence of former recruiters in the same region. According to the report of the Secretary-General, family reunion activities were suspended in certain regions of North Kivu during the course of 2009 in view of the high risk of re-engagement and the intimidation of children formerly associated with the armed forces and groups. The Committee also notes that the Committee on the Rights of the Child, in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 72), expresses concern at the fact that several thousands of child victims recruited or used in hostilities have not been provided with measures for recovery and integration and that certain of these children have been re-recruited in the absence of alternatives and assistance for demobilization. According to the report of the Secretary-General, girls associated with the armed forces and groups (around 15 per cent of the total number of children) rarely have access to reintegration programmes. Indeed, only 7 per cent of them benefit from assistance through national disarmament, demobilization and reinsertion programmes. The Committee notes the information provided by the Government to the effect that the structure of the unit for the implementation of the Programme for Disarmament, Demobilization and Reintegration needs to be strengthened. ***The Committee urges the Government to redouble its efforts and to take effective and time-bound measures to reinforce the National Programme for Disarmament, Demobilization and Reintegration with a view to continuing to remove children from armed groups and forces and ensuring their rehabilitation and social integration, paying special attention to girls. In this respect, it requests the Government to provide information on the results achieved in terms of the number of children who have benefited from social and economic reintegration measures.***

3. *Children who work in mines.* The Committee notes the Government's reply to the Conference Committee on the Application of Standards indicating that several projects for the prevention of child labour in mines and the reintegration of these children through education are being implemented. It notes the information provided in the Government's report according to which these projects are intended to cover a total of 12,000 children, of whom 4,000 are to be covered by prevention measures and 8,000 removed with a view to their reintegration through vocational training. ***With reference to the conclusions of the Committee on the Application of Standards, the Committee requests the Government to provide detailed information in its next report on the specific measures adopted in the context of these projects to prevent children under 18 years of age from working in mines and to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour and to ensure their rehabilitation and social***

*integration. In this respect, it requests the Government to provide information on the number of children who are in practice removed from these worst forms of child labour and who have benefited from reintegration measures through vocational training.*

The Committee is raising other points in a request addressed directly to the Government.

## Dominica

### Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2(1) of the Convention. Minimum age for admission to employment or work.* The Committee recalled that, under section 3 of the Employment of Children Prohibition Ordinance, the minimum age of admission to employment was 12 years and that, under section 4, subsections (1) and (5), of the Employment of Women, Young Persons and Children Ordinance, the minimum age is 14 years. The Government, however, specified a minimum age of 15 years when it ratified the Convention. ***It once again urges the Government to take the necessary measures in order to raise the statutory minimum age to 15 years, in accordance with this provision of the Convention.***

The Committee further noted that the statutory provisions on minimum age applied only to persons employed under an employment relationship or under a contract of employment, whereas the Convention also covered work performed outside any employment relationship, including work performed by young persons on their own account. ***The Committee once again expresses the hope that the Government will indicate the measures taken or envisaged to give full effect to the Convention on this point.***

*Article 3. Hazardous work.* The Committee recalled that no higher minimum age had been fixed for work which is likely to jeopardize the health, safety or morals of young people, other than night work. ***It once again urges the Government to take measures so as to set such higher minimum age(s) in accordance with Article 3(1) of the Convention, and to determine the types of employment or work to which higher minimum age(s) should apply, in accordance with Article 3(2) of the Convention.***

*Article 7. Light work.* The Committee noted that the national legislation allowed exceptions to the above minimum ages as regards the employment of children under the age of 12 years in domestic work or agricultural work of a light nature at home by the parents or guardian of such children (section 3 of the Employment of Children Prohibition Ordinance) and the employment of children under the age of 14 years in an undertaking or on a ship where only members of the same family are employed (section 4, subsection 1 and section 5, of the Employment of Women, Young Persons and Children Ordinance). The Committee recalled that under this Article of the Convention, national laws or regulations may permit the employment or work of persons 13–15 years of age on light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Another condition is that the activities involved and the conditions of work and employment should be determined by the competent authority. ***It once again expresses the hope that the Government will take measures to restrict, in accordance with this provision, the possibility to employ children below the minimum age specified, and to determine the activities and conditions of their employment or work.***

As regards the Government's reference to the work of family members as the category excluded under *Article 4*, the Committee pointed out that the exceptions under this provision must be listed in the first report after ratification, and that the Government declared in its first report, received in February 1988, that no use was made of this provision.

*Article 9(3). Keeping of registers.* The Committee noted that section 8(1) of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists of young persons of less than 16 years of age, whereas the Convention describes the keeping of such registers of persons of less than 18 years of age. It noted the Government's indication that this provision is not applied in practice. The Committee nevertheless pointed out that the Government has an obligation to give effect to the provisions of the Convention in law and practice. ***It therefore once again asks the Government to take the necessary measures so that registers or other documents are kept by the employer concerning workers younger than 18 years of age.***

The Committee noted the Government's indication that the provisions of the Convention are upheld by custom and practice. ***Pending the necessary amendments to the legislative provisions as requested above, the Committee once again asks the Government to supply detailed information on how the Convention is applied in practice, as required under Part V of the report form, including, for instance, extracts from official reports, statistics, and information on inspection visits made and contraventions reported.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Dominican Republic

### Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

*Article 2(1) and (4) of the Convention and Part V of the report form. Minimum age for admission to employment or work and application of the Convention in practice.* In its previous comments, the Committee noted the comments made by the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), according to which child labour is a major problem in the Dominican Republic. Owing to high unemployment and poverty, particularly among the Haitian community, children enter the labour market at a young age and work in the informal economy or in agriculture. Moreover, the number of Haitian children working in sugar plantations alongside their parents is increasing. In reply to the ITUC's observations, the Government indicated that the Dominican Republic is a very poor country and that it could not deny

that children enter the labour market at a very young age. However, with the technical assistance of the ILO–IPEC, it is taking measures to eliminate child labour, for example to remove children who are working in the agricultural sector. The Government also indicated that all children, irrespective of their nationality and including children of Haitian nationality, have to attend school. Furthermore, the Secretariat of State for Labour, in collaboration with the Secretariat of State for Education (SEE), has formulated a plan of action under which labour inspectors who identify children not attending school have to inform the SEE, irrespective of their nationality.

The Committee noted that, according to the statistics contained in the *Report on the results of the national study on child labour in the Dominican Republic*, published in 2004 by the ILO–IPEC, SIMPOC and the Secretariat of State for Labour, around 436,000 children aged between five and 17 years, were working in the Dominican Republic in 2000. Of these, 21 per cent were aged between five and nine years and 44 per cent were between ten and 14. The Committee noted that the sectors of economic activity most affected by child labour were services in urban areas and agriculture in rural areas. Furthermore, there were also many children working in the commercial and industrial sectors. The Committee noted that, in the context of the ILO–IPEC *Time-bound Programme (TBP)* on the worst forms of child labour, the Government has implemented several programmes of action in the agricultural and urban sectors to eliminate child domestic labour. According to the information available to the Office, these programmes should benefit around 25,200 boys and girls under 18 years of age and over 2,850 families. The Committee noted the adoption of the National Strategic Plan for the Elimination of the Worst Forms of Child Labour (2006–16), which is the country’s response to resolving the problem of child labour.

The Committee notes the Government’s indication that, in collaboration with the ILO–IPEC, it continues to take steps to eliminate child labour, in particular to remove children from agricultural plantations. Furthermore, an ongoing awareness-raising campaign on the radio and television has been launched in the country’s towns. The Committee also notes that the Government is participating in the ILO–IPEC project entitled “Elimination of child labour in Latin America (Central American component)”. It also notes the adoption of a Decent Work Country Programme (2008–11) and that it takes into account child labour. Furthermore, it notes that the *TBP* is still in progress in the country.

The Committee notes that, according to the statistics mentioned above, the application of the legislation on child labour seems difficult and that child labour constitutes a problem in practice in the country. It expresses its deep concern at the situation of children under the age of 14 years who are compelled to work in the Dominican Republic. ***The Committee firmly requests the Government to step up efforts to abolish child labour in the country. In this regard, it requests the Government to provide information on the measures taken within the framework of the National Strategic Plan for the Elimination of the Worst Forms of Child Labour (2006–16), the ILO–IPEC project on the elimination of child labour in Latin America, the Decent Work Country Programme (2008–11) and the TBP, in particular on the programmes of action which will be implemented to gradually abolish child labour. The Committee requests the Government to provide information on the results achieved. It also invites the Government to provide information on the application of the Convention in practice, including, for example, statistical data on the employment of children and adolescents, extracts from the reports of the inspection services, particularly inspections carried out in the sectors mentioned above.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Articles 3(a) and 7(1), of the Convention. Sale and trafficking of children for commercial sexual exploitation, and penalties.* In its previous comments, the Committee noted the observations made by the International Trade Union Confederation (ITUC), to the effect that the trafficking of human beings, including children, for commercial sexual exploitation, was a serious problem in the Dominican Republic, particularly in the tourist industry. The ITUC added that, despite the severe penalties set out in the national legislation for the trafficking of persons and the efforts made by the Government to eliminate this practice, the problem remained very widespread. The Committee noted that, according to the 2002 ILO–IPEC study entitled “Commercial sexual exploitation of young persons in the Dominican Republic”, the children involved in the commercial sexual exploitation sector were aged between 10 and 17 years. It noted that the Dominican legislation prohibits the sale and trafficking of children for the purposes of sexual and economic exploitation. The Committee also noted that, in the context of the ILO–IPEC Regional Project entitled “Participation in preventing and eliminating the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic” (Regional Project against CSEC), legislative measures were to be adopted to amend Act No. 137-03 of 7 August 2003 on the smuggling of migrants and the trafficking of persons and the Penal Code with a view to reflecting accurately the content of international instruments on the trafficking of persons, including trafficking for commercial sexual exploitation.

The Committee notes the Government’s information that the review of the Penal Code is being carried out in order to penalize clients and intermediaries of sale and trafficking and commercial sexual exploitation and establish new minimum penalties for commercial sexual exploitation. Moreover, Act No. 137-03 is also being revised.

The Committee notes that the 2009 Report on Trafficking in Persons in the Dominican Republic (Trafficking Report), available on the Office of the High Commissioner for Refugees web site ([www.unhcr.org](http://www.unhcr.org)), indicates that the Dominican Republic is a source, transit and destination country for men, women and children trafficked for the purposes of commercial sexual exploitation and forced labour. A significant number of women, boys and girls are trafficked within the country for forced prostitution and domestic servitude. In some cases, parents push children into prostitution to help support the family. Child sex tourism is a problem, particularly in coastal resort areas, with child sex tourists arriving year round from various countries, particularly Spain, Italy, Germany, Canada and the United States and reportedly numbering in the thousands. Haitian nationals, including children, who voluntarily migrate illegally to the Dominican Republic, may subsequently be subjected to forced labour in the service, construction and agricultural sectors. According to the same source, notwithstanding trafficking investigations continued during 2008, since 2007 there have been no convictions on

trafficking charges under Act No. 137-03 and the Government did not show evidence of progress in prosecuting and punishing trafficking offenders. Moreover, according to the 2010 Interim Assessment for the Trafficking Report, also available at the website of the Office of the High Commissioner for Refugees (www.unhcr.org), the Government has made limited progress in combating trafficking in persons since the release of the 2009 Report. The Attorney General's Office did not report any efforts to prosecute trafficking offenders and no trafficking cases were identified. The Committee finally notes that, according to the United Nations Office on Drugs and Crime (UNODC) 2009 Global Report on Trafficking in Persons, a human trafficking division within the national police was established in January 2008 to investigate cases of human trafficking. In addition, the Anti-Trafficking Unit of the Attorney-General's office is tasked with investigating and prosecuting human trafficking and related crimes. Between 2007 and 2008, the human trafficking division investigated five cases of trafficking in persons, none of which involved children.

The Committee expresses its *concern* at the persistence of the problem of trafficking of children for commercial sexual exploitation and forced labour in the country as well as at the limited anti-trafficking law enforcement efforts to address the issue. ***The Committee therefore urges the Government to redouble its efforts to strengthen the capacity of law enforcement agencies in order to ensure that persons who traffic in children for the purposes of sexual or labour exploitation are in practice prosecuted, and that sufficiently effective and dissuasive penalties are imposed. It also requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children. To the extent possible, all information provided should be disaggregated by sex and age. It finally hopes that the review of the provisions of the Penal Code and of Act No. 137-03 on trafficking and commercial sexual exploitation will be completed in the very near future and requests the Government to provide information in this regard.***

*Article 6. Programmes of action. 1. Trafficking. National Plan against Trafficking.* The Committee notes the Government's information that the inter-agency National Commission Against Trafficking elaborated the National Plan against Trafficking. ***It requests the Government to provide information on the programmes of action established in the context of the National Plan against Trafficking and the results achieved in terms of the elimination of the trafficking of children.***

*2. Commercial sexual exploitation. National Plan for the Elimination of the Abuse and Commercial Sexual Exploitation of Boys, Girls and Young Persons.* In its previous comments, the Committee noted with interest the National Plan for the Elimination of the Abuse and Commercial Sexual Exploitation of Boys, Girls and Young Persons (National Plan against CSEC) and the activities envisaged therein to combat commercial sexual exploitation in the country. The Committee notes that, according to the ILO-IPEC project "Developing a road map to make Central America, Panama, and the Dominican Republic a child-labour free zone" (Road Map), among the achievements of the National Plan against CSEC 2003-13, assistance is offered by the National Council on Children and Adolescents (CONANI) to child and adolescent victims of commercial sexual exploitation. ***The Committee requests the Government to continue to take measures in the framework of the implementation of the National Plan against CSEC and to provide information on results achieved in terms of the elimination of the commercial sexual exploitation of children.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing children from becoming engaged in the worst forms of child labour. Commercial sexual exploitation. 1. Time-bound Programme (TBP) and ILO-IPEC Regional Project.* In its previous comments, the Committee noted that the commercial sexual exploitation of children was one of the worst forms of child labour in respect of which the Government had undertaken to adopt measures as a priority in the context of the ILO-IPEC ***TBP*** on the worst forms of child labour.

The Committee notes that various measures have been adopted, both in the context of the ILO-IPEC project "Supporting the ***Time-bound Programme*** for the Elimination of the Worst Forms of Child Labour in the Dominican Republic - Phase II (2006-09)" (***TBP***, phase II), and in the context of the ILO-IPEC Regional Project against CSEC, to raise awareness on the commercial sexual exploitation of children. It also notes that, according to the technical progress report of September 2009 on the ***TBP***, phase II, 56 children have been prevented from commercial sexual exploitation through the provision of educational services or training opportunities. ***The Committee requests the Government to continue to take measures to prevent the engagement of children in commercial sexual exploitation and to provide information in this regard.***

*2. Tourist industry.* In its previous comments, the Committee noted that the ILO-IPEC Regional Project against CSEC provides for the strengthening of national institutional capacities. It requested the Government to provide information on the measures adopted for this purpose. As the country benefits from widespread tourist activity, the Committee also requested the Government to indicate whether measures have been taken to raise awareness among actors directly related to the tourist industry, such as associations of hotel owners, tourist operators, unions of taxi drivers and owners of bars, restaurants and their employees.

The Committee notes that, according to the final technical progress report of July 2009 of the ILO-IPEC Regional Project against CSEC, major institutional coordination has been promoted by providing specialized technical assistance to the Inter-institutional Commission against Abuse and Commercial Sexual Exploitation of Children. Moreover, human resources at key institutions (childcare institutions, police, district attorneys and judges) were trained for the improvement of programmes for child victims through training workshops and education materials. The Committee notes the Government's information that a project against commercial sexual exploitation in Las Terrenas is being carried out. It

further notes the Government's information that an ethical code for the tourism sector is being implemented and that awareness-raising activities on commercial sexual exploitation have been carried out in the tourist industry. **The Committee requests the Government to continue to take measures to raise awareness among actors directly related to the tourist industry and to provide information in this regard. It also asks the Government to provide information on the results of the project against commercial sexual exploitation in terms of preventing the commercial sexual exploitation of children.**

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Commercial sexual exploitation.* Following its previous comments, the Committee notes that, according to the technical progress report of September 2009 on the **TBP**, phase II, 80 children have been removed from commercial sexual exploitation through the provision of educational services or training opportunities. **The Committee requests the Government to continue to take measures to provide the necessary and appropriate direct assistance for the removal of children from commercial sexual exploitation and for their rehabilitation and social integration. The Committee also requests the Government to indicate whether reception centres for child victims of commercial sexual exploitation have been established in the country, with an indication of the number of children actually received by such centres; and whether specific medical and social follow-up programmes have been formulated and implemented for child victims of commercial sexual exploitation.**

*Article 8. International cooperation. 1. Commercial sexual exploitation.* In its previous comments, the Committee noted that the ILO–IPEC Regional Project against CSEC envisaged the strengthening of horizontal collaboration between countries participating in the project. The Committee notes that, according to the final technical progress report of July 2009 of the ILO–IPEC Regional Project against CSEC, horizontal collaboration between countries participating in the project was strengthened, inter alia, through: developing a regional database with approximately 400 institutions working on the theme of commercial sexual exploitation of children; exchanging information between district attorneys and police officers on sexual crimes and experiences in police investigation methods; and supporting the stakeholders concerned (such as migration offices, the Commission of Central American Chiefs of Police and the INTERPOL Subregional Office) in the common fight against trafficking of children. **The Committee requests the Government to continue to take measures to cooperate at the regional and international levels in order to eliminate the commercial sexual exploitation of children. It also requests it to provide information on further measures taken in this regard and results achieved.**

*2. Poverty reduction.* The Committee previously noted that both the Strategic National Plan for the Elimination of the Worst Forms of Child Labour (2006–16) and the National Plan against CSEC envisaged strategic measures for the reduction of poverty in the country. It also noted that, according to the statistical data provided by the Government, around 60 per cent of minors under 14 years of age lived in poverty in 2001.

The Committee notes with **interest** the Government's information that the conditional cash transfer programme “Solidaridad”, which is one of the programmes implementing the national strategy to reduce poverty (Social Protection Network), has been launched. It notes the Government's information that “Solidaridad” signed a cooperation agreement with ILO–IPEC in order to link the activities of “Solidaridad” with the ongoing ILO–IPEC programmes of action in the country. The Committee further notes that fighting poverty as a way to prevent and progressively eradicate child labour and eliminate its worst forms is one of the objectives of the Road Map. As a way to achieve this objective, the coverage of “Solidaridad” is projected to increase by 2020 and priority is to be given to poorest families with children under 18 years at risk of being involved or involved in the worst forms of child labour. In particular, the number of poor families who are beneficiaries of “Solidaridad” is projected to increase from 409,696 in 2009 (37.55 per cent of the total number of families in situations of poverty) to 700,000 in 2020 (87.5 per cent), and the total number of families who are beneficiaries with children from 6 to 16 years is projected to increase from 427,116 in 2009 to 891,656 in 2020. **The Committee requests the Government to provide information on the results of the implementation of the “Solidaridad” programme and the ILO–IPEC project Road Map, particularly in terms of the effective reduction of poverty among children removed from commercial sexual exploitation and from sale and trafficking for this purpose.**

The Committee is raising other points in a request addressed directly to the Government.

## Ecuador

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted the statistical information from the National Institute of Statistics and Census (INEC) of 2005, to the effect that the number of child workers between 5 and 17 years of age in the country was decreasing. It also noted the Government's statement that the child labour inspection and monitoring service had been reinforced since 2004. The Committee also noted that Ecuador had implemented a **Time-bound Programme (TBP)** in order to eliminate the worst forms of child labour, particularly the work of children in the banana and flower industries.

The Committee noted with **interest** the detailed information sent by the Government concerning the results achieved further to the implementation of the **TBP**, which ended in June 2008. A total of 7,406 children were beneficiaries of the **TBP**. Of these,

5,250 children were prevented from becoming involved in one of the worst forms of child labour covered by the *TBP* and received educational services, and 2,156 children were removed from their work and were also provided with educational services. The Committee noted the detailed information provided by the Government on the measures taken to implement other programmes of action, such as the “Being” project and the “Pro-child” programme, for abolishing child labour and the worst forms thereof. Moreover, it noted the Government’s indication that a review of the “National Plan for the prevention and elimination of child labour” is in progress. The Committee also noted the detailed information provided by the Government on the results of the second national survey of child labour carried out by the INEC in 2006. According to this survey, 580,888 children and young persons were employed in forms of child labour to be abolished under the terms of the Convention. Of these, 164,551 were children between 5 and 11 years of age, 202,585 were adolescents between 12 and 14 years of age, and 213,752 were young persons engaged in hazardous work between 15 and 17 years of age. The Committee noted that, according to the national survey of child labour for 2006, child labour has decreased by 3 per cent in comparison with 2001.

The Committee also noted that, according to ILO–IPEC information, the Government has adopted various public policies, including the “Social agenda for children and young persons”, the “Ten-year National Plan for the full protection of children and young persons” and the “National Development Plan”. In the context of these public policies concerning children, measures will be taken to combat child labour. The Committee also noted that the Government is participating in the ILO–IPEC project on the “Elimination of child labour in Latin America (third phase, South America)”. While duly noting the measures taken by the Government to combat child labour, the Committee again noted that, according to the abovementioned statistics, the practice observed is still in contradiction with the legislation and the Convention. ***The Committee is deeply concerned at the situation of children under 14 years of age who are compelled to work and urges the Government to intensify its efforts to gradually improve the situation. It requests the Government to take the necessary steps, in the context of the various public policies mentioned above and the ILO–IPEC project on the “Elimination of child labour in Latin America”, to abolish child labour. It requests the Government to supply information on the results achieved. The Committee also requests the Government to provide information on the application of the Convention in practice, including, for example, statistics relating to the employment of children and young persons, and extracts of the reports of the inspection services, particularly inspections conducted in the abovementioned sectors. Finally, it requests the Government to supply a copy of the new “National Plan for the prevention and elimination of child labour”, once it has been formulated.***

*Article 2(2) and (5). Raising the minimum age for admission to employment or labour to 15 years.* The Committee noted the Government’s statement that Act No. 2006-39 raised the minimum age for admission to employment or work from 14 to 15 years, thereby aligning the provisions of section 134(1) of the Labour Code with those of section 82(1) of the Children and Young Persons Code of 2003. It requested the Government to consider the possibility of sending the ILO Director-General a new declaration stating that Ecuador had raised the previously specified minimum age, in accordance with *Article 2(2)* of the Convention. The Government indicated that it will recommend that the Ministry of Labour and Employment notify the Director-General that the minimum age for admission to employment or work has been raised from 14 to 15 years. ***The Committee requests the Government to supply information on any new developments in this regard.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee noted that, according to UNICEF statistics for 2006, the net primary school enrolment rate was 98 per cent for girls and 97 per cent for boys and the figures for secondary schools were 53 per cent for girls and 52 per cent for boys. The Committee duly notes that, according to the Education for All (EFA) Global Monitoring Report 2008 published by UNESCO entitled “Education for All by 2015: Will we make it?”, Ecuador has achieved the objective of universal primary education for all and that of gender parity in both primary and secondary education. The Committee duly notes the net primary school enrolment rate. However, it expresses its concern with regard to the low net secondary school enrolment rate. It observes that poverty is one of the primary causes of child labour and, combined with a deficient education system, it hampers the development of the child. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to continue its efforts to improve the functioning of the education system in the country and to take measures to enable children to attend compulsory basic education or enter an informal school system. In this regard, it requests the Government to supply information on the measures taken to increase the secondary school enrolment rate. Finally, the Committee requests the Government to supply information on the results achieved.***

*Article 3(2). Determination of hazardous work.* With reference to its previous comments, the Committee noted with satisfaction Resolution No. 016 CNNA-2008 of 8 May 2008, adopting regulations on hazardous work which is prohibited for young persons who are legally entitled to work in employment or on a self-employed basis. This resolution was adopted in consultation with the employers’ and workers’ organizations, and also with various other parties concerned with the problem of child labour. The Committee noted in particular that section 5 of these Regulations contains a very detailed list of types of work prohibited for young persons between 15 and 18 years of age. It also noted that section 6 of the Regulations fixes at 18 years of age the minimum age for admission to employment for young domestic workers who live in the homes of their employers. The Committee further noted the Government’s statement that agreements concerning the types of work prohibited for young persons between 15 and 18 years of age in the banana and flower industries have been concluded. ***The Committee requests the Government to supply a copy of these agreements in its next report. It also requests the Government to provide information on the application in practice of Resolution No. 016 CNNA-2008 adopting regulations on hazardous work.***

*Article 8. Artistic performances.* In its previous comments, the Committee noted the Government’s statement that Regulations issued under the Children and Young Persons Code will lay down the conditions of employment for children and young persons engaged in artistic activities or performances. The Committee noted the Government’s information to the effect that the Regulations implementing the Children and Young Persons Code are in the process of being validated. The Committee reminded the Government that, under *Article 8(1)* of the Convention, the competent authority may waive the minimum age of 14 years specified by Ecuador for admission to employment or work and, after consultation of the employers’ and workers’ organizations concerned, may grant permission in individual cases for purposes such as participation in artistic performances. It also reminded the Government that according to *Article 8(2)* the permits so granted must limit the number of hours during which, and prescribe the conditions in which, employment or work is allowed. ***The Committee expresses the firm hope that the regulations implementing the Children and Young Persons Code will be adopted in the near future, will take account of the comments made above and will lay down the conditions of employment for children and young persons in artistic performances. It requests the Government to supply information on any new developments in this regard.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***



## **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

*Article 3(a) and (b) of the Convention and Part III of the report form. Sale and trafficking of children for commercial sexual exploitation, the use of children for prostitution and court decisions.* In its previous comments, the Committee noted that, according to ILO-IPEC statistics, over 5,200 children were victims of commercial sexual exploitation or trafficking for this purpose in Ecuador. It also noted the adoption of Act No. 25-447 of 23 June 2005, reforming the Penal Code, which categorizes crimes involving the sexual exploitation of young persons under 18 years of age and establishes heavy penalties for persons found guilty of having committed a crime established under this Act.

The Committee noted that, according to a 2007 report on the worst forms of child labour in Ecuador, available on the UNHCR website (www.unhcr.org), Colombian girls are trafficked to Ecuador for commercial sexual exploitation, and Ecuadorian children are trafficked to neighbouring countries and Spain. According to this report, it would seem that most children are trafficked within the country to urban centres, particularly for prostitution. The Committee also noted that the Committee on the Protection of the Right of Workers and their Migrant Families, in its final observations on Ecuador's initial report on December 2007 (CMW/C/ECU/CO/1, paragraph 32), while recognizing the efforts undertaken by the National Council for Children and Young Persons against the commercial sexual exploitation of children and trafficking for this purpose, was nevertheless concerned at the involvement of migrant children in prostitution, especially in the Lago Agrio region, and at the fact that there still seemed to be a sort of social acceptance of this criminal behaviour against children in Ecuadorian society.

The Committee noted the information provided by the Government on the denunciations received by the National Police Unit specialized in the welfare of boys, girls and young persons (DINAPEN) concerning the commercial sexual exploitation of children. It noted that, between 2006 and June 2008, there had been a total of 184 denunciations, of which 153 concerned prostitution, including trafficking, 24 child pornography and eight sexual tourism. The Committee took note of the Government's statement that, since 2005, 14 persons have been sentenced for the exploitation of children under 18 years of age for sexual purposes in the cities of Machala and Quito. In Quito, five sentences were handed down for the trafficking of children for sexual exploitation and one for the procuring of children, while in Machala, five sentences were handed down for trafficking for sexual exploitation, two for procuring and two for pornography. The penalties applied ranged from between three and five years' imprisonment. **The Committee encourages the Government to continue its efforts to ensure, in practice, the protection of children under 18 years of age against these worst forms of child labour. In this respect, it requests the Government to continue to provide information on the application of the provisions of the Penal Code applying to the crimes of sexual exploitation against minors of less than 18 years of age in practice. Furthermore, taking account of the information that persons have been prosecuted and sentenced, the Committee requests the Government to provide copies of the judgements handed down by virtue of the provisions in the Penal Code in its next report.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and social integration. Commercial sexual exploitation of children and the trafficking of children for this purpose.* In its previous comments, the Committee noted that, in the context of the **Time-bound Programme (TBP)**, programmes of action were to be implemented to combat the commercial sexual exploitation of children and the trafficking of children for this purpose. In this respect, the Committee noted, with **interest**, the detailed information provided by the Government on the results obtained following the implementation of the **TBP**, which ended in June 2008. It noted, more particularly, that a total of 1,174 children who were victims of commercial sexual exploitation or trafficking for this purpose benefited from the **TBP**. Out of this number, 1,037 children, of which 692 were girls and 345 boys, were prevented from being engaged in these worst forms of child labour, and 137 children, of which 135 were girls and two boys, were removed from these worst forms of child labour. The Committee further noted that, according to the Government, the children who benefited from the **TBP** also received assistance in re-entering the formal or informal education system, or received vocational training. What is more, temporary accommodation and social and legal assistance were provided to the children who had been removed from these worst forms of child labour. Finally, assistance, especially in the form of grants, were offered to the families of children benefiting from the **TBP**.

The Committee took due note of the Government's indication that it has adopted a national plan to combat the trafficking of persons, the illicit traffic of migrants, sexual exploitation, economic and other forms of exploitation, the prostitution of women, boys, girls and young persons, child pornography and the corruption of minors (National Plan to combat the trafficking of persons and commercial sexual exploitation). The Committee also noted that, in the districts of Cuenca and Machala, plans to combat the commercial sexual exploitation of children and trafficking of children for this purpose have also been drawn up. Furthermore, according to the ILO-IPEC final report on the **TBP** of June 2008, the National Programme of protection for children and young people who are victims of commercial sexual exploitation or trafficking for this purpose is still in operation in the cities of Quito and Machala and will also be implemented in the region of Lago Agrio. **The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken, when implementing the National Plan to combat the trafficking of persons and commercial sexual exploitation and the plans to combat the commercial exploitation of children and the trafficking of children for this purpose in Cuenca and Machala, to: (a) prevent children from being victims of commercial sexual exploitation or trafficking for this purpose; and (b) provide the necessary and appropriate direct assistance to remove child victims from these worst forms of child labour. It requests the Government to continue providing information on the results obtained. The Committee also requests the Government to provide information on the implementation of the National Programme of protection for children and young persons who are victims of commercial sexual exploitation or trafficking for this purpose, especially with respect to the measures taken in the context of this programme to guarantee the rehabilitation and social integration of the victims of this worst form of child labour.**

*Article 8. International cooperation and assistance. Commercial sexual exploitation of children and trafficking of children for this purpose.* In its previous comments, the Committee expressed the hope that, in the context of the implementation of the **TBP**, the Government would take measures to cooperate with neighbouring countries, particularly through the reinforcement of security measures on common borders. In this respect, the Committee took due note of the information provided by the Government that it participated in a meeting with Peru and Colombia to coordinate actions with a view to exchanging information on the commercial sexual exploitation of children and the trafficking of children for this purpose. Agreements had been reached on an exchange of information between the police and judicial services. **The Committee requests the Government to indicate whether the exchanges of information with Peru and Colombia, carried out in the context of the**

*agreements signed between the police and judicial services, have made it possible: (a) to identify and arrest persons working in networks involving the trafficking of children; and (b) to detect and intercept child victims of trafficking at the borders.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Egypt

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention and Part V of the report form. National policy on the effective abolition of child labour and the application of the Convention in practice.* The Committee previously noted that, according to the 2005 report of the International Trade Union Confederation (ITUC), 6 per cent of children aged 5–14 are involved in labour activities, mostly in the agricultural sector (in both commercial and subsistence agriculture). The ITUC report also indicated that children often work in repair and craft shops, in the brick making and textile sectors and in leather and carpet-making factories. The ITUC report stated that there was evidence of employers who abuse, overwork and endanger child workers. However, the Committee also noted the numerous measures taken by the Ministry of Manpower and Migration (MoMM) within the framework of the National Child Labour Strategy (adopted in 2006). These measures included the creation of a central database on child labour, the provision of services to working children and their families, and the development of poverty-alleviation programmes to help prevent children from entering the labour force or to return to school.

The Committee notes the Government's indication that, while the central database on child labour is still being developed, the Central Body for Public Mobilization and Statistics is undertaking a comprehensive survey on child labour, in collaboration with the ILO. The Committee also notes the Government's statement that child labour is not as widespread as indicated in the ITUC report and that the statistics in the ITUC report do not reflect the present reality of the situation in Egypt, particularly in light of the efforts of the Government over the last year. In this regard, the Committee notes the information in a report on the UNICEF Egypt website ([www.unicef.org/egypt](http://www.unicef.org/egypt)) on working children, that the issue of child labour is difficult to quantify in the country, and that different studies offer divergent figures on the number of working children. This UNICEF report indicates that the variation between different studies is due to the fact that much of the work performed by children is difficult to measure, as it is seasonal (UNICEF indicates that over a million children are hired each season to bring in the Egyptian cotton crop) and performed in the informal sector.

The Committee notes the Government's statement that its efforts on the ground to eliminate child labour have been strengthened. The Government states that the implementation of the National Child Labour Strategy has resulted in the establishment of steering committees in all governorates, by virtue of Ministerial Order No. 227 of 2009. These steering committees will translate the National Child Labour Strategy into a national plan of action, with participation from governmental and non-governmental organizations. The Committee also notes that the work of the steering committees has resulted in the reintegration of 122 children into basic education, the enrolment of 109 children in literacy classes, the provision of social and health services to 789 children, the signing of 428 apprenticeship contracts, and the holding of awareness-raising sessions for 515 children. The Committee further notes that the World Food Programme is implementing the Combating Child Labour Project, in Beni Suef, Adyut and Sohag, which provides both in-school and take-home food to school children.

The Committee notes the information in the Survey of Young People in Egypt (Preliminary Report) of February 2010 (produced by the Egyptian Cabinet Information and Decision Support Centre and the Population Council) that 81 per cent of working children between the ages of 10 and 14 are in rural areas, with 53 per cent working in agriculture and 28 per cent working in construction. The Survey indicates that working children come from poorer households, with 65 per cent of working children between the ages of 10 and 14 coming from households in the two lowest income quintiles. *While noting the efforts made by the Government to combat child labour, the Committee must express its concern at the number and situation of working children under the minimum age in Egypt and urges the Government to strengthen its efforts, within the framework of the National Child Labour Strategy, to ensure the progressive elimination of child labour. It requests the Government to continue to provide information on the impact of measures taken in this regard, particularly with respect to measures focusing on children in rural areas (including those engaged in seasonal work in the cotton sector) and children from low-income households. The Committee also requests the Government to take the necessary measures to ensure that the comprehensive survey on child labour of the Central Body for Public Mobilization and Statistics' includes both children working on a seasonal basis and in the informal sectors, and to provide the results of this survey, once available.*

*Article 2(2). Raising the initially specified minimum age for admission to work.* The Committee previously noted the Government's statement that the Children's Act No. 12 of 1996 (Children's Act) was amended by Law No. 126 of 2008, to raise the minimum age of employment to 15 years. In this regard, the Committee notes with *satisfaction* that on 1 June 2010 the Government sent a declaration to the Director-General indicating that it was officially raising the minimum age for admission to employment or work from 14 to 15 years, thus bringing the minimum age fixed by national law into line with that prescribed at the international level.

*Part III of the report form. Labour inspection.* The Committee previously noted that, the Committee on the Rights of the Child, in its concluding observations, noted that 80 per cent of child labour is reportedly concentrated in the agricultural sector (CRC/C/15/Add. 145, paragraph 49, of 21 February 2000). The Committee also noted that a separate unit within the MoMM is responsible for child labour investigations in the agricultural sector. It noted that inspections were carried out in small family enterprises in the agricultural sector to ensure that the working conditions conformed to those prescribed under Order No. 118 of 2003 (specifying that children under the age of 18 years may not be employed in several agricultural occupations) and Order No. 1454 of 2001 (on child labour in agriculture and cotton harvesting). The Committee further noted that, in the course of labour inspections, 3,677 children were found to be working by labour inspectors and that 436 violations of employers' obligations were detected, involving 277 children. The Committee requested the Government to indicate if these statistics included the agricultural sector, and to provide information on the number of fines issued. The Committee also requested the Government to provide a copy of Order No. 1454 of 2001.

The Committee notes the copy of Order No. 1454 of 2001 submitted with the Government's report. The Committee also notes the Government's statement concerning the statistics submitted with its previous report, that the 436 violations resulted in the issuance of 124 citations, and that these inspections included the agricultural sector. The Committee further notes the information in the Government's report that, in the first quarter of 2010, the following violations were registered: 106 violations for employing persons under the minimum age, 68 violations of Order No. 118 (involving 68 children) and six violations involving children in agriculture. The Government indicates that citations were issued for these violations. In addition, the Committee notes the detailed child labour inspection report submitted with the Government's report under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), on the number of child labour violations detected by the labour inspectorate in each region of the country. Lastly, the Committee notes the Government's indication that the child labour inspectorate coordinates with community-based organizations in each of the governorates, and that a child labour monitoring and tracking system has been set up for children working in agriculture.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted that while the sale and trafficking of children for the purpose of sexual exploitation was prohibited, Egypt did not have specific legislation prohibiting the sale and trafficking of children under 18 years of age for labour exploitation. However, the Committee noted that section 4 of Law No. 126 of 2008 on Amending Provisions of the Child Law, Penal Code and Civil Status (Law No. 126), sought to amend the Penal Code by adding section 291, which stated that "any person who sells, buys or offers a child for selling in addition to delivering, receiving or moving a child as a servant, sexually or commercially exploiting the same or employing him in compulsory work or other illegal purposes, shall be punished by imprisonment for not less than five years and a fine of at least 50,000 Egyptian Pounds (EGP) and maximum EGP200,000". The Committee requested the Government to indicate if this provision included all persons under 18 years of age.

The Committee notes that Law No. 126 was adopted on 15 June 2008, and notes the Government's statement that the prohibition of trafficking in the Penal Code applies to all persons under 18 years of age. In this regard, the Committee notes with *satisfaction* that, pursuant to section 4 of Law No. 126, the Penal Code was amended to include section 291 (prohibiting the sale and trafficking of a child for both sexual and labour exploitation), and that pursuant to section 1 of Law No. 126, section 2 of the Child Law was amended to define a child as every person under 18 years of age. The Committee further notes the information in a report on trafficking in persons in Egypt of 14 June 2010 (Trafficking Report), available on the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), that in May 2009, an Alexandria court convicted two men of trafficking pursuant to the amendments contained in Law No. 126. The court sentenced one of the traffickers to 15 years' imprisonment, and the other to life in prison.

*Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously noted that, according to the text of the Child Law dated October 2008, section 94 of the Child Law provides that the age of criminal responsibility in law starts at 7 years and that section 111 of the Child Law provides that children aged between 15 and 16 years are liable to confinement in jail for not less than three months.

The Committee notes the Government's statement that Egyptian law considers a child who has been exploited sexually and commercially to be a victim, and not a criminal. However, the Committee observes that the Government's report does not provide information on whether children who are victims of commercial sexual exploitation may still be charged with the criminal offence of perversion. While the Government's report provides information on the penalties for persons who violate the right of a child to protection against commercial sexual exploitation (pursuant to section 291 of the Penal Code (as amended)), it appears that section 291 does not address the issue of the criminal liability of the child victim of this offence. In this regard, the Committee notes the information the Trafficking Report that victims of trafficking (many of whom are victims of commercial sexual exploitation) are often detained and children may be sent to juvenile detention, rather than offered rehabilitative services. ***The Committee therefore once again urges the Government to ensure that child victims of prostitution are treated as victims rather than offenders. In this regard, it requests the Government to take immediate measures to ensure that children under 18 who are used, offered or procured for the purpose of prostitution are not liable to a criminal offence under national legislation.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Trafficking of children for commercial sexual and labour exploitation.* The Committee previously noted that Egypt is a country of transit for underage girls from Eastern Europe and the former Soviet Union who are trafficked into Israel for labour and sexual exploitation, and a source country for children trafficked within the country for commercial sexual exploitation and domestic servitude. The Committee also noted the establishment of the “National Coordinating Committee to Combat and Prevent Trafficking in Persons” (NCC) in July 2007 and that the National Council for Children and Motherhood (NCCM) established a unit specializing in combating child trafficking. It further noted the launching of an awareness campaign entitled “Stop human trafficking immediately”. It requested information on the impact of these measures.

The Committee notes the Government’s statement that there is no child trafficking in Egypt. However, the Committee notes the Government’s statement in its report to the Committee on the Elimination of Discrimination Against Women (CEDAW) of 5 September 2008, that Egypt is a transit country for victims from African and South-East Asian countries, the former Soviet Republics, and Eastern European countries and that the Suez Canal is a main transit route for human trafficking (CEDAW/C/EGY/7 page 25). The Committee also notes the statement in the compilation of United Nations documents submitted to the Human Rights Committee for the Universal Periodic Review of 26 November 2009 that UNICEF reported several instances of child trafficking in Egypt in 2009 (A/HRC/WG.6/7/EGY/2, paragraph 16). In its report to CEDAW, the Government also identifies a new type of trafficking, whereby, under the pretence of marriage, wealthy men from neighbouring countries pay poor rural families for “temporary marriages” to their daughters (CEDAW/C/EGY/7, page 25). The Trafficking Report indicates that the victims of these temporary marriages are often under 18 years of age. The Committee further notes the information in the report of the UN Special Rapporteur on trafficking in persons, especially women and children of 20 May 2010, that common forms of trafficking in persons in Egypt include trafficking for the purposes of sexual exploitation of under-aged girls through “seasonal” or “temporary” marriage, child labour, domestic servitude and other forms of sexual exploitation and prostitution (A/HRC/19/32/Add.5, paragraph 9).

Nonetheless, the Committee notes that the Government is taking some measures to combat this phenomenon; the Trafficking Report indicates that the NCCM, following a study on the issue of temporary marriages, launched a campaign against underage marriages to Arab tourists in a governorate where these commercial short-term marriages are common. Moreover, the Committee notes the Government’s statement in its report to the UN Human Rights Committee of 16 November 2009, that the NCC has intensified its awareness campaigns, using the media to raise public awareness of trafficking (A/HRC/WG.6/7/EGY/1, page 20). Despite these measures, the Committee notes that the CEDAW, in its concluding observations of 5 February 2009, expressed concern about the temporary marriages of young Egyptian girls to wealthy men from neighbouring countries, and about the Government’s failure to address the root causes of trafficking (CEDAW/C/EGY/CO/7, paragraphs 25 and 27). ***The Committee therefore strongly requests the Government to redouble its efforts, through the NCC, to prevent and eliminate the trafficking of children. It requests the Government to provide information on the concrete measures taken in this regard, including initiatives implemented to address the root causes of child trafficking. The Committee also encourages the Government to continue its efforts to raise awareness on the issue of temporary commercial marriages.***

*Clause (b). Providing the necessary and direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* The Committee previously noted that the Government does not offer protection services to victims of domestic servitude. It also noted reports that Egypt continued to lack formal trafficking victim identification procedures, so victims of trafficking may be punished for acts committed as a result of being trafficked. The Committee further noted credible reports that indicated that police sometimes arrest street children for prostitution or forced begging and treat them as criminals rather than victims.

The Committee notes the information in the Government’s report to the UN Human Rights Committee of 16 November 2009, that the Ministry of the Interior has set up special units in the Department for the Protection of Public Morals and the Department for Youth Welfare to systematize procedures for dealing with trafficking cases and that a rehabilitation centre for victims of trafficking was established in the Salam district of Cairo (A/HRC/WG.6/7/EGY/1, page 20). The Committee also notes the information in the Trafficking Report that the Ministry of Health (MOH) entered into an agreement with the International Organization for Migration to establish a care centre for trafficking victims in a Cairo public hospital (due to open in 2010), staffed with MOH employees trained in identifying and assisting trafficking victims.

However, the Committee also notes the information in the Trafficking Report that, despite receiving training in victim identification, government officials did not employ formal procedures to identify victims of trafficking or to refer these victims to appropriate services. The Trafficking Report indicates that victims of trafficking, including street children, were often treated as criminals rather than victims, and sent to juvenile detention centres or incarcerated with adults. ***The Committee expresses its concern at the continued criminalization of child victims of trafficking and urges the Government to take the necessary measures to ensure that child trafficking victims are treated as victims rather than offenders. In this regard, the Committee requests the Government to take effective and time-bound measures, as a matter of urgency, to ensure that child victims of trafficking have access to rehabilitation and social integration services.***

*Clause (d). Identifying and reaching out to children at special risk. Children working in agriculture.* The Committee previously noted the collaboration between the Ministry of Manpower and Migration and the Ministry of Agriculture to prevent underage children from working in the cotton harvesting sector and to provide children working legally with the necessary protection while engaging in agricultural activities. It noted that monitoring and follow-up systems for working children were established, within which inspections are conducted on large agricultural plantations. The Committee requested the Government to provide information on the number of children who were prevented from performing hazardous work as a result of the activities conducted by child labour inspectors in the agricultural sector.

The Committee notes the information in the Government's report that, in the first quarter of 2010, the labour inspectorate detected six violations involving children in agriculture in addition to 68 violations of Order No. 118 (which prohibits children under 18 from performing certain types of agricultural tasks). The Government indicates in this report that citations were issued for these violations. The Committee also notes the child labour inspection report submitted with the Government's report under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which indicates that in the last three months of 2009, 1,668 warnings and seven citations were issued by labour inspectors regarding violations detected during daily periodic inspections (of both rural and urban workplaces). This child labour inspection report indicates that a further 245 citations were issued after follow-up inspections were conducted. The Committee further notes the information in the Government's report submitted under the Minimum Age Convention, 1973 (No. 138), that a monitoring and tracking system has been set up for children working in agriculture.

Nonetheless, the Committee notes the information in the Survey of Young People in Egypt (Preliminary Report) of February 2010 (produced by the Egyptian Cabinet Information and Decision Support Centre and the Population Council) that 53 per cent of working children work in the agricultural sector. In this regard, the Committee notes UNICEF information that over a million children are hired each season to bring in the Egyptian cotton crop, and that these children routinely work 11 hours a day, seven days a week, in 40-degree summer heat. ***The Committee therefore urges the Government to redouble its efforts to ensure that children under 18 who work in agriculture are not engaged in hazardous activities. In this regard, it requests the Government to take measures to strengthen the capacity of child labour inspectors with regard to monitoring of the agricultural sector, and to enhance the functioning of the monitoring and tracking system for children working in agriculture. It requests the Government to provide information on the results achieved.***

*Street children.* The Committee previously noted that large numbers of street children (who have migrated from the countryside) live in urban areas. It also noted that, since 2003, the NCCM and UNICEF have been implementing the National Strategy for the Protection and Rehabilitation of Street Children which aims to rehabilitate and integrate street children back into society. The Committee requested the Government to provide information on the impact of the National Strategy for the Protection and Rehabilitation of Street Children.

The Committee notes an absence of information on this point in the Government's report. However, the Committee notes the Government's statement in its report to the UN Human Rights Committee of 16 November 2009, that the NCCM has proved effective in dealing with the situation of street children (A/HRC/WG.6/7/EGY/1, page 5). The Government also indicates in this report that it provides special care, through 20 specialized programmes, to children living in difficult circumstances, including street children (A/HRC/WG.6/7/EGY/1, page 18). The Committee also notes the information in the Trafficking Report that the NCCM, in partnership with an international NGO, continues to run a day centre in Cairo to rehabilitate abused street boys involved in forced begging or petty crime.

Nonetheless, the Committee notes the information from UNICEF estimating that there are some one million street children in Egypt. The Committee also notes a report on the worst forms of child labour in Egypt of 10 September 2009 (available on the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org))) which indicates that street children who work collecting garbage, begging and vending, are particularly vulnerable to becoming involved in illicit activities, including pornography and prostitution and are trafficked internally for the purposes of commercial sexual exploitation, forced begging, and domestic labour. In this regard, the Committee further notes the information in the Trafficking Report that in May 2009, two men were convicted under the amended Child Law and the Penal Code of forcing street children into prostitution with wealthy Egyptians and tourists from the Gulf. The Committee expresses its ***concern*** at the situation and high number of street children in Egypt. ***Recalling that street children are particularly exposed to the worst forms of child labour, the Committee urges the Government to redouble its efforts to ensure that children under 18 years living and working on the streets are protected from the worst forms of child labour, particularly trafficking, commercial sexual exploitation and begging. The Committee requests the Government to provide information on the impact of the measures taken in this regard.***

*Clause (e). Special situation of girls.* The Committee previously noted one of the three main goals of the Ministry of Education's policy concerning school-based development, included girls' education. In this regard, it noted the initiatives taken by the NCCM to reduce the gender gap in seven governorates. It also noted the UNESCO information that, while the gender parity index in both primary and secondary education was on the rise in the country, Egypt was on the list of countries at risk of not achieving the gender parity goal in 2015 or even 2025.

The Committee notes the information in the Government's report that 77 girl-friendly schools were established, which provide services to 1,737 girls. The Committee also notes the information in the Government's report submitted to CEDAW of 5 September 2008, that one-class schools have been established to enable female drop-outs to complete their

education (CEDAW/C/EGY/7, page 12). The Government also indicates in this report that, in response to parents in rural areas who do not want to send their daughters to co-educational schools, the Government is attempting to increase the number of girls' schools in the countryside. Nonetheless, the Committee notes the information in the UNESCO report entitled "Global Monitoring Report – Education for All" of 2010 that girls' enrolment rates for primary education remain 4 per cent lower than that of boys. This report also indicates that 96 per cent of out-of-school children between the ages of 6 and 11 are female. ***The Committee therefore urges the Government to strengthen its efforts to achieve gender parity with regard to education, so as to ensure equal protection for girls from the worst forms of child labour. In this respect, the Committee requests the Government to continue providing information on measures taken to facilitate access to free basic education for girls in rural areas.***

The Committee is raising other points in a request addressed directly to the Government.

## Eritrea

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2000)***

*Article 2(1) of the Convention. Scope of application. Self-employment.* The Committee previously noted that the provisions in Labour Proclamation No. 118/2001 (Labour Proclamation) concerning the minimum age were applicable only in the context of a contract of employment, and therefore appeared to exclude self-employed workers from the application of these provisions. However, it also noted the Government's indication that the Ministry of Labour and Human Welfare intended to introduce a programme with regard to self-employment. The Committee expressed the hope that this programme would ensure that self-employed children benefited from the protection laid down in the Convention, and requested information on progress made in this regard.

The Committee notes the information in the Government's report that, due to financial constraints, no programme on self-employment has yet been undertaken. The Government indicates that a programme in this regard will be contemplated once funding is available. The Committee reminds the Government that the Convention applies to all types of employment or work, whether or not it is performed on the basis of an employment contract. ***In this regard, the Committee requests the Government to take the necessary measures to ensure that children working outside of an employment relationship, such as those working on a self-employed basis, benefit from the protection afforded by the Convention. It also requests the Government to provide information on any measures taken or envisaged in this respect, including through the Ministry of Labour and Human Welfare's programme on self-employment.***

*Article 2(3) and (4). Age of completion of compulsory schooling and minimum age for admission to employment.* The Committee previously noted that the Labour Proclamation establishes a minimum age for admission to employment of 14 years, the age specified by the Government upon ratification. The Committee also noted the Government's intention to render education compulsory until middle school. The Committee requested the Government to provide information on progress made in this regard.

The Committee notes the statement in the Government's report that education is compulsory for eight years (five years of elementary school and three years of middle school). The Government indicates that children start elementary education at the age of 6 years, and therefore complete compulsory education at 14 years, the minimum age for admission to work. While taking due note of this information, the Committee also notes the information in the UNESCO report of 2010 entitled "Education for All: Global Monitoring Report" that, in 2007, the net enrolment rate in primary education was only 41 per cent, and that there were approximately 349,000 children of primary-school age who were not in school. The UNESCO report further indicates that the survival rate to the last grade of primary school was 60 per cent in 2006, a significant decline from the 95 per cent survival rate in 1999. The Committee expresses its ***concern*** at the low school enrolment rates, in addition to the significant number of children who leave school prior to completing primary education. ***Considering that education is one of the most effective means of combating child labour, the Committee urges the Government to improve the functioning of the education system, so as to increase school enrolment rates and reduce school drop-out rates. It requests the Government to provide information on the measures taken in this regard, and on the results achieved.***

*Article 3(2). Determination of the types of hazardous work.* The Committee previously noted that, under section 69(1) of the Labour Proclamation, the Minister may, by regulation, issue a list of activities prohibited to young employees, including apprentices, which shall in particular include work in docksides and warehouses involving heavy weight lifting, work connected with toxic chemicals, dangerous machines, underground work, work in sewers and digging tunnels. The Committee further noted that such a regulation on hazardous work had been drafted and finalized, following consultation with the social partners.

The Committee notes the Government's indication that this draft regulation has yet to be adopted. The Committee observes that the Government has been referring to the upcoming adoption of this list since 2007, and reminds the Government that, by virtue of *Article 3(2)* of the Convention, the hazardous types of employment or work shall be determined by national laws or regulations or by the competent authority. ***The Committee therefore requests the Government to take the necessary measures to ensure, in the very near future, the adoption of the regulation pursuant to section 69(1) of the Labour Proclamation, containing a list of hazardous activities prohibited to persons under the age of 18. It requests the Government to provide a copy of this regulation, once adopted.***

*Article 6. Apprenticeship.* In its previous comments, the Committee noted that the general minimum age of 14 years applied for admission to apprenticeships. It also noted that pursuant to section 38 of the Labour Proclamation, the Minister may issue regulations to supervise the conditions of training of apprentices. The Committee further noted that while no such regulation had been issued, the Government indicated that a regulation pertaining to the training of apprentices was envisaged. The Committee notes the Government's statement that no regulation has yet been issued pursuant to section 38 of the Labour Proclamation. However, the Government indicates that it does intend to issue a regulation concerning the training of apprentices in the future. ***The Committee once again requests the Government to provide a copy of the regulation on the training of apprentices once adopted.***

*Article 7. Light work.* The Committee previously observed that the legislation in force contained no exception for light work for children below the minimum age of 14 years. It also noted the Government's statement in its report to the Committee on the Rights of the Child (CRC) of 23 December 2002 that the Constitution Commission had indicated that there should be statutory regulations on how many hours children work (light work and after school hours) in addition to the types of work which should not be performed (CRC/C/41/Add.12, paragraph 40).

The Committee notes the Government's statement that no measures have been taken regarding the regulation of light work activities or the determination of light work conditions. It also notes the Government's statement that, in practice, some children from the age of 12 are engaged in part-time work, such as the distribution of newspapers or the selling of food items. In light of this information, the Committee recalls that by virtue of *Article 7(1) and (4)*, of the Convention, national laws or regulations may permit children from the age of 12 to engage in light work, which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance in school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Furthermore, pursuant to *Article 7(3)* of the Convention, the competent authority shall determine what light work is and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. ***The Committee therefore encourages the Government to take the necessary measures to determine light work activities that may be undertaken by children between 12 and 14 years of age, and to determine the number of hours which, and the conditions in which, light work may be undertaken.***

*Article 9(3). Keeping of registers by employers.* The Committee previously noted that, pursuant to section 20(7) and 10(1) of the Labour Proclamation, employers were required to keep a register, but that the register that was required did not include the names and ages or dates of birth of persons employed who are under 18 years. However, the Committee noted the Government's indication that this issue would be addressed in an upcoming regulation that would be adopted pursuant to section 69(1) of the Labour Proclamation relating to hazardous work. The Committee expressed the firm hope that the regulation would be adopted in the near future.

The Committee notes the Government's statement that the Ministry of Labour and Human Welfare is currently undertaking studies in preparation for developing a regulation on employers' registers. The Committee recalls that *Article 9(3)* of the Convention requires national laws or regulations or the competent authority to prescribe the registers or other documents which shall be kept and made available by the employer, and that such registers shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he/she employs or who work for him/her and who are under 18 years of age. ***The Committee therefore requests the Government to take the necessary measures to ensure that the regulation concerning the registers kept by employers is elaborated and adopted in the near future. It requests the Government to provide a copy of this regulation, once adopted.***

*Parts III and V of the report form. Labour inspection and practical application of the Convention.* Following its previous comments, the Committee notes the Government's statement that there is a need for further awareness-raising on child labour issues, in addition to a need to build the capacity of governmental staff for the effective application of the Convention. The Committee also notes the Government's statement that there have been no reported cases of child labour through the labour inspection system. The Government's report further states that the information from the public prosecutor's office indicates that there have not been any court cases filed relating to child labour.

However, the Committee notes that the CRC, in its concluding observations of 23 June 2008, expressed concern regarding widespread child labour, over the lack of comprehensive measures to ensure that children are protected from economic exploitation and due to the lack of data concerning the child labour situation in the country (CRC/C/ERI/CO/3, paragraphs 18 and 74). ***The Committee expresses its concern over the situation of widespread child labour in the country, as well as the weak enforcement of the Convention, and accordingly urges the Government to redouble its efforts to improve this situation, including through measures to strengthen the capacity of the labour inspection system. It requests the Government to provide information on the concrete measures taken in this respect, and on the results achieved. The Committee further requests the Government to take the necessary measures to ensure that sufficient data on the situation of children involved in economic activity is available and invites the Government to provide such data when it becomes available.***

## Ethiopia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* In its previous comments, the Committee noted the Government's indication that a new "National Plan of Action for Children 2003–10 and beyond" (NPA) had been drafted in 2004. One of the six main components of the NPA is reducing child labour. The Committee requested the Government to provide more detailed information on the implementation of the NPA and on the results attained. The Committee noted the Government's indication that, based on the priority areas identified by the NPA, it has begun to plan an awareness-raising programme concerning the problems associated with child labour, aimed at governmental and non-governmental bodies, although this programme has not yet been fully implemented. ***The Committee requests the Government to continue to provide information on the implementation of the NPA, as well as results achieved in terms of the elimination of child labour.***

*Article 2(1). Scope of application.* The Committee had previously observed that the provisions of the Labour Proclamation No. 377/2003 (Labour Proclamation) do not cover work performed outside an employment relationship. The Committee noted the Government's acknowledgement that the labour legislation does not cover children who work on their own account, and that measures will be taken. The Committee noted the information in National Labour Force Survey of 2004–05 (NFLS), produced by the Central Statistical Agency of Ethiopia (Ministry of Finance and Economic Development), that approximately 1.57 per cent of economically active children (approximately 139,404 children between the ages of 5 and 14) are self employed. The Committee recalled that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether under a labour relationship or contract of employment or not, and whether it is remunerated or not. ***It therefore again requests the Government to provide information in their next report on measures taken or envisaged to ensure the application of the Convention to all types of work, including work carried out by persons under 14 years of age who work on their own account.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee noted the information in the Government's National Report on the Development of Education submitted to the International Conference on Education in 2008, that the third five-year Education Sector Development Program was launched in 2005, with the goal of improving educational quality, relevance and efficiency and expanding access to education with special emphasis on primary education in rural areas and the promotion of education for girls, as a step to achieving universal primary education by 2015. The Committee further noted the data in the Government's report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that indicated that between 2001 and 2006, drop-out rates for primary school fell from 17.2 per cent to 12.4 per cent. The Committee also noted the information in this report that, over this period, there has been an increase in enrolment at the primary, secondary and higher education levels, as well as for technical and vocational education and training.

Nonetheless, the Committee noted that the Committee on the Rights of the Child (CRC), in its 1 November 2006 concluding observations, expressed serious concern that primary education in Ethiopia is still not free nor compulsory, and that net enrolment is still very low. While the CRC welcomed the improved enrolment rate in primary school, the increased budgetary allocation for education, and the improved collection of statistics regarding school attendance, it nevertheless expressed concern at the large number of school drop-outs, the charging of fees in primary education, the overcrowding of schools, the limited provisions for vocational training, the low transition rate to secondary school, the insufficient number of trained teachers and available school facilities, the absence of budgetary allocations for pre-primary schools and the poor quality of education (CRC/C/ETH/CO/3, paragraph 63). In addition, the Committee noted the information in the UNESCO report on school attendance and enrolment issued in 2007, that the net primary school enrolment rate in 2006 was 68.2 per cent, and that the secondary net enrolment rate was 32.1 per cent. Finally, the Committee noted the information in the NFLS that 36.3 per cent of children between the ages of 5 and 14 engage only in economic activity and do not attend school. ***The Committee is seriously concerned by the large numbers of children who, in practice, do not attend school, and in view of the fact that compulsory schooling is one of the most effective means of combating child labour, it urges the Government to take the necessary measures to set the age of completion of compulsory schooling at 14 years in the near future. The Committee also requests the Government to redouble its efforts to improve the functioning of the education system, in particular by increasing school enrolment and attendance rates among children in rural areas and among children under 14 years of age, so as to prevent the engagement of these children in child labour. Lastly, it requests the Government to provide information on the progress made in this regard.***

*Article 3. Hazardous work.* The Committee previously observed that the section 4(1) of the decree issued by the Minister of Labour and Social Affairs of 2 September 1997 concerning the prohibition of work for young workers, contained a list of types of hazardous work prohibited for young workers. The Committee also noted that, pursuant to section 4(2) of this decree, this prohibition did not apply to persons who carry out such activities in the course of professional education in vocational centres. The Committee further noted that the guidelines designed to facilitate the implementation of this decree are only available in Amharic. The Committee had asked the Government to specify what measures ensured that apprentices of 14 years of age and above do not engage in the hazardous work prohibited to young workers.

The Committee noted the information in the Government's report that pursuant to section 3(2)(b) of the Labour Proclamation, apprenticeships are covered by the Labour Proclamation. Section 89(4) of the Labour Proclamation prohibits young workers (which, pursuant to section 89(1), is defined as a person who has attained the age of 14 years, but is not over the age of 18 years) from engaging in work which endangers their life or health. However, the Committee noted that pursuant to section 89(5) of the Labour Proclamation, young workers following courses in vocational schools (that are approved and inspected by the competent authority) are expressly excluded from the prohibition in section 89(4). It therefore appears that workers between the ages of 14 and 18 are not prohibited from engaging in hazardous work while they are following courses in vocational schools which have been approved and inspected by the competent authority. The Committee recalled that, under the terms of *Article 3(1)* of the Convention, the minimum age of admission to hazardous work shall not be less than 18 years. The Committee further recalled that the exception outlined in *Article 3(3)* of the Convention provides that national laws or regulations may authorize hazardous work for young persons over the age of 16 following consultation with the organizations of employers and workers concerned, provided that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee therefore requests the Government***



*to take the necessary measures to ensure that young persons under 16 years of age following courses in vocational schools will be not be authorized to carry out hazardous work that is prohibited for young workers. The Committee further requests the Government to provide information on the measures taken to ensure that the health, safety and morals of young persons engaged in vocational training aged 16 and 17 are fully protected, and to specify whether the employers' and workers' organizations have been consulted on the matter. Lastly, the Committee once again requests the Government to supply a copy of the guidelines of the abovementioned decree concerning the prohibition of work for young workers once they have been translated into one of the official languages of the ILO.*

*Part V of the report form. Practical application of the Convention.* The Committee noted the data in the Government's report from the 2001 National Child Labour Survey and the 2006 analysis of this data. The Committee noted that this survey indicated that 15.5 million children (84.5 per cent of the child population) were engaged in economic activities, and 12.6 million of these children (81.2 per cent) were under the age of 15. The Committee also noted the information in the NLFS that 46.4 per cent of boys in rural areas, between the ages of 5 and 14, do not attend school, and are engaged only in economic activity. The Committee noted that the CRC, in its concluding observations of 1 November 2006, expressed deep concern at the prevalence of child labour among young children including those as young as five and that the Government had not taken comprehensive measures to prevent and combat this large-scale economic exploitation of children (CRC/C/ETH/CO/3, paragraph 71). The Committee expressed its *serious concern* at the large percentage of children under the age of 14 who are engaged only in economic activity and do not attend school, particularly in rural areas. *It therefore urges the Government to redouble its efforts to ensure that, in practice, children under the minimum age of 14 do not work. It strongly encourages the Government to take the necessary measures in the very near future to address this issue, including the allocation of additional resources to the child labour component of the NPA. The Committee asks the Government to provide detailed information on the implementation of measures taken in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Gabon

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3(a) of the Convention and Part III of the report form. Sale and trafficking of children and court decisions.*

The Committee previously noted that the Government has brought its legislation relating to the sale and trafficking of children into line with the Convention. However, it noted that, according to the information contained in a 2006 UNICEF report entitled "Trafficking in human beings, in particular women and children, in West and Central Africa", a number of children, particularly girls, are victims of internal and cross-border trafficking, for the purposes of work as domestic servants or in the country's markets. Children from Benin, Burkina Faso, Cameroon, Guinea, Niger, Nigeria and Togo are victims of trafficking to Gabon. The Committee noted that, despite the statement made by the Government representative in the Conference Committee on the Application of Standards in June 2007 that there is no internal trafficking of children in the national territory, it emerged from the discussion that took place within this Committee that children are victims of both internal and cross-border trafficking in the country. It also noted that 11 court cases are in progress, most of which have been referred to the Public Prosecutor's Office.

The Committee notes the Government's indication that statistics on convictions and penalties imposed are not available at present. It also notes that the decisions on the 11 court cases will be communicated as soon as possible. The Committee observes that, according to the report of the UNICEF West and Central Africa Regional Office submitted to the United Nations Economic and Social Council during its second regular session of September 2010 (E/ICEF/2010/P/L.17, paragraph 21), even though policies and laws exist to protect children against trafficking and several structures have an operational mandate in this area, legislation is not regularly enforced and coordination is weak, and for this reason trafficking is a major threat to children in the country. It also notes the information regarding Gabon in the 2010 report on human trafficking, published on the website of the Office of the United Nations High Commissioner for Refugees (UNHCR) ([www.unhcr.org](http://www.unhcr.org)), according to which, despite the fact that more than 30 persons were arrested for human trafficking between 2003 and 2008, no conviction has been recorded with respect to the reporting period. *The Committee urges the Government to take the necessary steps to ensure the thorough investigation and robust prosecution of persons who engage in the sale and trafficking of children under 18 years of age, in accordance with the national legislation in force. It again requests the Government to supply specific information on the application of the provisions relating to this worst form of child labour, including statistics on the number of convictions and penalties imposed. Finally, it expresses the strong hope that the Government will send in the very near future a copy of court decisions relating to the cases referred to the Public Prosecutor's Office.*

*Article 5. Monitoring mechanisms. 1. Council to prevent and combat the trafficking of children.* With reference to its previous comments, the Committee notes the Government's indications that the Council and watchdog committees responsible for preventing and combating the trafficking of children have the task of identifying any situation involving child labour and notifying the administrative and judicial authorities. *The Committee once again requests the Government to supply information on the operation of the Council and watchdog committees responsible for preventing and combating the trafficking of children. In this regard, it requests the Government to provide information as soon as possible on the number of child victims of trafficking identified by the Council and the watchdog committees.*

*2. Labour inspection.* The Committee previously noted that, under Decree No. 007141/PR/MTE/MEFBP of 22 September 2005 [Decree No. 007141 of 22 September 2005], the labour inspector may immediately draw up a report of any violations relating to the trafficking of children. It noted that the Committee on the Application of Standards, in its

conclusions of June 2007, asked the Government to strengthen the authority of the labour inspection services to enforce the law and also asked it to increase its human and financial resources. The Committee on the Application of Standards further asked the Government to ensure that regular inspections were carried out by the labour inspectorate. The Committee noted that a draft text is currently under examination with a view to the effective application of Decree No. 007141 of 22 September 2005. This draft text provides for the establishment of a special inspection unit responsible for combating child labour.

The Committee notes the Government's indication that Decree No. 007141 of 22 September 2005 is directly applicable without any need for the prior adoption of implementing regulations. It also notes that the special inspection unit to deal with child labour has not yet been established. However, the Committee notes with *interest* that, under section 178 of the Labour Code as amended by Ordinance No. 018/PR/2010 of 25 February 2010, labour inspectors have the power to question, and have the security forces arrest, any child who they have good reason to think is employed in any activity corresponding to the worst forms of child labour, including in the informal sector. In addition, labour inspectors are required to report any evidence of exploitation of children for the purposes of labour. ***The Committee requests the Government to supply statistics on the number of violations reported by the labour inspectorate involving children under 18 years of age engaged in any of the worst forms of child labour, particularly in the informal sector. It also requests the Government to provide information on the measures taken to strengthen the capacity of the labour inspectorate in order to ensure that regular inspections are carried out.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* With reference to its previous comments, the Committee notes the Government's statement to the effect that, in the context of the new national policy on the working of the education system, a major forum was organized by the Government in May 2010 for the purpose of a review, discussion and analysis of the situation in education and making suggestions for the future. It notes that the forum led to a number of recommendations aimed at improving the education system. The Committee observes that, according to the information contained in the report of the UNICEF West and Central Africa Regional Office submitted to the United Nations Economic and Social Council during its second regular session of September 2010 (E/ICEF/2010/P/L.17, paragraph 21), despite the improvements recorded in recent years in terms of the increase in the net school enrolment rate and gender parity in primary education, progress is undermined by high drop-out rates and a high percentage of children repeating classes. In addition, according to UNICEF statistics for 2003–08, the secondary school attendance rate (12–18 years) remains low (about 35 per cent) in comparison with primary education. ***Considering that education contributes towards preventing the engagement of children in the worst forms of child labour, the Committee encourages the Government to continue its efforts to improve the functioning of the education system by taking measures aimed, inter alia, at reducing the school drop-out and repetition rates and increasing the attendance rate in secondary education. The Committee requests the Government to provide information on the measures taken in the context of the new national policy on the functioning of the education system and to provide a copy of this policy.***

*Clause (b) Removing children from the worst forms of child labour and ensuring their rehabilitation and social integration. Reception centres and medical and social assistance for child victims of trafficking.* The Committee previously noted that the country has four reception centres, three in Libreville and one in Port-Gentil. Children removed from a situation of exploitation are given an initial medical examination a few days after their placement in a centre. Children who are ill are taken care of by doctors and, if necessary, hospitalized. In addition, with a view to their rehabilitation and social integration, children are supervised by specialist teachers and psychologists and benefit from social and educational activity programmes and administrative and legal support in association with the monitoring committee and watchdog committees. The Committee also noted that children removed from trafficking are, during their stay in the centres, enrolled free of charge according to their age in state schools in which they enjoy the same advantages as other children. Those who are no longer of school age are enrolled in literacy centres. The Committee asked the Government to provide information on the number of children who have been removed from trafficking and on the measures taken to ensure their rehabilitation and social integration.

The Committee notes that the Government's report does not contain any further information on these points. However, it notes that, according to a UNICEF press release dated 13 November 2009, the Government has identified 34 child victims of trafficking (26 girls and eight boys between 11 and 18 years of age), 26 of them originating from Benin and eight from Togo and Mali, who were located on a boat which was boarded and searched in Gabonese territorial waters in October 2009. All the children were taken to reception centres to be given assistance pending repatriation to their countries of origin. Furthermore, according to the 2010 report on human trafficking, the Ministry of Family and Social Affairs has trained 30 groups of trainers and more than 100 social workers in procedures for taking care of the victims of trafficking as part of a six-week programme. ***The Committee strongly encourages the Government to continue to take immediate and effective measures to remove children from sale and trafficking and once again requests it to provide information on the number of children who have actually been removed from this worst form of child labour and placed in reception centres. Furthermore, it again requests the Government to supply information on the specific measures taken to ensure the rehabilitation and social integration of these children.***

*Article 8. International cooperation.* The Committee previously noted that, during the discussion which took place within the Committee on the Application of Standards in June 2007, the Government representative indicated that

the possibility of taking steps to increase the number of police officers at land, maritime and aerial borders, using joint border patrols and opening transit centres at these borders was being considered. The Committee also noted that the Government signed the Multilateral Regional Cooperation Agreement against the trafficking of children in West and Central Africa in July 2006 [2006 Regional Cooperation Agreement] and that a bilateral agreement relating to the trafficking of children is being negotiated with Benin.

The Committee notes the Government's indication that current measures taken to give effect to the 2006 Regional Cooperation Agreement consist of information and awareness raising for the States parties to this Agreement, the establishment of a joint regional monitoring committee involving the ECOWAS and ECCAS countries, and the adoption of the "national roadmap" drawn up by Gabon for implementation of the regional plan. The Government's report also indicates that negotiations with a view to signing a bilateral agreement with Benin are continuing. The Committee notes that, according to the information contained in the 2010 report on human trafficking relating to the case of the 34 child victims of trafficking identified on a boat which was boarded and searched in Gabonese territorial waters in October 2009, the Gabonese Government has set up a team, including with the support of the Government of Benin and UNICEF, in order to look for the families of the child victims and organize the safe repatriation of the Beninese children. ***The Committee requests the Government to continue to supply information on the steps taken to give effect to the 2006 Regional Cooperation Agreement, particularly concerning the strengthening of the police presence at borders, the establishment of the regional monitoring committee and the adoption of the "national roadmap" drawn up by Gabon to implement the regional plan. In addition, the Committee expresses the hope that the bilateral agreement on the trafficking of children being negotiated with Benin will be signed in the very near future and requests the Government to continue to supply information on any new developments in this respect.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments the Committee noted that the lack of recent statistics on the trafficking of children in the country was emphasized in the discussion which took place within the Committee on the Application of Standards in 2007. In this respect, the Government representative indicated that the Government intended to carry out an analysis of the national situation concerning child trafficking in Gabon and a mapping of the trafficking routes and areas in which forced labour involving children was practised.

The Committee notes the Government's indication that the undertaking made with respect to analysing the national situation concerning trafficking will be acted upon when resources are sufficient to allow it. ***The Committee again expresses the strong hope that the analysis of the situation of the trafficking of children in Gabon will be conducted in the very near future and requests the Government to continue to supply information in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

## Georgia

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1996)***

The Committee notes the Government's report and the comments of the Georgian Trade Unions Confederation (GTUC) dated 13 September 2010.

*Article 2(1) of the Convention and Part V of the report form. Minimum age for admission to employment and application of the Convention in practice.* In its previous comments, the Committee had noted the comments made by the GTUC that according to UNICEF estimates, 30 per cent of children between the ages of 5–15 years worked in Georgia and that there were reports of children between the ages of 7–12 years working on the streets of Tbilisi, in markets, carrying or loading wares, selling goods in underground carriages, railway stations, etc. Moreover, based on the information provided by the Trade Union of Agricultural Workers, the GTUC alleged that child labour is widespread in the agricultural sector at harvest time in several regions of Georgia.

The Committee had noted the Government's statement that allegations by the GTUC were based on unverified sources and that UNICEF was planning to conduct a study on street children which would help to assess the actual situation of child labour in the country. The Committee, further noting the child labour estimates from the Multiple Indicator Cluster Survey (MICS), UNICEF 2005, indicating an important drop in the percentage of children involved in labour, from 30 per cent in 1999 to 18 per cent in 2005, had requested the Government to pursue its efforts to ensure that no child under the age of 15 years performed child labour in any sector of economic activity. It had also requested the Government to provide recent statistical information on the employment of children and young persons, in particular children working on the streets and in the agricultural sector.

The Committee notes the Government's information that education is one of its priorities and that it has taken a number of steps to strengthen the educational system and the school attendance of children. In 2008, the expenditure on general education had doubled from that of 2004, and in 2009 this expenditure increased by 23.1 per cent and by 20.9 per cent in primary education. The major state programmes in the educational sector aimed at the renovation and rehabilitation of the education infrastructure. It notes the Government's indication that in 2009, under the "Public Schools Rehabilitation Programme", more than 300 public schools were renovated. The Committee further notes the Government's information that in order to make primary education accessible for children from the families living below the poverty line, the Government developed the "State Assistance Programme for the First Year Pupils from the Families below Poverty Line".

Under this programme, in 2009–10, one-time assistance to cover the costs related to schooling was provided for children from poor families.

The Committee notes that according to the UNICEF statistics on education, in Georgia, the gross primary school enrolment rate in 2008, was 100 per cent for males and 98 per cent for females. ***The Committee requests the Government to provide recent statistical information on the employment of children and young persons, in particular children working in the streets and in the agricultural sector.***

*Scope of application.* The Committee had previously noted the Government's indication that self-employment was not regulated by the legislation of Georgia. It had also noted section 4(2) of the Labour Code, which permits the employment of children below 16 years on the condition that such work is not against his/her interests, does not damage his/her moral, physical or mental development or limit their right and ability to obtain elementary, compulsory and basic education and upon the consent from his/her legal representative, tutor or guardian. The Committee had further noted the Government's reference to the data provided by the Department of Statistics of Georgia, that 95 per cent of employees in agriculture were engaged in small-scale farms and household cultivated lands, which did not use hired labour. The Committee reminded the Government that, by virtue of the minimum age specified by it, children under 15 years of age shall not be permitted to work, regardless of the type of work performed, and whether it is paid or not, with the exception of light work, which can only be carried out under the conditions laid down in *Article 7* of the Convention.

The Committee notes the comments made by the GTUC that the Labour Code applies only to hired labourers. As such children working on family farms, or in the agricultural sector are not afforded the protection guaranteed under the Convention. Furthermore, with the abolition of the labour inspectorate by the Labour Code of 2006, there exists no public authority to observe the implementation of labour legislation, including child labour provisions.

The Committee notes that the Government refers to *Article 5(3)* of the Convention which provides for the possibility of limiting the scope of application of the Convention to certain branches of economic activity, "excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers". The Government further states that children's work in the agricultural sector is not hired work and therefore their activities cannot be considered as incompatible with the Convention, as it is excluded under *Article 5(3)* of the Convention. The Committee reminds the Government that by virtue of *Article 5(1) and (2)* of the Convention, a Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, initially limit the scope of application of this Convention, and each Member which avails of this provision shall specify in a declaration appended to its ratification, the branches of economic activity or type of undertakings to which it will apply the provisions of the Convention. The Committee observes that at the time of ratification, Georgia did not avail itself of this provision and therefore the provisions of the Convention apply to all branches of economic activity, including family undertakings and small-scale holdings, and cover all types of employment, whether hired or self-employed. ***The Committee therefore once again requests the Government to take the necessary measures to ensure that children working in the agricultural sector, whether paid or unpaid, as well as those working on their own account, are entitled to the protection afforded by the Convention. In this regard, it requests the Government to envisage the possibility of re-establishing the labour inspection services, including in the informal sector, in order to ensure the effective implementation of the provisions giving effect to the Convention.***

*Article 7(1) and (3). Light work and determination of light work.* The Committee had previously noted the comments by the GTUC that the hours of work of young workers are not limited. It had noted that as per section 14 of the Labour Code, if parties do not agree otherwise, a working week shall not exceed 41 hours, which is also applicable to young workers. The Committee had further noted section 18 of the Labour Code which prohibits night work (10 p.m. to 6 a.m.) by young persons and section 4(2) which lays down the conditions of employment of children between 14 and 16 years. Observing that the Labour Code does not contain provisions which prescribe the number of working hours during which young persons may work, the Committee had requested the Government to take the necessary measures to determine light work activities and to prescribe the number of hours during which light work may be undertaken by young persons of 14 years of age and above, in conformity with the Convention.

The Committee notes the comments made by the GTUC that the regulation on the work of young persons under the Labour Code does not guarantee sufficient protection to minors in employment relations. The GTUC further added that it is important to restrict the working hours of young persons and to also include provisions for rest periods, breaks and holidays.

The Committee, while once again noting the Government's reference to section 18 of the Labour Code, observes that this provision only prohibits night work, which makes it possible for young workers to work from 6 a.m. to 10 p.m. The Committee also observes that section 18, read with section 4(2) of the Labour Code which lays down the condition that work by children below 16 years of age shall not limit their right and ability to obtain elementary, compulsory and basic education, implies that children may work for about eight hours per day, excluding school hours and night work. In this context, the Committee draws the attention of the Government to Paragraph 13(1)(b) of the Minimum Age Recommendation, 1973 (No. 146), that in giving effect to *Article 7(3)* of the Convention, special attention should be given to the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto) for rest during the day and for leisure activities.

With regard to the determination of light work activities, the Committee notes the Government's reference to section 4(3) of the Labour Code that the employment contracts of persons under 14 years of age may be concluded only in the sphere of arts, sports, cultural or for advertisement activities. The Committee observes, however, that the Labour Code allows children between 14 and 16 years of age to perform light work under the conditions specified under section 4(2). ***In this context, the Committee urges the Government to take the necessary measures to determine light work activities permitted for children between 14 and 16 years of age and to prescribe the number of hours during which and the conditions in which light work may be undertaken by such persons.***

*Article 8. Artistic performances.* The Committee had previously noted information contained in the Government's report to the Committee on the Rights of the Child (CRC/C/41/Add.4, 1997, paragraph 13) that, under certain conditions, children under 15 years of age may be engaged in artistic activities, such as the circus or the cinema. It had also noted the Government's statement that the working conditions of young persons in all spheres, including artistic performances, are well protected under the Labour Code and therefore no separate method of issuance of permits for artistic performances has been set up. Noting the provisions under section 4(3) of the Labour Code which states that a labour contract can be concluded with a child below 14 years only for work related to sport, art, cultural and advertising activities, the Committee had requested the Government to indicate the measures taken or envisaged to ensure that approval for young persons below 15 years of age to take part in artistic activities is granted in individual cases, and that permits so granted shall prescribe the number and hours during which, and the conditions in which, such employment or work is allowed. While noting the Government's reference to section 18 of the Labour Code which prohibits the hiring of minors for night work (10 p.m. to 6 a.m.) and section 14 of the Labour Code which restricts the working hours to 41 hours per week, including for young workers, the Committee observes that these provisions do not limit the number of working hours or set maximum working hours or conditions for employment of young persons who participate in artistic performances. ***Recalling that Article 8 of the Convention allows exceptions to the specified minimum age of admission to employment or work for such purposes as artistic performances only by permits granted by the competent authority in individual cases and that such permits so granted shall limit the number of hours during which, and prescribe the conditions in which, such employment or work is allowed, the Committee once again requests the Government to take the necessary measures to ensure that children under 15 years of age who participate in artistic performances benefit from the protection laid down by this provision of the Convention.***

*Article 9(1) and Part III of the report form. Penalties and labour inspection.* In its previous comments, the Committee had noted the Government's statement that the labour inspectorate stands abolished according to the Labour Code of 2006 and had requested the Government to indicate the effective manner in which the provisions giving effect to the Convention are enforced.

The Committee notes the comments made by the GTUC that with the abolition of the labour inspectorate, there exists no public authority to observe the implementation of labour legislation, including child labour provisions.

The Committee notes the Government's indication that the police is responsible for the monitoring of infringements related to child labour. While noting that the Government's report contains information on the activities of the police with regard to crime prevention, child abuse and the protection of minors with unusual social behaviour, the Committee observes that these do not relate to infringements of the Labour Code related to child labour. The Committee observes with ***concern*** that there exists no public authority to monitor the implementation of the child labour related provisions in the country. In this regard, the Committee recalls that, by virtue of *Article 9(1)* of the Convention, all necessary measures shall be taken by the competent authority, including the provision of appropriate penalties, to ensure the effective enforcement of the provisions of the Convention. ***The Committee therefore urges the Government to take the necessary measures to ensure the effective monitoring and implementation of the provisions giving effect to the Convention. It also requests the Government to provide information on the types of violations detected by the competent authority with regard to child labour, the number of persons prosecuted and the penalties imposed.***

The Committee is raising other points in a request addressed directly to the Government.

## Greece

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1986)**

The Committee notes the Government's report and the communication of the Greek General Confederation of Labour (GSEE) dated 29 July 2010.

*Article 3(3) of the Convention. Authorization to carry out hazardous work from the age of 16 years.* In its previous comments, the Committee noted that section 7(5) of Presidential Decree No. 62/1998 provides that certain exceptions regarding the authorization to carry out hazardous work of "adolescents" may be made. The Committee noted that section 2(c) of Presidential Decree No. 62/1998 seems to define an "adolescent" as a young person of at least 15 years of age who has ceased to attend compulsory school in accordance with the relevant provisions. The Committee reminded the Government that according to *Article 3(3)* of the Convention, national laws or regulations or the competent authority may authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

The Committee notes with *concern* the Government's statement that no new legislative, administrative or other measures were taken to ensure the application of the Convention, and observes that Presidential Decree No. 62/1998 continues to permit the performance of hazardous work by persons as of the age of 15 under certain conditions, pursuant to sections 2(c) and 7(5). ***The Committee therefore strongly urges the Government to take the necessary measures to bring its national legislation into conformity with Article 3(3) of the Convention by providing in legislation that no person under 16 years of age may be authorized to perform hazardous work under any circumstance. In this regard, it urges the Government to take measures to ensure that section 2(c) of Presidential Decree No. 62/1998 is amended to define a "young person" as a person of at least 16 years of age.***

*Part V of the report form. Application of the Convention in practice. 1. Labour inspection.* Following its previous comments, the Committee notes the Government's statement that, in 2008, the labour inspectorate recorded 15 complaints of illegal employment of under-aged persons, and 31 fines were imposed. The Government indicates that, in 2009, 17 fines were imposed for the illegal employment of under-aged persons. The Government further indicates that 2,775 young persons (between the ages of 15–18) were permitted to work in 2008, pursuant to Act No. 1837/1989, and 1,752 such young persons in 2009. ***The Committee requests the Government to continue providing information on the manner in which the Convention is applied, including, for example, statistical data on the employment of children and young persons, extracts for the reports of inspection services and information on the number and nature of violations detected and penalties applied involving children and young persons.***

*2. Conditions of employment.* The Committee notes that the Greek Parliament adopted, on 5 May 2010, Act No. 3845/2010 (FEK A'65/6-5-2010) on "Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the International Monetary Fund". The Committee also notes the adoption of Act No. 3863 on the "New Social Security System and relevant provisions" (FEK A'115) which is aimed at implementing the time-bound commitments made in the two memorandums with regard to structural policies on strengthening labour markets.

The Committee notes the statement in the communication of the GSEE that Act No. 3845/2010 includes provisions that directly exclude (or serve as a legal authorization for the introduction of further exclusions) groups of workers, including young workers, from the scope of the National General Collective Agreement, and from the generally binding provisions on minimum wages and conditions of work. The GSEE further alleges that, pursuant to Act No. 3863/2010, minor workers of 15 to 18 years will be employed under contracts of "apprenticeship" with extended probationary periods and will receive 70 per cent of the minimum wage established in the national collective agreement. According to the GSEE, these young workers will be excluded from the protective provisions of labour legislation on permissible working hours, the start and end of the working day taking into account course schedules, obligatory periods of rest, obligatory paid annual leave, time off for attending school, studying and sick leave (pursuant to section 74(8) and (9) of Act No. 3863). The GSEE states that the deregulation of the existing minimum protective legislative framework, in addition to the absence of adequate guarantees and deficient inspection mechanisms, will have multiple harmful side effects for young workers.

In this regard, the Committee draws the Government's attention to Part IV, Paragraphs 12 and 13 of the Minimum Age Recommendation, 1973 (No. 146). Paragraph 12 states that measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and are maintained at a satisfactory standard. Paragraph 13 states that in connection with paragraph 12, "special attention should be given to: (a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work ... and (e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be". ***The Committee requests the Government to provide information in its next report on measures taken or envisaged to ensure that the conditions of work for young persons under the age of 18 are maintained at a satisfactory standard and that adequate safeguards are adopted to protect them from hazardous work taking into account Greece's ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182).*** It also refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## Haiti

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2007)***

The Committee notes the Government's first report. With reference to its comments made under the Forced Labour Convention, 1930 (No. 29), concerning the sale and trafficking of children and the exploitation of child domestic workers and inasmuch as Convention No. 182 deals with these worst forms of child labour, the Committee considers that they can be examined more specifically in the context of the present Convention.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its observations made under Convention No. 29, the Committee noted that the Act of 2003 concerning the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhuman treatment against children [Act of 2003] cited, among the situations involving ill-treatment, inhuman treatment or exploitation, the sale and trafficking of children and also the offering, procuring, transfer, accommodation, reception or

use of children for sexual exploitation, prostitution or pornography. It also noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 18 March 2003, expressed deep concern at the number of cases of trafficking of children from Haiti to the Dominican Republic (CRC/C/15/Add.202, paragraph 60). The Committee also noted the September 2006 report on the fact-finding mission of the General Secretariat of the Organization of American States (OAS) relating to the trafficking of persons in Haiti, this trend stemming from the deterioration of the socio-economic and political situation in recent years, which has prevented an effective response to the primary needs of the population and paved the way for an increase in all forms of human exploitation and illicit economic activities.

The Committee notes that, even though section 2(1) of the Act of 2003 prohibits abuse and violence with regard to children and also such exploitation as the sale and trafficking of children, this law does not establish penalties for violations of its provisions. However, it notes with *interest* the Government's information concerning the preparation and adoption of preliminary draft legislation concerning the trafficking of persons. It observes that, under this bill, the procuring, enlistment, transfer, transportation, accommodation or reception of a child for the purposes of exploitation are considered as trafficking and constitute a violation of the law. Under section 5, the term "child" means any person under 18 years of age. Moreover, section 13 of the bill states that the trafficking of children constitutes an aggravating circumstance liable to incur the maximum penalty established by the Act (section 14), namely nine years' imprisonment. However, the Committee observes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 10 February 2009, expressed concern at the fact that, despite the alarmingly high number of women victims of trafficking in Haiti, specific legislation criminalizing trafficking is still in draft form and has not yet been submitted to Parliament (CEDAW/C/HTI/CO/7, paragraph 26). The CEDAW also observed that this situation may result in insufficient investigations into cases of trafficking in women and girls and, consequently, lead to impunity for perpetrators.

The Committee also notes that, according to the report of the United Nations Special Rapporteur on contemporary forms of slavery, its causes and consequences (A/HRC/12/21/Add.1, paragraph 19, 4 September 2009) [report of the Special Rapporteur], a new trend has been observed in recent years with regard to the employment of children as domestic workers (designated by the Creole term *restavek*), namely the emergence of persons who recruit children from rural areas to work as domestic servants in urban families and outside the home in markets. The Special Rapporteur noted that this new trend has caused many stakeholders to describe the phenomenon as trafficking since parents are now handing their children over to strangers, whereas previously they entrusted the children to relatives. Moreover, the Committee observes that, according to a UNICEF press release of 15 October 2010, the number of child victims of trafficking has increased since the earthquake of January 2010, traffickers having taken advantage of the resulting chaos to prey on children who were lost or separated from their parents. ***The Committee therefore expresses the hope that the bill on the trafficking of children will be adopted as a matter of urgency and requests the Government to send information on all new developments in this respect. It also requests the Government to take immediate and effective steps to ensure thorough investigations and robust prosecutions of the perpetrators of the sale and trafficking of children under 18 years of age are carried out.***

*Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic labour.* In its observations under Convention No. 29, the Committee has been commenting for many years on the situation of hundreds of thousands of *restavek* children who are often exploited under conditions that qualify as forced labour. It noted that in practice many of these children, some of them only 4 or 5 years old, are the victims of exploitation, are obliged to work long hours without pay, face all kinds of discrimination and bullying, receive poor lodging and food and are often subjected to physical, psychological and sexual abuse. In addition, very few of them attend school. The Committee also noted the repeal of Chapter IX of Title V of the Labour Code, relating to children in service, by the Act of 2003. It noted that the prohibition established by section 2(1) of the Act of 2003 covers the exploitation of children, including servitude, forced or compulsory labour, forced service and also work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. It further noted that the repealed provisions include section 341 of the Labour Code, which allowed a child aged 12 or over to be entrusted to a family for employment in domestic work.

The Committee observes, however, that section 3 of the Act of 2003 states that a child may be entrusted to a host family in the context of a relationship of assistance and solidarity. It notes that the Special Rapporteur expressed deep concern in her report at the vagueness of the concept of assistance and solidarity and considered that the provisions of the Act of 2003 allow the practice of *restavek* to be perpetuated.

According to the report of the Special Rapporteur, the number of *restavek* children is between 150,000 and 500,000 (paragraph 17), and this represents about one in ten children in Haiti (paragraph 23). As a result of interviews with *restavek* children, the Special Rapporteur ascertained that all of them were given heavy workloads by their host families, which was often incompatible with their full physical and mental development (paragraph 25). Moreover, the Special Rapporteur was told that these children are often ill-treated and subjected to physical, psychological and sexual abuse (paragraph 35.) Representatives of the Government and civil society pointed out that cases of children being beaten and burned were routinely reported (paragraph 37). The Committee notes that, in view of these findings, the Special Rapporteur described the *restavek* system as a contemporary form of slavery. The Committee expresses its *deep concern* at the exploitation of the domestic work of children under 18 years of age performed under conditions similar to slavery or

under hazardous conditions. It reminds the Government that, under *Article 3(a) and (d)* of the Convention, work done by, or the employment of, children under 18 years of age under conditions similar to slavery or under hazardous conditions belongs to the worst forms of child labour and, under the terms of *Article 1*, must be eliminated as a matter of urgency. ***The Committee requests the Government to take immediate and effective measures to ensure, in law and in practice, that children under 18 years of age may not be employed as domestic servants under conditions equivalent to slavery or under hazardous conditions, taking account of the special situation of girls. It requests the Government to take the necessary steps to ensure that thorough investigations and robust prosecutions of persons who subject children under 18 years of age to forced or hazardous domestic labour are carried out and to ensure the imposition in practice of sufficiently effective and dissuasive penalties.***

*Article 6. Programme of action for the elimination of the worst forms of child labour.* The Committee notes the Government's indication that a national protection plan was validated in 2006. It notes that the plan targets ten categories of vulnerable children who need protection, including child domestic workers and child victims of trafficking. The Government also indicates that, further to the ratification of the Convention, the Ministry of Social Affairs and Labour (MAST) has considered it necessary to review the national protection plan and include thematic time-bound programmes of action in it. ***The Committee requests the Government to supply information on the time-bound measures taken as part of the thematic programmes of action and the national protection plan for the child victims of trafficking and child domestic workers. It also requests the Government to send a copy of the national plan.***

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Sale and trafficking.* The Committee notes that, according to the February 2009 UNODC Global Report on Trafficking in Persons, no system exists for providing the victims of trafficking with care or assistance, nor are there any reception centres for accommodating the victims of trafficking. It also notes that the CEDAW, in its concluding observations of 10 February 2009 (CEDAW/C/HTI/CO/7, paragraph 26), expressed concern at the lack of reception centres for women and girls who are the victims of trafficking. ***The Committee requests the Government to take effective measures to provide the necessary and appropriate direct assistance for the removal of children from sale and trafficking and for their rehabilitation and social integration. It requests the Government to provide information on the measures taken towards this end.***

*Clause (d). Identifying and reaching out to children at special risk. Restavek children.* In its observations of 2009 made under Convention No. 29, the Committee noted the existence of programmes for the rehabilitation of *restavek* children established by the Social Welfare and Research Institute (IBESR) in cooperation with various international and non-governmental organizations. It noted that these programmes focus on reintegration in the family setting in order to promote the social and psychological development of the children concerned.

The Committee observes that the Government's report does not contain any information in this respect. It notes that the CRC, in its concluding observations, expressed deep concern at the situation of *restavek* children placed in domestic service and recommended that the Government take urgent steps to ensure that *restavek* children are provided with services offering physical and psychological rehabilitation and social reintegration (CRC/C/15/Add.202, 18 March 2003, paragraphs 56–57). ***The Committee requests the Government to take the necessary steps to ensure that restavek children are provided with services offering physical and psychological rehabilitation and social reintegration as part of rehabilitation programmes designed for them. It requests the Government to supply information on the specific results achieved in terms of the number of children who have benefited from these measures.***

*Article 8. International cooperation. Sale and trafficking of children.* In its observations of 2009 made under Convention No. 29, the Committee noted that the MAST, in cooperation with the Ministry of Foreign Affairs, is studying the problem of the exploitation of persons in sugar cane plantations in the Dominican Republic and the involvement of children in begging in the same country, and is due to conduct bilateral negotiations with a view to resolving the situation. It also observed that the CEDAW, in its concluding observations of 10 February 2009 (CEDAW/C/HTI/CO/7, paragraph 27), encouraged the Government "to conduct research on the root causes of trafficking and to enhance bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic, to prevent trafficking and bring perpetrators to justice".

The Committee notes that the Government's report does not contain any information in this regard. ***It requests the Government to supply information on the progress of negotiations aimed at the adoption of a bilateral agreement with the Dominican Republic.***

The Committee is raising other points in a request addressed directly to the Government.

## Indonesia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 2(1) of the Convention. Scope of application. 1. Self-employment.* The Committee previously noted the indication of the International Trade Union Confederation (ITUC) that child labour was widespread in Indonesia and that it mostly took place in informal, unregulated activities, such as street vending and in the agricultural and domestic sectors.



The Committee also noted that Act No. 13 of 2003 (Manpower Act) appears to exclude from its application children who are engaged in self-employment or working without a clear wage relationship. The Committee further noted that section 75 of the Manpower Act stipulates that the Government is under an obligation to make efforts to overcome problems concerning children who work outside of an employment relationship, and that these efforts should be specified with a government regulation. In this regard, the Committee noted the Government's indication that a draft government regulation, aiming to protect self-employed children pursuant to section 75 of the Manpower Act, had been elaborated.

The Committee notes the information in the Government's report that the draft government regulation regarding children working outside the framework of an employment contract is still under discussion by the technical unit of the Ministry of Manpower. The Government indicates that it continues to identify issues on this subject, and is seeking further input from experts in this regard. The Committee also notes the information in the Indonesia Child Labour Survey Report released on 11 February 2010 (Indonesia Child Labour Survey (2009)) that 12.7 per cent of all working children between the ages of 5–12 are self-employed. The Survey also indicates that unpaid family workers constitute 82.5 per cent of all working children between the ages of 5–12, and 81.5 of all working children aged 13–14. The Committee observes that only 4.8 per cent of working children between the ages of 5–12 (and only 12.1 per cent of children aged 13–14) were working as "employees", and therefore within the scope of application of the Manpower Act. The Committee therefore expresses its *concern* that the vast majority of children working under the minimum age do not benefit from the protection of the Manpower Act. ***Observing that the Manpower Act (obligating the Government, pursuant to section 75, to address the issue of children working outside of an employment relationship) has been in force since 2003, the Committee strongly urges the Government to take the necessary measures to ensure the completion and adoption of a government regulation regarding children working outside of an employment relationship, in the very near future. It requests the Government to provide a copy of this government regulation as soon as it has been adopted.***

2. *Domestic work.* The Committee previously noted the ITUC's allegation in its communication of 6 September 2005 that domestic workers as young as 12 years routinely work 14–18 hours a day, seven days a week, without a day off. The ITUC indicated that these girls typically entered domestic work between the ages of 12–15, with some beginning even earlier, despite the established minimum age of 15. The ITUC further stated that it appeared that the Government had failed to take meaningful action to protect domestic workers – who numbered at a minimum 688,000 children – from exploitation and abuse. In this regard, the ITUC indicated that national labour laws exclude domestic workers from the minimum protections afforded to workers in the formal sector and that laws enacted to protect children from labour exploitation did not address child domestic labour. The Committee also noted the Government's indication that a draft Act for the Protection of Domestic Workers had been formulated, but had yet to be elaborated. The Committee urged the Government to take measures to ensure that children under 15 do not perform domestic work.

The Committee notes the Government's statement that it has increased its efforts to prevent children under 15 from working as domestic workers. The Government indicates that the Ministry of Women's Empowerment has created guidelines to prevent children under 15 from engaging in domestic work and that these guidelines have been disseminated to various employers, in collaboration with NGOs. The Government also indicates that it has worked with heads of local government to form a joint commitment to prevent children under 15 from engaging in domestic work. The Committee further notes the Government's indication that a workshop on withdrawing child domestic workers was organized for labour inspectors in several areas, including Bakasi, Tangerang and South Tangerang. In addition, the Committee notes the information in the Government's report that the draft Act for the Protection of Domestic Workers shall be discussed in the Indonesian House of Representatives. In this regard, the Committee notes the information in a report entitled "Recognizing domestic work as work", published by the ILO Country Office in Jakarta in April 2010 (ILO Jakarta report) that this draft Act contains various provisions for the protection of domestic workers. The ILO Jakarta report also indicates that approximately 25 per cent of domestic workers in Indonesia are under the age of 15, but that these children are expected to perform the same amount of work as adult domestic workers. The ILO Jakarta report further indicates that 81 per cent of domestic workers work 11 hours or more a day, and quotes a study where 93 per cent of domestic worker respondents had experienced physical violence at work. ***The Committee once again expresses its deep concern at the number and situation of children working as domestic workers, and urges the Government to take the necessary measures to ensure that the draft Act for the Protection of Domestic Workers is adopted in the near future. It requests the Government to provide a copy of this legislation, once adopted.***

*Article 7. Light work.* The Committee previously noted that section 69(1) of the Manpower Act allows the employment of children between 13–15 years of age for light work as long as the job does not stunt or disrupt their physical, mental and social development. Section 69(2) of the Manpower Act further provides that entrepreneurs who employ children in light work may not require them to work longer than three hours a day, may only engage children during the day without disturbing their schooling and must meet their occupational safety and health requirements.

The Committee notes the information in Indonesia Child Labour Survey (2009) that approximately 52 per cent of working children aged 13–14 years engaged in work that did not constitute light work. This amounts to approximately 321,200 children of light work age performing non-light work activities. ***The Committee therefore requests the Government to provide information on any measures, taken or envisaged, to strengthen the enforcement of section 69(2) of the Manpower Act (prescribing the conditions for light work), to ensure that children aged 13–14 are only engaged in light work activities.***

*Article 9(3). Keeping of registers.* In its previous comments, the Committee noted that there appeared to be no provisions in the Manpower Act prescribing that a register be kept and made available by the employer. It noted the Government's information that the labour inspectorate ensures that employers keep registers of children employed for developing their talents and interests. The Committee requested the Government to provide a copy of the relevant forms.

The Committee notes that, pursuant to section 6 of Decision No. Kep-115/Men/VII/2004, an entrepreneur who employs children for developing their talents and interests must submit the prescribed report form, and notes the copy of the report form submitted with the Government's report. However, the Committee observes that Decision No. Kep-115/Men/VII/2004 appears to regulate solely the participation of children in artistic activities, such as art shows and television broadcasts, and does not apply to all working children. The Committee also notes the copy of Regulation No. 02/MEN/1981 included in the Government's report, which provides guidelines for a company report, and the attached company report form. However, the Committee observes that this company report form does not appear to comply with the requirements of an employer's register as set forth in *Article 9(3)* of the Convention. While Part 8 of the company report form requires employers to indicate the number of young persons employed, it does not require them to indicate the names or ages of these young workers. Moreover, the Committee notes that Act No. 7 of 1981 (pursuant to which Regulation No. 02/MEN/1981 was promulgated), specifies that this company report form must only be submitted annually, or when an enterprise is established, moved or liquidated. In this regard, the Committee notes that this company report does not appear to be kept by the employer and made available to labour inspectors. ***Observing that neither the report forms provided for under Decision No. Kep-115/Men/VII/2004 nor under Regulation No. 02/MEN/1981 meet the requirements set forth in Article 9(3) of the Convention, the Committee urges the Government to take the necessary measures to ensure that every employer, regardless of the type of work performed, keeps a register indicating the name and age or date of birth of persons whom he/she employs who are less than 18 years of age, in the very near future.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted the ILO-IPEC project entitled "Enhancing national capacity in child labour data collection, analysis and dissemination through technical assistance to surveys, research and training" which aimed to conduct a nationwide child labour survey and promote more effective national responses to child labourers and at-risk children.

The Committee notes the information in the Indonesia Child Labour Survey (2009) that there are approximately 1.76 million children engaged in prohibited child labour in Indonesia (defined as working children between the ages of 5–12, children aged 13–14 engaged in non-light work activities, and children between 15–18 years engaged in hazardous work). This represents 43.3 per cent of all working persons under 18. Most working children (57 per cent of working children aged 5–17) were employed in agriculture, including forestry, hunting and fishery. The Indonesia Child Labour Survey (2009) further indicates that while most working children still attended school, 20.7 per cent of persons under the age of 18 worked for more than 40 hours a week. ***The Committee expresses its concern at the high number of children working under the minimum age, and requests the Government to redouble its efforts to ensure that, in practice, children under the minimum age of 15 are not engaged in child labour. It requests the Government to provide information on the impact of the measures taken, in addition to information on the manner in which the Convention is applied, including extracts from the reports of inspection services, information on the number and nature of contraventions reported and penalties applied. To the extent possible, statistics should be disaggregated by gender.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous work. Child domestic workers.* The Committee previously noted the allegations of the International Trade Union Confederation (ITUC) that child domestic workers in Indonesia often suffered some form of sexual, physical or psychological abuse. The Committee noted that the second stage of the National Action Plan on the Elimination of the Worst Forms of Child Labour (NAP on WFCL) aimed to prevent 5,000 children, and withdraw 2,000 children, from child domestic labour. The Committee also noted the Government's statement that a draft Act on Domestic Workers' Protection had been formulated, but that the elaboration of the final draft would take time. The Committee requested the Government to take the necessary measures to ensure that the draft Act for the Protection of Domestic Workers was adopted.

The Committee notes the Government's statement that it is making serious efforts to provide physical, psychological, economic and legal protection to domestic workers. The Government indicates that the Ministry of Women's Empowerment has created guidelines regarding the risk to child domestic workers and provides skills training to prevent children from entering domestic work. The Committee also notes the Government's indication that through phase II of the ILO-IPEC project entitled "Support to the Indonesian National Action Plan and the Development of the Time-bound Programme for the Elimination of the Worst Forms of Child Labour", 1,213 children have been prevented from becoming engaged in child domestic work, and rehabilitation and reintegration services have been provided to 127 former child domestic workers. The Government's report indicates that ILO-IPEC is making efforts to raise awareness among employers and domestic workers about regulations related to the protection of domestic workers. Nonetheless, the Committee notes the information in the ILO-IPEC technical progress report for phase II of the ***Time-bound Programme (TBP)*** of 15 August 2010 (ILO-IPEC TPR) that the action programmes working with child domestic workers continuously face difficulties in accessing households and this has impacted the achievement of withdrawing child domestics. The Committee further notes the information in the Government's report that the draft Act for the Protection of Domestic Workers shall be discussed in the Indonesian House of Representatives. In this regard, the Committee notes the

information in a report entitled “Recognizing domestic work as work”, published by the ILO Country Office in Jakarta in April 2010 (ILO Jakarta report) that this draft Act contains various provisions for the protection of domestic workers.

However, the Committee notes the information in the ILO Jakarta report that approximately 35 per cent of domestic workers are under the age of 18. This report also indicates that 81 per cent of domestic workers work 11 hours or more a day, and being invisible and hidden from public scrutiny, these workers are prone to becoming victims of exploitation and abuse. The ILO Jakarta report further quotes a study indicating that 68 per cent of domestic worker respondents indicated that they had experienced mental abuse, 93 per cent had experienced physical violence, and 42 per cent had experienced some form of sexual harassment or abuse while at work. Therefore, while taking due note of the steps taken by the Government to combat child domestic work and the results achieved under the *TBP*, the Committee expresses its *serious concern* at the exploitation which continues to be experienced by child domestic workers. It reminds the Government that, pursuant to *Article 3(d)* of the Convention, work or employment in conditions that are hazardous are among the worst forms of child labour and are therefore to be eliminated as a matter of urgency, in accordance with *Article 1*. ***The Committee accordingly urges the Government to take the necessary steps to ensure that the draft Act for the Protection of Domestic Workers is adopted as a matter of urgency. The Committee also requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons who employ children under 18 years of age in hazardous domestic work are carried out and that sufficiently effective and dissuasive sanctions are applied in practice. It further requests the Government to continue to take measures to address the situation of child domestic workers, and to provide information on the results achieved, particularly in terms of the prevention and withdrawal of children from domestic labour.***

*Article 5. Monitoring mechanisms. Police and immigration officers.* The Committee previously noted that law enforcement against traffickers had increased in 2006 and that the Government had taken measures to enhance the capacities of the police and immigration officers. The Government also indicated that in 2007, 123 trafficking cases were filed involving 71 children. The Committee notes the Government’s statement that efforts have been made to strengthen the role of the police in combating the trafficking of children, including the establishment of a Women and Children’s Service Unit within the Republic of Indonesia National Police. The Committee also notes the information in the report on trafficking in persons in Indonesia of 14 June 2010, available on the website of the Office of the High Commissioner of Refugees ([www.unhcr.org](http://www.unhcr.org)) (Trafficking report) that 139 suspected trafficking offenders were prosecuted in 2009, an increase from 129 in 2008. The Committee further notes the information from the International Organization for Migration (IOM) that it has collaborated with the Government with a view to building the capacity of law enforcement bodies, including through workshops, curriculum development for police schools and the 2009 revision of the Guidelines on Law Enforcement and Victim Protection (Guidelines). The IOM indicates that jointly with the Government, awareness-raising initiatives have reached 5,000 law enforcement officers, and that 10,000 copies of the Guidelines have been distributed.

The Committee further notes the information from the IOM that there has been a great need to sensitize criminal justice agencies across Indonesia with regard to the content of the Anti-Trafficking Law of 2007. In this regard, the Trafficking report indicates that many police and prosecutors remain unfamiliar with the anti-trafficking legislation, and are reluctant or unsure of how to effectively use this legislation to punish traffickers. The Trafficking report indicates that prosecutors and judges still frequently use other laws to prosecute traffickers and that only 56 per cent of trafficking-related cases were prosecuted using the Anti-Trafficking Law. Moreover, the Trafficking report indicates that corruption continues to hinder anti-trafficking efforts, as members of the security forces continue to be involved in trafficking, and that it is a widespread practice for traffickers to pay police and military officials “protection money”. The Trafficking report further contains reports indicating that some Ministry of Manpower officials provided licences to international labour recruiting agencies involved in human trafficking, despite the officials’ knowledge of the agencies’ involvement, and that some local officials facilitated trafficking by producing national identity cards for children containing false information so that these children could be recruited as adults. The Committee expresses its *concern* at allegations of complicity and cooperation of law enforcement officials and other government officials with human traffickers. ***The Committee therefore urges the Government to redouble its efforts to ensure that perpetrators of human trafficking, and complicit government officials, are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, the Committee requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out, including through increasing the awareness among prosecutors and judges of the Anti-Trafficking Law of 2007. It further requests the Government to provide information on the measures taken in this respect, and the results achieved, particularly the number of persons investigated, convicted and sentenced for cases of trafficking involving victims under the age of 18.***

*Article 6. Programmes of action to eliminate the worst forms of child labour. Trafficking.* The Committee previously noted that the *TBP* contained measures to combat child trafficking for sexual and labour exploitation, and that the second stage of the NAP on WFCL (2006–10) aimed to prevent 5,000 children from being trafficked for commercial sexual exploitation and withdraw 300 children. It requested information on the results achieved through these initiatives.

The Committee notes the information in the Government’s report that phase II of the *TBP* (to support the second stage of the NAP on WFCL) had, between October 2007 and February 2010 succeeded in preventing 528 vulnerable children from becoming victims of trafficking and providing rehabilitation and reintegration services to nine child victims

of trafficking. The ILO–IPEC TPR indicates that, as of August 2010, 816 children had been prevented from becoming engaged in trafficking, and 53 had been withdrawn. The Committee also notes the Government’s indication that the **TBP** has contributed to strengthening the network of service providers for trafficking victims. Social workers at the social protection home for children (homes operated by the Ministry of Social Affairs which serve as a shelter for trafficking victims) received training to better equip them to reunite and reintegrate child victims of trafficking with their families. Between 2004 and 2009, the Ministry of Social Affairs recorded 251 victims who received rehabilitation services from the social protection home for children in Jakarta.

The Committee further notes information in a UNICEF report entitled “Children in Indonesia: Child trafficking” of July 2010 (UNICEF report) that the Government has passed the Decree on the National Plan of Action on the Eradication of Trafficking in Persons and Sexual Exploitation of Children 2009–14. The Plan guides governmental ministries and provincial departments, through task forces, to implement programmes to eradicate trafficking in persons and sexual exploitation of children. Nonetheless, the Committee notes the statement in the Trafficking report that efforts to protect victims of trafficking remained uneven and inadequate in comparison with the scope of the country’s trafficking problem. **The Committee therefore urges the Government to continue to take measures, within the framework of both the TBP and the National Plan of Action on the Eradication of Trafficking in Persons and Sexual Exploitation of Children 2009–14, to prevent the trafficking of persons under 18, in addition to providing for their removal, rehabilitation and social reintegration. It requests the Government to provide information on the concrete steps taken and the results achieved, particularly the number of children reached through these initiatives.**

Article 7(2). *Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assisting the removal of children from these worst forms.* 1. *Commercial sexual exploitation of children.* The Committee previously noted the implementation of an action programme, within phase I of the **TBP** to remove child victims of commercial sexual exploitation. It also noted that phase II of the **TBP** would continue to provide services to girls withdrawn from such situations, and attempt to reach out to more child victims of prostitution. However, the Committee noted that there was an estimated 5,100 sex workers under 18 years of age operating in Jakarta alone.

The Committee notes the Government’s statement that it works with ILO–IPEC and the Indonesian Child Welfare Foundation (YKAI) to combat commercial sexual exploitation. The Government indicates that during phase I of the **TBP**, 177 children were withdrawn from commercial sexual exploitation and an additional 5,210 children were prevented from engaging in this worst form of child labour. However, the Committee notes the information in the ILO–IPEC TPR of August 2010 that phase II of the **TBP** has not yet recorded the removal of any children from commercial sexual exploitation. The Committee further notes the information in the UNICEF report regarding the adoption of the Decree on the National Plan of Action on the Eradication of Trafficking in Persons and Sexual Exploitation of Children 2009–14, in addition to the information in the ILO–IPEC TPR of August 2010 that the Minister of Culture and Tourism adopted Regulation No. PM.30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism, in 2010. The Ministry of Tourism will be working with the ILO Office in Jakarta on concrete activities to implement this regulation.

In this regard, the Committee notes the statement in the Trafficking report that child sex tourism is prevalent in most urban areas and tourist destinations, such as Bali and Riau Island. The Committee also notes the information in the UNICEF report that approximately 30 per cent of the women in prostitution in Indonesia are below the age of 18, with 40,000–70,000 Indonesian children being victims of sexual exploitation. **The Committee expresses its serious concern at the significant number of children who are victims of commercial sexual exploitation, including child sex tourism, and accordingly urges the Government to redouble its efforts to protect children under 18 years from this worst form of child labour. It requests the Government to continue providing information on the number of children who have been removed from commercial sexual exploitation and rehabilitated through the implementation of the TBP, in addition to those reached through the National Plan of Action on the Eradication of Trafficking in Persons and Sexual Exploitation of Children 2009–14. It further requests the Government to pursue its efforts to implement Regulation No. PM.30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism, and to provide information on the impact of measures taken.**

2. *Children engaged in the sale, production and trafficking of drugs.* In its previous comments, the Committee noted that 15,000 children were involved in the sale, production and trafficking of drugs in Jakarta in 2003. The Committee noted the removal and prevention of children from this worst form through the **TBP**, but also noted reports that as many as 20 per cent of drug users were involved in the sale, production or trafficking of drugs, suggesting that between 100,000 and 240,000 young persons might still be involved in the drug trade.

The Committee notes the information in the Government’s report that in the first six months of 2010 there were 5,603 children (mostly boys and street children), undergoing training in penitentiaries, 90 per cent of whom were drug users and/or drug dealers. The Government indicates that these children obtain health care, psychosocial and spiritual education. The Committee also notes that the Ministry of Social Affairs has engaged in cooperation with various governmental agencies to provide services and rehabilitation to children found to be in violation of the law. The Government further indicates that the Ministry of Women’s Empowerment and Children Protection has established an Memorandum of Understanding with various judicial institutions to encourage the use of a restorative justice approach

with regard to children in conflict with the law, including those under 18 found to be guilty of selling, producing or trafficking drugs. The Committee also notes the information in the ILO–IPEC final technical progress report for phase I of the *TBP* of March 2008 (ILO–IPEC FTFR 2008) that 517 children were withdrawn from work involving drugs, and a total of 8,298 children were reached through initiatives to prevent such involvement. The ILO–IPEC FTFR 2008 also indicates that the Jakarta Provincial Narcotics Board began to use community-based approaches in its regular prevention and treatment programmes for children and families to respond to the problems of child drug trafficking and drug abuse. However, the Committee notes the information in the “Report on the implementation of the NAP on WFCL stage I (2002–07) and the NAP on WFCL stage II (2008–12)” (Report on the NAP on WFCL stages I and II) (submitted with the Government’s report) that there has not been any significant progress made with regard to the prosecution of persons employing children in several of the worst forms of child labour, including drug trafficking, and that some cases were not taken to court. ***The Committee expresses its concern at the lack of progress in prosecuting perpetrators of this worst form of child labour, and accordingly urges the Government to strengthen its efforts to protect children under 18 years from becoming engaged in the sale, production and trafficking of drugs. In this regard, the Committee requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of perpetrators of this worst form of child labour are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It requests the Government to continue to provide information on the impact of the measures taken, including the number of investigations, prosecutions and sanctions imposed.***

*Clause (d). Identifying and reaching out to children at special risk. Children on fishing platforms.* The Committee previously noted that more than 7,000 children were estimated to be engaged in deep-sea fishing in North Sumatra. It also noted several ongoing initiatives being implemented within the *TBP*, to prevent and remove children from being engaged in this hazardous form of work. The Committee requested the Government to provide information on the results achieved through these initiatives.

The Committee notes the Government’s statement that, at the end of phase I of the *TBP*, 457 children had been withdrawn from the offshore fishing sector, and an additional 6,653 children had been prevented from becoming engaged in this sector. The Government also indicates that the North Sumatra Government made efforts to monitor this sector and disseminated information about the dangers of working on fishing platforms through the provincial action committee on child labour. The Government indicates that child labour in this sector shall naturally decline due to the physical conditions of fishing platforms, and the lack of new fishing platform developments. However, the Committee notes that the Report on the NAP on WFCL stages I and II identifies offshore fishing platforms as an area where investigations and prosecutions for persons who employ children in the worst forms of child labour need to be more effective. This report indicates that many cases of violations were closed just after the investigations and never brought to court because of the inadequate capacity of law enforcers. It indicates that an owner of fishing platforms in North Sumatra was investigated for using children, but that this case was not brought to court for trial. The Committee reminds the Government that, pursuant to *Article 7(1)* of the Convention, ratifying countries are required to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the application of appropriate sanctions. ***The Committee accordingly urges the Government to take the necessary measures to ensure that sufficiently effective and dissuasive penalties are applied in practice to persons who engage children in hazardous work on fishing platforms. The Committee requests the Government to provide information on the impact of the measures taken in this regard, including the number of prosecutions, convictions and sanctions applied to persons who engage children in work on deep-sea fishing platforms.***

The Committee is raising other points in a request addressed directly to the Government.

## Jamaica

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)***

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously requested the Government to provide information on the measures taken to ensure that the sale and trafficking of girls below 18 years of age is effectively prohibited.

The Committee notes with *satisfaction* that sections 4(1) and 4(3) of the Trafficking in Persons (Prevention, Suppression and Punishment) Act, 2007, prohibits both internal and inter-state trafficking of children, and that section 2 defines a child as any person under 18 years of age.

*Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously observed that the provisions in the Offences Against Persons Act relating to the prohibition of procuring or offering a child for prostitution applied only to women and girls. However, the Committee noted that discussions and consultations were being held for the drafting of a Sexual Offences Act, to address all crimes of a sexual nature.

The Committee notes the Government’s statement in its report to the United Nations Human Rights Committee of 21 October 2009 that Parliament took the decision to enact a new act (the Sexual Offences Act) rather than amending the Offences Against Persons Act (CCPR/C/JAM/3, paragraph 23). The Committee also notes the Government’s indication in its report that the Sexual Offences Act, which was adopted on 20 October 2009, addresses sexual offences against

children. The Committee further notes that section 18 of the Sexual Offences Act prohibits procuring or attempting to procure a child for the purpose of sexual intercourse (section 18(a)) and prohibits procuring any person, male or female, to become a prostitute (section 18(b)). Pursuant to section 2, a child is defined as any person under 18 years of age. Section 23(1)(a) of the Sexual Offences Act further prohibits living off the proceeds of prostitution, which, pursuant to section 23(1)(i) includes exercising control, direction or influence over the movements of a prostitute in such a manner as to show that the person is aiding, abetting or compelling prostitution. The Committee observes that the Sexual Offences Act does not appear to prohibit the use of a person under the age of 18 for the purpose of prostitution. ***It therefore requests the Government to provide information on the legislative provisions which prohibit the use of a child for the purpose of prostitution. If no such provisions exist, the Committee requests the Government to take the necessary measures to ensure the adoption of such a prohibition in the near future.***

*Clause (c). Use, procuring or offering a child for illicit activities, particularly the production and trafficking of drugs.* In its previous comments, the Committee noted that the Dangerous Drugs Act of 1942, together with its amendment of 1994, prohibits and punishes various drug-related behaviour such as importing, exporting, cultivating, manufacturing, selling, using, dealing, transporting and possessing various types of drugs. However, the Committee observed that the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, did not appear to be specifically prohibited by the relevant Jamaican legislation. It requested the Government to indicate the measures taken or envisaged in this regard.

The Committee notes that the draft list of hazardous work prohibited for children (submitted with the Government's report) prohibits involving children in illicit activities and the drug industry, as well as more specific provisions prohibiting children from cultivating ganja and guarding ganja fields. The Committee also notes the information in a report on the worst forms of child labour in Jamaica of 10 September 2009, available on the website of the Office of the High Commissioner for Refugees (www.unhcr.org) (WFCL Report), that children are used as drug couriers and for selling drugs. ***The Committee therefore urges the Government to take the necessary measures to ensure the adoption of the provisions (in the list of hazardous work prohibited for children) prohibiting the involvement of children in illicit activities and the drug industry, in the near future.***

*Article 4(1). Determination of hazardous work.* The Committee previously noted the Government's indication that a tripartite workshop was held to identify hazardous types of work, and that a list of types of hazardous work would be present in the new Occupational Health and Safety Act (OHS Act).

The Committee notes that the draft list of types of hazardous work prohibited for children, included in the Government's report contains 45 types of prohibited work. The Committee also notes the Government's statement that if the draft list has not been reviewed before the enactment of the OHS Act, it will be included in the regulations of the OHS Act. The Committee observes that the Government has been compiling this list since 2006, and reminds the Government that, in accordance with *Article 1* of the Convention, it is under the obligation to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***It therefore urges the Government to take the necessary measures, as a matter of urgency, to ensure that this draft list of types of hazardous work prohibited for children is reviewed and adopted in the near future. It requests the Government to provide a final copy of the list, once it has been adopted.***

*Articles 5 and 7(1). Monitoring mechanisms and penalties. Law enforcement agencies.* The Committee previously noted the establishment of a Child Labour Unit within the Ministry of Labour and Social Security (MoLSS), and noted that this unit was aiding in the development of a referral system for children. The Committee also noted that over 150 officers of the Jamaica Constabulary Force (JCF) received training from the Child Development Agency (CDA) on the provisions of the Child Care and Protection Act.

The Committee notes the Government's statement that the Child Labour Unit continues to collaborate with the JCF, particularly the Trafficking in Persons Unit, where the Child Labour Unit assists in referring victims of trafficking to services offered by the MoLSS. Although this cooperation currently occurs on an ad hoc basis, it is envisioned that a more formal system will be put in place following a series of training sessions organized by the JCF's Trafficking in Persons Unit, the National Task Force on Trafficking in Persons and the Ministry of National Security. The Committee also notes the Government's statement that an "Assessment of the Implementation and Enforcement Machinery to Combat Child Labour in Jamaica" was carried out within the framework of the ILO-IPEC "Tackling Child Labour through Education" Project (TACKLE Project). The Government states that the assessment indicated that much more was needed to be done on the ground to facilitate greater cooperation between agencies involved in aspects of child labour regulation.

In this regard, the Committee notes the statement in a report on trafficking in persons in Jamaica of 14 June 2010 (available on the website of the Office of the High Commissioner for Refugees (www.unhcr.org)) (Trafficking Report) that the Government has made no discernible progress in prosecuting trafficking offenders during the past year, and that more vigorous investigations of trafficking offences was necessary. The Trafficking Report also indicates that there have been reports of trafficking complicity by police. The Committee expresses its **concern** at allegations of complicity of law enforcement officials with human traffickers. ***The Committee therefore urges the Government to redouble its efforts to ensure that perpetrators of human trafficking, and complicit government officials, are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, the Committee requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried***

**out, including by strengthening the coordination between the relevant law enforcement agencies. It requests the Government to provide information on the measures taken in this respect, and the results achieved, particularly the number of persons investigated, convicted and sentenced for cases of trafficking involving victims under the age of 18.**

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Child victims of trafficking and prostitution.* In its previous comments, the Committee noted an ILO-IPEC rapid assessment study on child prostitution of November 2001 which indicated that, in all seven locations surveyed, children between the ages of 10 and 18 years were exposed to prostitution, pornographic performances and other activities that adversely affected their health, safety and morals. The study indicated that 70 per cent of children engaged in such activities were girls, some as young as 10 years of age. The study further indicated that one of the causes of prostitution, in addition to poverty and failure of the education system, was the weak monitoring of existing laws.

The Committee notes the information in the Government's report indicating that the CDA reported 361 cases of sexual abuse, but that medical assistance and counselling were usually provided to these victims. Moreover, while the matter was under investigation, the victims were allowed to conditionally return to school or were provided with state care. The Committee also notes the information in the Government's report that it is finalizing the National Child Diversion Policy, which emanates from the National Plan of Action for Child Justice. The fourth strategic objective of the National Child Diversion Policy includes the rehabilitation and reintegration of child victims. The Government also indicates that a shelter for victims has been refurbished and is to become operational shortly. In this regard, the Committee further notes the information in the Trafficking Report that the Government began taking measures for the establishment of three shelters for female trafficking victims, the first of which was completed in March 2010. The Trafficking Report also indicates that the Government took measures to return child victims of trafficking to families, or referred them to foster homes, and operated facilities that housed child trafficking victims.

Nonetheless, the Committee notes the indication in the Trafficking Report that Jamaica is a source, transit, and destination country for child victims of trafficking, specifically for the purposes of forced prostitution, and that Jamaican women and girls have been subjected to forced prostitution in other countries such as Canada, United States, United Kingdom, Bahamas, and other Caribbean destinations. The Trafficking Report also indicates that child-sex tourism continues to be a problem in Jamaica's resort areas. ***The Committee therefore requests the Government to take immediate and effective measures to ensure the removal of victims of commercial sexual exploitation, including victims of child sex tourism, from this worst form of child labour. It also requests the Government to strengthen its efforts to ensure the provision of appropriate services, including legal, psychological and medical services, to child victims of trafficking, to facilitate their rehabilitation and social reintegration and to provide information on the number of children reached through these initiatives.***

*Part III of the report form. Court decisions.* The Committee previously noted the Government's indication that a number of cases pertaining to the Convention were pending and that a copy of these decisions would be transmitted promptly. It also noted that four persons had been charged under the Trafficking in Persons Act, including the case of a 14 year old girl who was pimped by two male traffickers.

The Committee observes that no court cases have been submitted with the Government's report. However, it notes the information in the Government's report that, in December 2009, two persons were successfully convicted under the Trafficking in Persons Act for offering a 14 year old girl for prostitution. The Committee further notes the information in the Trafficking Report that Jamaican authorities initiated the prosecution for carnal abuse of a foreign visitor to Jamaica who allegedly engaged in child-sex tourism. ***The Committee requests the Government to continue to provide information on the prosecutions and convictions related to breaches of national legal provisions relevant to the application of the Convention. It also requests the Government to supply a copy of any court decision issued in this regard.***

*Part V of the report form. Practical application of the Convention. Trafficking of children and child prostitution.* Following its previous comments, the Committee notes the information in the Government's report concerning the number of reports of child abuse and neglect received by the Office of the Children's Registry, but observes that this data is not disaggregated to indicate the number of these cases which relate to the worst forms of child labour.

The Committee notes the indication in the WFCL Report that commercial sexual exploitation of children is a problem in Jamaica, especially in tourist areas. The Committee notes the indication in the Trafficking Report that the trafficking of children continues to be a significant problem, specifically for the purpose of forced prostitution, and that victims often come from Jamaica's poverty stricken garrison communities. This report indicates that the majority of trafficking victims identified were poor Jamaican women and girls, though boys are increasingly subject to forced prostitution in urban and tourist areas. ***In this regard, the Committee expresses its deep concern at the situation of persons under the age of 18 who are victims of trafficking and prostitution, and accordingly urges the Government to take immediate and effective measures to ensure in practice the protection of children from these worst forms of child labour. It also requests the Government to take the necessary measures to ensure that sufficient data is available on the worst forms of child labour, particularly on the sale and trafficking of children and child prostitution.***

The Committee is raising other points in a request addressed directly to the Government.

## Jordan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

*Article 2(1) of the Convention. Scope of application.* In its previous comments, the Committee noted that, while section 73 of the Labour Code of 1996 prohibits the employment of minors under 16 years of age, this prohibition did not include persons who perform work outside the framework of an employment contract. It also observed that, by virtue of its section 3, the Labour Code did not apply to members of the family of the employer working in his/her enterprise without remuneration, domestic workers, gardeners, cooks and those of a similar capacity, in addition to agricultural workers, excluding those who shall be covered by the Labour Code pursuant to a decision taken by the Council of Ministers. However, the Committee noted the Government's indication that draft amendments to the Labour Code, providing that workers in the domestic and agricultural sectors shall be governed by the provisions of the Labour Code, had been referred to the Council of Ministers.

The Committee notes the Government's statement that section 3 of the Labour Code was amended by virtue of Act No. 48 of 2008 (published in the *Official Gazette* No. 4924 of 17 August 2008). The Committee notes with *interest* that section 3 of Act No. 48 of 2008 repeals and replaces section 3 of the Labour Code, broadening the scope of the Code's application (pursuant to section 3(a)) to cover "all workers", including certain previously excluded groups such as workers in family enterprises and those working outside the framework of an employment contract. Nonetheless, section 3(b) of the Labour Code (as amended in 2008) states that agricultural workers, domestic workers, cooks and gardeners will be governed by regulations issued on this subject, provided that these regulations address labour contracts, hours of work, rest periods, inspection and any other matters related to their employment. In this regard, the Committee notes the Government's indication that Regulation No. 90 of 2009, (promulgated in the *Official Gazette* No. 4989 of 1 October 2009) regulates the work of domestic workers and cooks. However, the Committee observes that the Government does not indicate if the regulations issued pursuant to section 3(b) of the Labour Code (as amended in 2008) will prescribe a minimum age for those working in the agricultural and domestic sectors, or if the new section 3(a) of the Labour Code signifies that the general minimum age prescribed in the Labour Code now applies to this group of workers. ***The Committee therefore requests the Government to indicate whether the minimum age specified in the Labour Code (as amended in 2008) applies to agricultural workers, domestic workers, cooks and gardeners. If not, the Committee requests the Government to take the necessary measures to ensure that the regulations adopted pursuant to section 3(b) of the Labour Code (as amended in 2008) prescribe the minimum age of 16 for the admission to employment or work for these categories. It also requests the Government to provide a copy of Regulation No. 90 of 2009 governing domestic workers, in addition to any regulations adopted governing agricultural workers.***

*Article 9(1) and Part III of the report form. Penalties and labour inspection.* The Committee previously noted that section 77 of the Labour Code provides for penalties between 100 and 500 dinars (JOD) for violations of the Code's provisions, including section 73 on the minimum age for employment or work. However, the Committee noted the information in a 2006 ILO-IPEC rapid assessment study that official records suggested a very weak enforcement of the provisions of the Labour Code related to the illegal employment of children.

The Committee notes the Government's statement that, pursuant to Act No. 48 of 2008, the minimum penalty for employing a young person was increased. Section 7 of Act No. 48 of 2008 amends section 77 of the Labour Code to raise the minimum fine for violations of its provisions from JOD100 (approximately US\$140) to JOD300 (approximately US\$422), and that courts may not reduce the fine below this minimum in any circumstance. The Committee also notes the Government's indication that the child labour unit was provided with two more labour inspectors specializing in occupational safety and health and legal issues. The Government also indicates that the number of inspection visits have been increased through field visits made by inspectors to verify compliance with the Labour Code by private sector undertakings, particularly with respect to child labour. The Government further indicates that the necessary legal proceedings were initiated following these inspections. The Committee further notes the information in the Government's report that labour inspectors will be trained on programmes related to the reduction of child labour. In addition, the Committee notes the information in the report on the worst forms of child labour in Jordan of 10 September 2009 (available on the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org))) (WFCL report) that the Labour inspectorate set a target to remove 3,000 children from the labour market in 2008 as part of its long-term strategy to remove 38,000 children from work.

However, the Committee notes the statement in the report of the International Trade Union Confederation, for the World Trade Organization General Council, on the trade policies of Jordan of 10 and 12 November 2008, entitled "Internationally recognized core labour standards in Jordan" (ITUC report) that, with regard to child labour, enforcement and penalties remain insufficient. Moreover, the Committee notes the statement in the WFCL report that inspectors often handle child labour cases informally rather than issuing citations and fines. In this regard, the Committee notes the information in the Government's report, submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that between 1 July 2009 and 30 June 2010, 1,459 working children were detected through labour inspections. However, the Government indicates that in only 81 of these cases were measures taken pursuant to section 77 of the Labour Code. The Government indicates that warnings were issued in 147 cases and that, in the remaining 1,092 cases, advice and guidance was given. While noting that several cases of violations of child employment were detected by the labour



inspectorate, the Committee observes with *concern* that persons who employ children in breach of the provisions giving effect to the Convention are not prosecuted as a rule. ***In this regard, the Committee recalls that, by virtue of Article 9(1), of the Convention, all necessary measures shall be taken by the competent authority, including the provision of appropriate penalties, to ensure the effective enforcement of the provisions of the Convention, and accordingly requests the Government to redouble its efforts to ensure that persons found to be in breach of the provisions giving effect to the Convention are prosecuted and that adequate penalties are imposed. In this regard, it requests the Government to continue to provide information on the types of violations detected by the labour inspectorate, the number of persons prosecuted and the penalties imposed. Lastly, it encourages the Government to pursue its efforts, through the labour inspectorate, to remove children from the labour market, and to provide information on the number of children removed through this initiative.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted the indication in the Committee of the Rights of the Child's concluding observations of 29 September 2006 that "the employment of children has steadily grown in recent years, especially in agriculture" (CRC/C/JOR/CO/3, paragraph 88). The Committee also noted a 2006 rapid assessment survey on child labour (published by the University of Jordan, in collaboration with ILO-IPEC) which indicated that the average age of working children is 15 years. The study also indicated that the working hours of children appeared to be very long (90 per cent of working children work eight to 12 hours a day), and that child workers must often carry heavy objects and can be exposed to dangerous chemicals, heavy shaking or noise. The Committee urged the Government to take measures to improve the situation.

The Committee notes the Government's statement that the Ministry of Labour is engaged in awareness-raising measures such as newsletters and lectures at schools on the risk of working at an early age. The Government also indicates that 16 liaison officers (within the labour inspectorate) were certified, for the purpose of carrying out activities related to the rehabilitation of children who had dropped out of school to enter the labour market. The Committee also notes the Government's statement (in its report submitted under Convention No. 182) that a national framework to reduce child labour is currently being prepared by the National Council for Family Affairs.

However, the Committee notes the information in a study entitled "Working Children in the Hashemite Kingdom of Jordan", issued by the Jordanian Department of Statistics in collaboration with ILO-IPEC in March 2009, which indicates that there are approximately 29,225 child labourers in Jordan (defined as children under the minimum age for light work, children under 16 years not performing light work, and children under 18 engaged in hazardous work). The study indicates that 88.1 per cent of children who are engaged in some form of economic activity are performing work not permitted under the Convention, mostly due to the number of hours during which, and the conditions in which, these children work. The Committee also notes the study's indication that children put in substantial hours of work and that the average work week among all children is 38.6 hours per week. Most of these children combine school work with economic activities. However, the study indicates that children in employment start school later and drop out earlier than non-working children. The Committee further notes the statement in the ITUC report that child labour is prevalent in Jordan and that, despite efforts to reduce child labour including work with the ILO, the number of child workers has increased (pages 9–10). ***The Committee therefore expresses its concern at reports of the growing number of children working under the minimum age, as well as in hazardous conditions, in Jordan, and requests the Government to redouble its efforts, within the forthcoming national framework to reduce child labour, to ensure the progressive elimination of child labour. It requests the Government to provide information on the impact of measures taken in this regard, particularly with respect to reducing the number of children working under the minimum age and in hazardous work.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously requested the Government to take immediate measures to prohibit the sale and trafficking of children for both labour exploitation and commercial sexual exploitation, and to adopt appropriate sanctions as a matter of urgency.

The Committee notes the adoption of the Prevention of the Trafficking in Persons Law (Act No. 9 of 2009), published in the *Official Gazette* No. 4952 on 1 March 2009. The Committee notes with *satisfaction* that, pursuant to sections 3(2) and 9, the Prevention of the Trafficking in Persons Law prohibits the trafficking of persons under 18, and sets forth penalties of ten years' hard labour for the commission of this offence and/or a fine of between 5,000 and 20,000 dinars (between approximately US\$7,042 and \$28,169).

*Clause (b). 1. Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that the Penal Code prohibits certain acts associated with the prostitution of women but does not do so in respect of boys under the age of 18. It noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 29 September 2006, recommended the revision and amendment of the provisions of the Penal Code to provide protection to both boys and girls under the age of 18 against commercial sexual exploitation (CRC/C/JOR/CO/3, paragraph 93).

The Committee notes the Penal Code provisions referenced in the Government's report, but observes that these provisions do not appear to prohibit the use, procuring or offering of a boy under 18 for the purpose of prostitution. Therefore, the Committee once again reminds the Government that, pursuant to *Article 3(b)* of the Convention, this offence constitutes one of the worst forms of child labour, and that, pursuant to *Article 1*, measures to prohibit this worst

form must be taken as a “matter of urgency”. *Therefore, the Committee once again strongly requests the Government to take immediate measures to ensure that the use, procuring or offering of both boys and girls under 18 years of age for the purpose of prostitution is prohibited, as a matter of urgency.*

2. *Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously requested the Government to indicate the specific provisions of the Penal Code which prohibit the use, procuring or offering of a child for pornography.

The Committee notes the reference in the Government’s report to section 306 of the Penal Code, which prohibits subjecting a boy or girl to an act that is contrary to morals, as well as prohibiting the utterance of indecent words to them. However, the Committee observes that section 306 of the Penal Code appears to only provide protection to persons under 15 years of age. *Observing that Jordan ratified the Convention over ten years ago, the Committee urges the Government to take immediate and effective measures to prohibit the use, procuring or offering of all persons under 18 for the production of pornography and pornographic performances, in conformity with Article 3(b) of the Convention.*

The Committee is raising other points in a request addressed directly to the Government.

## Kyrgyzstan

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2004)

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted that section 124(1) of the Criminal Code prohibits the trafficking of persons, and section 124(2) specifies that trafficking in persons under 18 is an aggravated offence. However, the Committee noted the Government’s indication to the Committee on the Rights of the Child (CRC) in May 2006 that women and children are trafficked to Turkey, China and the United Arab Emirates for sexual exploitation, and that Kyrgyz citizens have been sold in Kazakhstan to work in tobacco (CRC/C/OPSC/KGZ/1, page 10). In light of this, the Committee requested the Government to take immediate and effective measures to apply section 124 of the Criminal Code and to provide statistical information on the practical application of this provision.

The Committee notes the information in the UNODC Global Report on Trafficking in Persons that state authorities recorded six child victims of trafficking in 2005, and nine such victims in 2006. The Committee also notes the information in the 2008 report on human trafficking in Kyrgyzstan, available on the website of the Office of the High Commissioner for Refugees (www.unhcr.org) (Trafficking Report) that indicates that the Government conducted 33 investigations relating to trafficking in 2007, and 92 such investigations in 2008. This report indicates that, in 2008, the Government prosecuted eight persons for this offence, of which six were convicted. However, this report also indicates that four out of the six offenders received suspended sentences, with two receiving sentences of 3–8 years’ imprisonment. The Committee also notes that the CRC, in its concluding observations in relation to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC OP-SC) of 2 February 2007, expressed concern that, in a number of cases, investigations and prosecutions had not been initiated (CRC/C/OPSC/KGZ/CO/1, paragraph 17), and that complicity by government officials with traffickers, and corruption, was impeding the effectiveness of prevention measures (paragraph 25). The CRC also expressed regret at the lack of statistical data, and the lack of research on the prevalence of national and cross-border trafficking and the sale of children (paragraph 9).

The Committee expresses its *deep concern* at allegations of complicity of low-level government officials with human traffickers, and at the lack of complete data on the prevalence of child trafficking in Kyrgyzstan. *The Committee therefore requests the Government to take the necessary measures as a matter of urgency to ensure that persons who traffic in children for the purpose of labour or sexual exploitation are in practice prosecuted, and that sufficiently effective and dissuasive penalties are imposed. The Committee also urges the Government to take the necessary measures to ensure that sufficient data on the sale and trafficking of persons under the age of 18 is made available. In this regard, the Committee once again requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of section 124 of the Criminal Code. To the extent possible, all information provided should be disaggregated by sex and age.*

*Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that section 157(1) of the Criminal Code makes it an offence for a person to involve a minor in prostitution. Sections 260 and 261 of the Criminal Code make the enticement into prostitution an offence. Noting the Government’s indication that the number of street children and children in risk groups forced into prostitution was rising, it requested the Government to provide information on the practical application of these provisions of the Criminal Code.

The Committee notes the information in the 2008 report on the worst forms of child labour in Kyrgyzstan (WFCL Report), available on the Office of the High Commissioner for Refugees website (www.unhcr.org), that child commercial sexual exploitation continues to be a problem due in part to the lack of legal regulation and oversight. This report indicates that children from rural areas (primarily girls) are trafficked from rural areas to Bishkek and Osh for commercial sexual exploitation. The Committee also notes that the CRC, in its concluding observations in relation to the OP-SC, expressed concern that in a number of cases of child prostitution, investigations and prosecutions had not been initiated

(CRC/C/OPSC/KGZ/CO/1, paragraph 17). The CRC also expressed deep concern that child victims are often stigmatized and socially marginalized and may be held responsible, tried and placed in detention (CRC/C/OPSC/KGZ/CO/1, paragraph 21).

The Committee expresses *concern* that child prostitution continues in part due to the lack of legal oversight, and that children who are the victims of commercial sexual exploitation risk being regarded as criminals. ***It therefore requests the Government to take the necessary measures to ensure that children who are used, procured or offered for commercial sexual exploitation are treated as victims rather than offenders. The Committee also requests the Government to provide information on the practical application of the provisions of the Criminal Code relating to child prostitution, in particular by supplying statistics on the number and nature of violations reported, investigations, prosecutions, convictions and sanctions applied. Lastly, the Committee once again requests the Government to indicate whether the national legislation contains provisions criminalizing the client who uses children under 18 years of age for prostitution.***

*Clause (d). Hazardous work. Children working in agriculture.* The Committee previously noted that the Government had approved a detailed list of occupations or works prohibited for persons under 18 years, and had adopted regulatory instruments at the sectoral level prohibiting this group from being engaged in work related to the use and storage of pesticides. The Committee also noted that that section 294 of the Labour Code prohibits the employment of persons under the age of 18 years in work with harmful and dangerous conditions, including in the manufacture of tobacco.

Nonetheless, the Committee notes the indication in the WFCL Report that the use of hazardous child labour in the agricultural sector is widespread, particularly in tobacco, rice and cotton fields, and that these children face dangerous working conditions. The Committee also notes the indication in the WFCL Report that, in rural areas, regulations prohibiting children from engaging in such work are not strictly enforced. In this regard, the Committee notes the statement in the report of the International Confederation of Free Trade Unions (now the International Trade Union Confederation) for the World Trade Organization General Council on the trade policies of Kyrgyzstan of 9 and 11 October 2006, entitled “Internationally recognized core labour standards in Kyrgyzstan” that some schools require children to participate in the tobacco harvest, and that the income from this goes directly to the schools, not the children or their families. This report also indicates that, in some cases, classes are cancelled and children are sent to the fields to pick cotton. Lastly, the Committee notes that the CRC, in its concluding observations of 3 November 2004, expressed concern regarding the use of children as workers by State institutions, and in particular by State educational establishments (CRC/C/15/Add.244, paragraph 59). ***The Committee expresses its serious concern at the situation of school children who are required to engage in agricultural work in the cotton and tobacco sectors, often under hazardous conditions, and requests the Government to take the necessary measures, as a matter of urgency, to ensure that persons under 18 years of age are protected against this worst form of child labour, including through the enforcement of regulations prohibiting children’s involvement in hazardous agricultural work.***

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. Trafficking in children.* The Committee previously noted that governmental departments, international agencies and the local media, in collaboration with the International Organization for Migration (IOM), conducted a high-profile awareness campaign on violence against women and trafficking in women and girls and its prevention. The Committee also took note of the Sezim Psychological Crisis Centre in Bishkek, which provided rehabilitation and reintegration services to victims of trafficking, including 30 children.

The Committee notes the information on the IOM website that its collaboration with the Government continues through the IOM programme entitled “Combating Trafficking in Persons in Central Asia: Prevention, Protection and Capacity Building”, which includes awareness raising and assistance for victims. The Committee also notes the information in the Trafficking Report that, while the Government provides no direct funding for shelters or medical assistance to victims, it provides space for three NGO-run shelters, and has improved its process for the repatriation of Kyrgyz nationals who are victims of trafficking. The Trafficking Report also indicates that the Government and NGOs identified 331 trafficking victims in 2007, and 161 victims in 2008. This report further indicates that 117 victims of trafficking received NGO assistance in 2008, 20 of whom were referred to these services by the Government. ***Observing the disparity between the number of trafficking victims identified, and the number of victims receiving assistance, the Committee requests the Government to strengthen its efforts to provide the necessary and appropriate direct assistance for the removal of child victims of trafficking, and for their rehabilitation and social integration. It requests the Government to provide information on concrete measures taken in this regard, and to supply information on the results achieved, including the number of victims of trafficking under the age of 18 who have participated in the repatriation process, and the number of children receiving rehabilitative assistance, shelter and other services.***

*2. Children engaged in hazardous work in agriculture.* The Committee notes the estimation in the ILO-IPEC Technical Progress Report for the project entitled “Health and rehabilitation of working children in tobacco, rice and cotton fields in Osh and Jalalabat regions” of August 2006 (Agriculture TPR 2006), that child labour in the agricultural sector is quite common in Kyrgyzstan, and that, in the oblast of Jalalabat alone, it is estimated that 125,000 children are involved in agricultural production each year. The Agriculture TPR 2006 indicates that many of these children face work-

related risks including injuries resulting from the use of heavy equipment, lack of clean drinking water in the fields, exposure to toxic pesticides, insects and rodents bites, and hazards related to tobacco production (skin irritation and intoxication). However, the Committee notes the statement in the Agriculture TPR 2006 that there is an understanding at the governmental level for the need to develop a comprehensive programme for the elimination of the worst forms of child labour in the agricultural sector. The Committee also notes that various initiatives are being implemented to address this issue, such as the “Elimination of child labour in tobacco growing industry in Kyrgyzstan” project for 2010–12, implemented by the Agricultural Workers’ Union and supported by the ECLT Foundation (within the framework of the PROACT–CAR Phase II) and meetings organized by the ILO Bureau for Employers’ Activities on the role of employers in the elimination of child labour in agriculture in Kyrgyzstan.

Nonetheless, the Committee notes the information in the WFCL Report indicating that, during the cotton and tobacco harvesting season, children in southern Kyrgyzstan frequently miss school to work in the fields, often under hazardous conditions. **Therefore, the Committee requests the Government to redouble its efforts to remove and rehabilitate children engaged in hazardous agricultural work, particularly in the cotton, tobacco and rice-growing sectors. The Committee requests the Government to provide information on concrete measures taken in this regard, and the results achieved, including information on the number of children removed and rehabilitated.**

The Committee is raising other points in a request addressed directly to the Government.

## Lesotho

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted the Government’s indication that the legislative process for the adoption of the Children’s Protection and Welfare Bill was ongoing. It also noted the Government’s indication that the Action Plan for the Elimination of Child Labour had been endorsed by the Programme Advisory Committee on Child Labour (PACC), and awaited formal adoption.

The Committee notes the Government’s statement that the Children’s Protection and Welfare Bill has not yet been adopted. The Committee also notes the information in the final technical progress report for the ILO–IPEC project entitled “Programme Towards the Elimination of the worst forms of child labour (TECL)” of June 2008 that, following the endorsement of the PACC in June 2008, the Action Plan for the Elimination of Child Labour was subsequently approved by the labour advisory council (NACOLA), and has been submitted to Cabinet for approval. **Observing that the Government has referred to the Children’s Protection and Welfare Bill since 2005, the Committee urges the Government to take the necessary measures to ensure the adoption of this legislation without delay and to ensure the adoption of the Action Plan for the Elimination of Child Labour by Cabinet, in addition to the implementation of this Action Plan, in the near future. The Committee requests the Government to provide a copy of the Children’s Protection and Welfare Bill and the Action Plan for the Elimination of Child Labour, along with its next report.**

*Article 2(1). Scope of application. Self-employment and domestic work.* The Committee previously requested the Government to take the necessary measures to ensure that children engaged in types of work outside of an employment relationship benefited from the protection of the Convention. The Committee subsequently noted the Government’s indication that the draft revision of the Labour Code contained a provision for the protection of children in the domestic sector as well as self-employed workers. The Government indicated that this proposed provision stated that, for the purposes of sections 124–129 of the Labour Code of 1992 (related to the minimum age for admission to work, hazardous work, light work and related issues), “[a] person is deemed to have employed a child or young person if they employ a child or young person to work or require or permit a child or young person to work in any workplace or establishment under their control, including work as a domestic worker, or for any business that they conduct, irrespective of whether the child or young person is working in terms of a contract of employment or otherwise”. The Committee expressed the hope that the draft revision of the Labour Code would soon be adopted.

The Committee notes the Government’s indication that the draft revision of the Labour Code has not been adopted by Parliament. The Committee also notes the Government’s statement that efforts are being made towards its adoption, though observes that the Government has been referring to the impending adoption of the draft revision to the Labour Code since 2006. **Therefore, the Committee urges the Government to take the necessary measures to ensure that the draft revision of the Labour Code is adopted in the near future, so that self-employed children and children engaged in domestic work benefit from the protection of the Convention. It requests the Government to provide information on progress made in this regard and to provide a copy of this legislation, once adopted.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that primary education is not compulsory and that many children, in particular herd boys, children living in poverty and children in remote rural communities, do not have adequate access to education. The Committee expressed the view that it is desirable to ensure compulsory education up to the minimum age for employment and noted the Government’s indication that a Bill introducing free and compulsory primary education had been prepared and was awaiting clearance from the Attorney-General’s Office.

The Committee notes the Government's statement that the Bill introducing free and compulsory primary education has yet to be adopted. The Committee notes the information, available on the Government's website ([www.lesotho.gov.ls](http://www.lesotho.gov.ls)), that, as of October 2009, the Education Bill, which would make primary school free and compulsory (including sanctions for parents if they did not send their children to school) was under discussion in Parliament. The Committee also notes that the parliamentary committee assigned to assess the Education Bill endorsed the Bill's adoption in its presentation on its findings to the National Assembly in May 2009.

The Committee notes the information from UNESCO's 2010 report entitled *Education for All: Global Monitoring Report* that, as of 2007, the net intake rate in primary education was 49 per cent, and the net enrolment ratio was 72 per cent. This report indicates that there are approximately 101,000 out-of-school children, between the ages of 6–12. The Committee also notes the information in the Government's report that the current age at which a primary school leaving certificate can be obtained is 13 years, two years below the current minimum age for admission to work. In this regard, the Committee draws the Government's attention to the importance of linking the age of admission to employment to the age limit for compulsory education; if compulsory schooling comes to an end before young persons are legally entitled to work, there may be a period of enforced idleness (see ILO: *Minimum age*, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum age, and Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(B)), ILC, 67th Session, Geneva, 1981, paragraph 140). **Recalling that compulsory education is one of the most effective means to combat child labour, the Committee requests the Government to take the necessary measures to ensure the adoption of the Education Bill and to provide a copy of this legislation, once adopted. In addition, the Committee expresses the firm hope that the Government will give due consideration to the Committee's comments concerning the desirability of ensuring compulsory education up to the minimum age of employment of 15 years.**

*Article 3(2). Determination of hazardous work.* The Committee previously noted that, while section 125(1) of the Labour Code provides that the Minister of Labour or the Labour Commissioner may, by written notice, determine the types of work injurious to the health and morals of children and young persons, there appeared to be no determination made in this respect. However, the Committee noted the Government's indication that the draft revision of the Labour Code contained a proposed section 129A containing a list of types of hazardous work prohibited to young persons. It requested a copy of this list, and expressed the hope that it would soon be adopted.

The Committee notes the extracts of the draft revision of the Labour Code, submitted with the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), including the proposed section 129A. This proposed section is entitled "worst forms of child labour for children and young persons", and prohibits requiring or permitting a child or young person to engage in exploitative work, and prohibits the worst forms of child labour, as defined in Article 3 of Convention No. 182, including hazardous work.

The Committee observes that, while this proposed provision prohibits hazardous work, it does not contain a list determining types of hazardous work activities, as previously indicated by the Government. Therefore, the Committee invites the Government to consider Paragraph 10(1) of the Minimum Age Recommendation, 1973 (No. 146), which provides that in determining the types of hazardous employment or work, full account should be taken of relevant international labour standards, such as those concerning dangerous substances, agents or processes, the lifting of heavy weights and underground work. **The Committee accordingly urges the Government to take the necessary measures to ensure the elaboration and adoption of a list of hazardous types of work prohibited for persons under 18 in the very near future, in accordance with Article 3(2) of the Convention. It requests the Government to provide information on the consultations held with organizations of employers and workers concerned on this subject.**

*Article 6. Minimum age for admission to apprenticeship.* The Committee previously noted the Government's indication that, during the revision of the Labour Code, due consideration would be given to bringing the Labour Code in to line with the requirements of *Article 6* of the Convention. The Committee notes the information in the Government's report that there is currently no regularized system of vocational and technical education and that no consultations have been held on this matter. The Government also indicates that, in practice, the minimum age for admission to vocational school is 13 years (following graduation from primary school), but that there is no minimum age for admission to apprenticeships. The Committee reminds the Government that pursuant to *Article 6* of the Convention, the minimum age for admission to work in undertakings in the context of vocational training or an apprenticeship programme is 14 years. **It therefore urges the Government to take the necessary measures, within the context of the draft revision of the Labour Code, to ensure that no child under 14 years of age is permitted to undertake an apprenticeship in an enterprise, in conformity with Article 6 of the Convention.**

*Article 7. Light work.* The Committee previously noted that section 124(2) of the Labour Code permits the employment of children between the ages of 13 and 15 for light work in technical schools and similar institutions, provided that the work has been approved by the Department of Education. It also noted the information contained in the 2004 Lesotho Child Labour Survey that 38.6 per cent of children, regardless of age, worked between 22 and 28 hours per week. The Committee requested the Government to indicate the measures taken to determine light work activities, and noted the Government's indication that due consideration would be given to *Article 7* during the revision of the Labour Code.

The Committee notes the Government's statement that the draft revision of the Labour Code includes a provision which defines light work as work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance in, or the child's capacity to benefit from, school (proposed section 124(6)). The Government does not indicate if this amendment will apply concurrently with section 124(2) of the current Labour Code, thereby permitting such light work only in technical schools and similar institutions. In the case that the draft revision of the Labour Code intends to permit light work outside of educational institutions, the Committee reminds the Government that, pursuant to *Article 7(3)* of the Convention, the competent authority shall determine what is light work and shall prescribe the number of hours during which, and the conditions in which such employment or work may be undertaken. ***The Committee therefore requests the Government to indicate if the proposed section 124(6) in the draft revision of the Labour Code permits the performance of light work outside of technical schools and similar institutions. If so, the Committee requests the Government to provide information on any measures taken or envisaged to determine types of light work activities, in conformity with Article 7(3) of the Convention.***

*Article 8. Artistic performances.* The Committee previously noted the Government's indication that, while there is no system of permits for children engaged in artistic activities, consideration would be given to this matter during the process of amending the Labour Code. ***Noting an absence of information on this point in the Government's report, the Committee once again expresses the hope that, in the process of amending the Labour Code, the Government will take the necessary measures to establish a system of individual permits for children under the age of 15 years who participate in artistic performances. It requests the Government to provide information on any developments made in this regard.***

*Parts III and V of the report form. Labour inspectorate and application of the Convention in practice.* The Committee previously noted that, according to the 2004 Lesotho Child Labour Survey, 23 per cent of the children in Lesotho are child labourers. The Survey also indicated that children mainly work in agricultural activities followed by those who work as domestic workers. The Committee also noted the Government's indication that the office of the labour commissioner carries out inspections in all commercial enterprises but not in the informal economy and private residences, which is where most child labour occurs. It requested the Government to take measures to improve labour inspection in these sectors, and to provide information on the practical application of the Convention.

The Committee notes an absence of information on these points in the Government's report. However, the Committee notes the comments of the Commissioner of Labour of 2 March 2008, available on the Government's website ([www.lesotho.go.ls](http://www.lesotho.go.ls)) indicating that child labour continues to be a problem in Lesotho particularly with under-age domestic workers and herders. The Commissioner of Labour attributed the problem to poverty in Lesotho and the HIV/AIDS pandemic, and stated that the lack of supportive laws to redress the current status exacerbates the problem, and hinders her Ministry's capacity to intervene. ***The Committee must express its serious concern at the large number of working children under the minimum age in Lesotho, and urges the Government to redouble its efforts to address this problem, within the framework of the Action Plan for the Elimination of Child Labour. In this regard, the Committee encourages the Government to take the necessary measures to ensure the adoption of appropriate legislation, to strengthen the labour inspection system (particularly in the informal economy), and to continue its collaboration with ILO-IPEC. It further requests the Government to provide information on the application of the Convention in practice, including statistical data on the employment of children and young persons, extracts of inspection reports as well as the number and nature of violations detected and penalties imposed.***

***The Committee encourages the Government to take into consideration, during the review of the relevant legislation, the Committee's comments on discrepancies between national legislation and the Convention. The Committee asks the Government to provide any information on progress made in this regard and invites it to consider seeking technical assistance from the ILO.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted the Government's indication that the legislative process was ongoing for the adoption of the Children's Protection and Welfare Bill, which prohibits the trafficking of persons under 18.

The Committee notes the Government's statement in its report submitted for the Minimum Age Convention, 1973 (No. 138), that the Children's Protection and Welfare Bill has not yet been adopted. The Committee observes that this Bill has been in the process of adoption since 2005. However, the Committee also notes the extracts of the draft revision of the Labour Code (submitted with the Government's report) containing a provision (draft section 129A(2)) prohibiting the worst forms of child labour which, pursuant to draft section 129A(3)(a), includes the sale and trafficking of children.

The Committee further notes the information in the 2009 report on the trafficking in persons in Lesotho, available on the web site of the Office of the UN High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (Trafficking Report), that trafficking exists in Lesotho, and that women and children are trafficked for the purposes of sexual exploitation and forced labour, particularly to South Africa. The Trafficking Report further indicates that no arrests or prosecutions have been made in this regard, and that there are indications that investigations of trafficking-related situations are rare because trafficking is not specifically defined as a crime under existing laws, and law enforcement resources and capacity are

limited. The Trafficking Report indicates that the Government's ability to address human trafficking is hindered by the lack of anti-trafficking legislation. The Committee expresses *concern* at the incidence of child trafficking in Lesotho, and that anti-trafficking efforts are hindered by insufficient legislation. **Therefore, the Committee urges the Government to take immediate measures to ensure the adoption of legislation prohibiting the sale and trafficking of children without delay. It requests the Government to provide a copy of the relevant legislation, once adopted.**

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* In its previous comments, the Committee noted that street children were used by adults in illegal activities, such as housebreaking and petty theft. It also noted the Government's indication that there is no legislation that specifically prohibits the use, procuring or offering of a child under the age of 18 for illicit activities, in particular for the production and trafficking of drugs, and requested the Government to take measures in this regard.

The Committee notes that an extract of the draft revision of the Labour Code (submitted with the Government's report) contains a provision (draft section 129A(2)) prohibiting the worst forms of child labour and that, pursuant to draft section 129A(3)(c), this includes the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, as defined in the relevant international treaties. The Committee also notes the Government's statement in its report submitted for Convention No. 138, that the draft revision of the Labour Code has not yet been adopted by Parliament, though efforts are being made in this regard. However, the Committee observes that the Government has been referring to the impending adoption of the draft revision to the Labour Code since 2006. **Reminding the Government that, by virtue of Article 3(c) of the Convention, the use, procuring or offering of a child for the production and trafficking of drugs constitutes one of the worst forms of child labour and that, by virtue of Article 1, it is obliged to take immediate measures to prohibit this worst form of child labour, the Committee urges the Government to take the necessary measures to ensure that the draft revision of the Labour Code, prohibiting the use, procuring or offering of a child for illicit activities, is adopted as a matter of urgency.**

*Article 4(1). Determination of hazardous work.* The Committee previously noted that, while section 125(1) of the Labour Code provides that the Minister of Labour or the Labour Commissioner may, by written notice, determine the types of work injurious to the health and morals of children and young persons, no determination had been made in this regard, either in the Labour Code or in any other legislation. However, the Committee noted the Government's indication that the draft revision of the Labour Code contained a proposed section 129A containing a list of types of hazardous work prohibited to young persons, inserted after consultations with the employers' and workers' organizations. It requested a copy of this list.

The Committee notes that the proposed section 129A (contained in the extracts of the draft revision of the Labour Code, submitted with the Government's report) is entitled "worst forms of child labour for children and young persons", and prohibits requiring or permitting a child or young person to engage in exploitative work, and prohibits the worst forms of child labour, as defined in *Article 3* of the Convention, including hazardous work. However, the Committee observes that, while the proposed section 129A prohibits hazardous work, it does not contain a list determining types of hazardous work activities, as previously indicated by the Government. Therefore, the Committee draws the Government's attention to Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), which provides that, in determining the types of such hazardous work, consideration should be given, inter alia, to: (i) work which exposes children to physical, psychological or sexual abuse; (ii) work underground, underwater, at dangerous heights or in confined spaces; (iii) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (iv) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health; and (v) work under particularly difficult conditions, such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer. **The Committee accordingly requests the Government to take the necessary measures to ensure the elaboration and adoption of a list of hazardous types of work prohibited for persons under 18, in consultation with the organizations of employers and workers concerned.**

*Article 7(2). Effective and time-bound measures. Clause (e). Special situation of girls. Child domestic workers.* The Committee previously noted that, according to the 2004 Lesotho Child Labour Survey, girls performing domestic work face verbal, physical and, in some cases, sexual abuse from their employers, and that these children generally do not attend school. This survey also indicated that 17.4 per cent of all working children were paid domestic workers. The Committee also noted the Government's reference to the new draft provision inserted in the draft revision of the Labour Code which provides for the protection of children engaged in domestic work. It encouraged the Government to pursue its efforts, including through labour inspection, to accord special attention to girls engaged in domestic work.

The Committee notes the information in the joint document produced by ILO-IPEC and the Ministry of Employment and Labour in 2006 entitled "Implementation Plan of the Programme towards the elimination of the worst forms of child labour in Lesotho" (Implementation Report) that girls as young as 12 years work as domestic workers, and that these children often work long exhausting days for low pay (page 10). The Committee further notes the indication in a report on the worst forms of child labour of 10 September 2009, available on the web site of the Office of the UN High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) that girls are trafficked within Lesotho and to other countries to perform domestic work. **The Committee expresses its concern at the situation of girls engaged in domestic work in Lesotho and urges the Government to take immediate and effective measures to ensure that these children are protected from the**

*worst forms of child labour, particularly trafficking and hazardous work. It requests the Government to provide information on concrete measures taken in this regard.*

*Part V of the report form. Application of the Convention in practice.* The Committee previously requested the Government to provide information on the application of the Convention in practice. The Committee notes with *regret* an absence of information in the Government's report on this point. However, the Committee notes the comments of the Commissioner of Labour of 2 March 2008, available on the Government's web site ([www.lesotho.go.ls](http://www.lesotho.go.ls)) indicating that child labour continues to be a problem in Lesotho particularly with regard to under-age domestic workers and herders. The Committee also notes the information in the Implementation Report indicating that commercial sexual exploitation, the use of children by adults in illegal activities, the trafficking of children and hazardous street work are all present in Lesotho. ***The Committee therefore once again requests the Government to provide information on the nature, extent and trends of the worst forms of child labour, the number of children covered by the measures giving effect to the Convention, the number and nature of infringements reported, investigations, prosecutions, convictions and penalties imposed. To the extent possible, all information provided should be disaggregated by sex and age.***

***The Committee encourages the Government to take into consideration, during the review of the relevant legislation, the Committee's comments on discrepancies between national legislation and the Convention. The Committee asks the Government to provide any information on progress made in this regard and invites it to consider seeking technical assistance from the ILO.***

The Committee is raising other points in a request addressed directly to the Government.

## Malawi

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention and Part V of the report form. National policy and practical application of the Convention.* In its previous comments, the Committee noted that, while the Malawi Multiple Indicator Cluster Survey, 2006 indicated that the total child labour rate had decreased, the relevant legislation was not strongly enforced and a significant number of persons under 14 continued to work. The Committee also noted the implementation of the ILO-IPEC country programme to combat child labour in Malawi, which featured four action programmes. The Committee further noted the Government's information that a National Action Plan (NAP) on child labour was under development.

The Committee notes the Government's statement that it will work, along with the social partners, to enforce the legislation (particularly Employment Act No. 6 of 2000 (Employment Act)) for the purpose of eliminating the employment of children below 14 years. The Committee also notes the information in the ILO-IPEC Technical Progress Report of 18 March 2010, for the project "Support to the National Action Plan to Combat Child Labour in Malawi" (SNAP project TPR) that the National Child Labour Policy and the NAP on the elimination of child labour were concluded and presented to the Government in December 2009. The SNAP project TPR also indicates that the National Policy would be tabled in Parliament and the NAP was due for adoption in the Principal Secretaries meeting. This document further indicates that the Ministry of Labour continues to set aside specific funds for child labour through the Child Labour Unit, which allocates these funds to district level child labour activities. In addition, a baseline survey on child labour in Malawi was initiated in February 2010 within the framework of the SNAP project, in consultation with the National Statistics Office. The Committee further notes the information in the Government's reply to the list of issues raised by the Committee on the Rights of the Child (CRC) of 9 January 2009, that a law enforcement training manual was developed for police, social welfare officers, child labour officers and magistrates on how deal with cases of child labour (CRC/C/MWI/Q/2/Add.1, paragraph 64).

Nonetheless, the Committee notes the statement in the SNAP project TPR that the Government is moving slowly in the final adoption of the national policy and NAP even though these have been adopted at ministerial level. The Committee also notes that the Malawi Multiple Indicator Cluster Survey, 2006 indicates that approximately 33.6 per cent of all persons between the ages of 5 and 14 (1.4 million children) are involved in economic activity in Malawi. ***The Committee expresses its concern at the considerable number of children under 14 who are engaged in economic activity. It once again urges the Government to redouble its efforts to ensure the progressive abolition of child labour, and the enforcement of the relevant legislation. In this regard, it urges the Government to take the necessary measures to ensure the adoption and implementation of the NAP and asks the Government to supply a copy of it as soon as it is adopted. Lastly, the Committee encourages the Government to continue its collaboration with ILO-IPEC in the development of a baseline survey, and to provide the results of this survey when they are available.***

*Article 2(1). Scope of application.* In its previous comments, the Committee noted that the Employment Act is applicable only where there is an employment contract or labour relationship and does not cover self-employment. It reminded the Government that the Convention covers all types of employment or work, whether there is a contract of employment or not. Following consultation on this subject, the Government indicated that the social partners were unclear as to how the Employment Act could be applied to self-employed children, particularly those who work on family farms or accompany their parents to work as tenants. The Committee therefore drew the Government's attention to possible alternatives for providing self-employed children the protection of the Convention, including the elaboration of legislation specifically to ensure children's rights or by strengthening the labour inspectorate in sectors where children are often self-



employed, such as the commercial agricultural sector. In this regard, the Committee noted the ILO–IPEC information that there had been no progress made in the past ten years in the adoption of the Tenancy Labour Bill, a Bill which establishes a minimum age for employment in the tobacco sector and provides for frequent inspections of tobacco estates. The Committee therefore urged the Government to take measures to ensure that the Tenancy Labour Bill was adopted without delay.

The Committee notes the Government’s statement that the applicability of the Employment Act to self-employed persons remains a challenge. The Government indicates that it has taken note of the alternatives that could be pursued, and that it will consider these options. The Committee also notes the Government’s indication that the Tenancy Labour Bill has been finalized technically and is awaiting Cabinet approval (prior to submission to Parliament). Nonetheless, the Government indicates that it has a considerable backlog of legislation to deal with. The Committee further notes the information in the SNAP project TPR that the discussion of the Tenancy Labour Bill in Parliament in 2010 will be a positive development for the welfare and protection of children at risk of child labour. In this regard, the Committee notes that the CRC, in its concluding observations of 27 March 2009, expressed concern that many children between 15–17 are engaged in work that is considered as hazardous, especially in the tobacco and tea estate sector (which continues to be a major source of child labour) (CRC/C/MWI/CO/2, paragraph 66). ***The Committee therefore expresses its concern that the Tenancy Labour Bill has yet to be adopted and urges the Government to take the necessary measures to ensure the adoption of the Bill in the very near future. It hopes that, in adopting the Tenancy Labour Bill, the labour inspection component concerning children working in the commercial agricultural sector on their own account will be strengthened. In this regard, the Committee requests the Government to strengthen its efforts to adapt and strengthen the labour inspection services, in order to ensure that the protection established by the Convention is applied to all self-employed working children.***

*Article 3(1). Minimum age for admission to hazardous work.* In its previous comments, the Committee noted a discrepancy between article 23 of the Constitution, which provides for protection from dangerous work for children below the age of 16 years, and section 22(1) of the Employment Act, which, in accordance with the Convention, lays down a minimum age of 18 years for work that is likely to be harmful to their health, safety, education, morals or development, or prejudicial to their attendance in school. This issue was discussed at a tripartite meeting in 2005, where it was agreed by all social partners that there was a need to harmonize the provisions of the national laws. Subsequently, this issue was presented to the Malawi Law Commission for consideration, and the Commission recommended that the age stipulated under article 23 of the Constitution be raised to 18 years of age. The Committee encouraged the Government to take the necessary measures to ensure that this Constitutional Amendment was adopted in the near future.

The Committee notes the Government’s statement that discussions on the review of the Constitution, including article 23, are still ongoing. ***Observing that the discrepancy between section 22(1) of the Employment Act and article 23 of the Constitution has been under discussion since 2005, the Committee urges the Government to take the necessary measures to ensure that the recommended amendment to article 23 of the Constitution is adopted in the very near future, in conformity with Article 3(1) of the Convention.***

*Article 3(2). Determination of types of hazardous work.* The Committee previously noted that, in the implementation of section 22(2) of the Employment Act, the Minister can, in consultation with appropriate organizations of employers and employees, specify, by a notice published in the *Gazette*, occupations or activities which, in his opinion, are likely to be: (a) harmful to the health, safety, education, morals or development of persons between the ages of 14–18 years; or (b) prejudicial to their attendance at school or any other vocational or training programme. In this regard, the Government indicated that it had consulted with the social partners and had conducted consultative workshops in 11 districts in the country. The Committee noted that the final draft list of types of hazardous work was produced and ready for submission to the Ministry of Justice. The Committee urged the Government to adopt this list in the near future.

The Committee notes the Government’s information that the final draft list has been submitted to the Ministry of Justice. ***The Committee therefore once again urges the Government to take the necessary measures to ensure that the draft list of types of hazardous work is adopted without delay. It requests the Government to provide a copy of this list as soon as it is adopted.***

*Article 9(3). Keeping of registers by employers.* The Committee previously noted that section 23 of the Employment Act stipulates that every employer is required to maintain a register of persons aged below 18 years employed by, or working for, him/her. However, the Committee also noted the indication of the Malawi Trade Unions Congress (MCTU) that some estates did not have registers, particularly in commercial agriculture. The Committee noted the Government’s indication that labour inspectors have demanded labour registers when inspecting any workplace and, where no such register exists, the owner is advised to purchase one which is available at the government press or any bookshop. The Government indicated that the applicable parliamentary Act still did not have a model register, that the registers available at the government press are general and that employers use different formats. Nonetheless, the Government indicated that following discussions with the social partners, it was resolved to develop standard templates for various legislative prescriptions, including a model for a labour register. The Committee expressed the hope that this model register would be in conformity with *Article 9(3)* of the Convention.

The Committee notes the information in the Government’s report that the draft model register will be finalized before the end of the year, and that this draft will be submitted to the Tripartite Labour Advisory Council for adoption. In

this regard, the Committee reminds the Government that, pursuant to *Article 9(3)* of the Convention, the registers kept by employers shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom they employ, or who work for them, and who are less than 18 years of age. ***The Committee requests the Government to take the necessary measures to ensure the elaboration and adoption of a model register of employment, in conformity with Article 9(3) of the Convention. It requests the Government to supply a copy of the model register as soon as it is adopted.***

## Mexico

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children for commercial sexual exploitation. 1. Federal legislation.* In its previous comments, the Committee noted the observations of the International Trade Union Confederation (ITUC) reporting the trafficking of young girls within the country and abroad for the purposes of sexual exploitation, including forced prostitution. It further noted that, according to a study carried out in six Mexican cities with the support of UNICEF, around 16,000 boys and girls were victims of commercial sexual exploitation. A study carried out by ILO-IPEC, the Secretariat for Labour and Social Assistance and the National Social Sciences Institute corroborated the figures referred to above and added that around 5,000 children were the victims of this form of exploitation solely in the Federal District of Mexico. The Committee also noted the adoption of new legislation to penalize the trafficking of persons under 18 years of age for sexual and economic exploitation.

The Committee notes the Government's information on the adoption of the Act of 27 November 2007 "to prevent and punish the trafficking of persons, amend, add and repeal different provisions of the Federal Act to Combat Organized Crimes, the Federal Penal Procedure Code, and the Federal Penal Code" (Act to prevent and punish the trafficking of persons) and its regulation of 27 February 2009. It notes that section 5 of the Act to prevent and punish the trafficking of persons punishes the trafficking of children under 18 years and section 6 increases the maximum penalty for this offence to 18 years' imprisonment. The Committee further notes the Government's information that the Attorney General's Crimes against Women and Trafficking in Persons Unit (FEVIMTRA) was created on 31 January 2008. FEVIMTRA, inter alia, assists trafficking victims in order to get their collaboration in trials and obtain useful information for investigations.

The Committee notes that the 2009 Report on Trafficking in Persons in Mexico (Trafficking Report), available on the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) indicates that Mexico is a large source, transit, and destination country for persons trafficked for the purposes of commercial sexual exploitation and forced labour. The Trafficking Report points out that a significant number of Mexican children are trafficked within the country or into the United States for commercial sexual exploitation or forced labour. Moreover, foreign child victims (especially from Central and South America but also from the Caribbean, Eastern Europe, and Asia) are trafficked into Mexico for sexual or labour exploitation or transit Mexico en route to the United States, Canada and Western Europe. Child sex tourism continues to grow in Mexico, especially in tourist areas. The Trafficking Report points out that Mexico has failed to improve on its limited anti-trafficking law enforcement efforts against offenders in 2008. FEVIMTRA opened 24 investigations into suspected trafficking activity, including 11 cases of labour exploitation and 13 cases of commercial sexual exploitation. No convictions or sentences of trafficking offenders were reported by federal, state, or local authorities in 2008. Moreover, notwithstanding alleged corruption in trafficking crimes among public officials, no convictions or sentences against corrupt officials were handed down in 2008, although some immigration officials, officials from the Mexican Attorney General's Office, and military officials were arrested for their alleged participation in trafficking crimes. The Committee further observes that the Special Rapporteur on the sale of children, child prostitution and child pornography, who visited the country from 4 to 14 May 2007, in his report of 28 January 2008 (A/HRC/7/8/Add.2) indicates that the sexual exploitation of children is related to various forms of organized crime and clandestine circuits of the sex trade, where the vast amount of money generated by such activities, and corrupt connections with various bodies in the State sector, facilitate exploitation and frequently make it impossible to prosecute the perpetrators. The testimonies gathered overwhelmingly point to corruption and police negligence as one of the main causes of exploitation and trafficking. Inefficiency, poor training, corruption and the lack of adequate protocols and monitoring regulations, endemic in various police and municipal agencies responsible for ensuring that no minors are exploited in the "sex trade", is conducive to the activities of speculators and opportunists who wish to offer their "clients" adolescents and children (A/HRC/7/8/Add.2, paragraphs 77 and 78).

The Committee, while observing that various provisions prohibit the commercial sexual exploitation of children and the trafficking of children for this purpose, expresses its *serious concern* at the information concerning the persistence of the problem of trafficking of children for commercial sexual exploitation and forced labour in Mexico as well as at allegations of complicity of law enforcement officials with human traffickers. ***It urges the Government to take, without delay, the necessary measures to eliminate the commercial sexual exploitation of children under 18 years, as well as the trafficking of children for this purpose. In this regard, the Committee urges the Government to strengthen the capacity of law enforcement agencies, in order to ensure that the perpetrators, including official state accomplices, are***

*prosecuted and that sufficiently effective and dissuasive penalties are imposed. It also requests the Government to provide information on measures taken to implement the new legislation, including the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.*

2. *State legislation.* The Committee previously noted that, according to the information contained in the report of the ILO–IPEC project “Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC Victims in Mexico” (ILO–IPEC project against CSEC), draft amendments to the Penal Codes in the states of Baja California, Guerrero and Chihuahua had been approved. It requested the Government to provide information on any progress in the adoption of the draft amendments to the Penal Codes.

The Committee notes with *interest* the Government’s information that the amendments to the Penal Codes in the states of Baja California, Guerrero and Chihuahua have been adopted. It notes that, by virtue of these amendments, trafficking of children under 18 years, sex tourism involving children under 18 years and child pornography are established as punishable offences. The Committee further notes that, according to the Trafficking Report, 22 Mexican states and the Mexican federal district have enacted legislation to criminalize some forms of human trafficking at the local level. It also notes that, according to the Government’s first report under the Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC/C/OPSC/MEX/1, Annex 6), several Mexican states specifically punish the trafficking of children. The Committee notes that, according to the United Nations Office on Drugs and Crime (UNODC) 2009 Global Report on Trafficking in Persons, Chihuahua is the only state that, as of May 2008, reported investigations and prosecutions of human trafficking cases during 2007: 15 cases were reported from 2007 due to the entry into force of the law on human trafficking, which was enacted on 1 January 2007. Chihuahua is also in the process of establishing a specialized police unit comprised of 15 law enforcement officials to investigate cases of trafficking of persons. *The Committee welcomes the measures taken by the state of Chihuahua to combat trafficking by implementing its legislation and hopes that this example will be followed by the other Mexican states. It requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for the violation of the legal prohibitions on the sale and trafficking of children at the state level.*

*Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.* In its previous comments, the Committee had noted with interest that the Decree of 27 March 2007 contains provisions penalizing the following crimes: acting as an intermediary for the prostitution of persons under 18 years of age (sections 206 and 206bis); pornography involving persons under 18 years of age (sections 202 and 202bis); and sex tourism involving persons under 18 years of age (sections 203 and 203bis).

The Committee notes the information provided by the Government representative at the Conference Committee on the Application of Standards at the 97th Session of the International Labour Conference of June 2008, according to which in the framework of the Permanent Programme for the collection of confidential information on crimes, anonymous complaints can be filed which are directly forwarded to the Attorney General’s Office for analysis with a view to referring them for investigation to the competent services in the local or federal jurisdiction. Since the second half of 2007 and until May 2008, 54 cases related to the sexual exploitation, prostitution and pornography of minors were referred to the crime prevention service of the Attorney General’s Office. With regard to the crime of procuring in relation to the prostitution of minors under 18 years, there were three cases in which the preliminary investigation was completed and in which eight persons were being prosecuted, while two other cases were under investigation. With regard to pornography, there were four cases in which full investigations were completed, three that were being prosecuted and another five that were under investigation. The Committee further notes the Government representative’s information that one of the strategic projects of FEVIMTRA is to create a database of information on the number and nature of the crimes of prostitution, sexual exploitation and sex tourism involving persons under 18 years. The Committee finally notes the information contained in the Government’s report that the results of the investigations of the Internet Police Unit for 2007 regarding crimes against minors include, inter alia, the deactivation of 1,113 sites containing child pornography and the identification of 1,396 internet sites related with child pornography. *The Committee encourages the Government to pursue its efforts to combat child prostitution and child pornography. It requests the Government to continue to provide statistics on the number and nature of the violations reported, investigations undertaken, prosecutions, convictions and the penal sanctions applied.*

*Article 6. Programmes of action. Trafficking.* The Committee notes that according to the Government representative at the Conference Committee on the Application of Standards, a draft National Programme to prevent, repress and punish trafficking in persons (National Programme against Trafficking) was prepared, pursuant to the Act to prevent and punish the trafficking of persons. *The Committee requests the Government to provide information on the adoption of the National Programme against Trafficking and results achieved in terms of the elimination of the trafficking of children.*

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing children from being engaged in the worst forms of child labour.* 1. *Commercial sexual exploitation.* The Committee notes the extensive information contained in the Government’s report on the results achieved at the federal and state levels under the ILO–IPEC project against CSEC, particularly in terms of information and awareness raising to prevent and mitigate the commercial sexual exploitation of children and identify its causes. It notes that, according to the final technical report of this project of April

2007, in total 546 children were prevented from being engaged in commercial sexual exploitation through the provision of educational services or training opportunities, while 106 children were prevented from being engaged in this worst form of child labour through the provision of other non-education related services. It finally notes the extensive information on the activities carried out at the state level to raise awareness on commercial sexual exploitation. ***The Committee requests the Government to continue to take measures to prevent the engagement of children in commercial sexual exploitation and to provide information in this regard.***

2. *Education.* In its previous comments, the Committee noted the indication by the ITUC that 1.7 million children of school age were unable to receive education as poverty makes it imperative for them to work. The ITUC added that, in the case of indigenous children, access to education was difficult as teaching was normally provided only in Spanish and many indigenous families only spoke their mother tongue. The Committee noted that in 2005 and 2006, over 5,290,000 children benefited from the “Opportunities” programme of Ministry of Social Development, which provides children and young persons living in poverty with full and free access to education and to health services. It noted that the Government projected to increase the number of grants provided at the secondary and higher levels to cover 1.24 million girls and 1.18 million boys for the school year 2006–07.

The Committee notes that, according to the Government representative at the Conference Committee, financial assistance was provided to 5 million families in extreme poverty in 2007 and a total of 5.3 million education grants were provided during the 2007/2008 school year for children in very poor households throughout the country within the framework of the “Opportunities” programme. As a result of this programme, at the national level the school completion rate of children who received education grants in the school year 2007–08 was of 68.98 per cent, which represents 1.79 per cent more than in 2006–07. It further notes the Government’s extensive information on the results of the “Opportunities” programme for the school year 2008/2009, especially regarding the progress in attending school. It also notes that the Government plans to extend the programme to 5,286,000 children for the school year 2009–10, which represents 256,000 children more than in 2008–09. The Committee notes the Government’s information that the Public Education Office, through the Indigenous Education General Unit (DGEI), is in charge of assisting more than 1,200,000 indigenous children. It notes that the DGEI is in charge of 1,111 indigenous educational institutions with more than 40,000 children in 19 federal states. The Committee notes with *interest* that the ILO–IPEC project “Stop Child Labour in Agriculture – Contribution to the prevention and elimination of child labour in Mexico, in particular the worst forms in the agricultural sector with special focus on indigenous children and child labour as a result of internal migration” (Stop Child Labour in Agriculture) was launched at the end of 2009 for a duration of five years. This project, inter alia, plans to improve the effectiveness of the “Opportunities” programme in indigenous communities. ***Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to continue its efforts, in particular within the framework of the “Opportunities” programme, to provide access to free basic education to children vulnerable to the worst forms of child labour, particularly those living in rural areas as well as children of indigenous and migrant workers. It requests the Government to continue to provide information on the implementation of the “Opportunities” programme and results achieved.***

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* The Committee notes that the Act to prevent and punish the trafficking of persons and its regulation foresee measures to protect and assist in a concerted and appropriate manner victims of trafficking, especially children and young persons. It notes the Government’s information that FEVIMTRA is, inter alia, in charge of assisting child victims of trafficking through legal counselling, physical and psychological aid. Victims are also assisted for their rehabilitation and reintegration in their families, in order to avoid their re-victimization. The Committee notes the Government’s information that, since its creation, FEVIMTRA has assisted 12 girls and 20 boys, who were probable victims of trafficking. It further notes that, according to the final technical progress report of the ILO–IPEC project against CSEC, 108 children in total were withdrawn from commercial sexual exploitation through the provision of educational services or training opportunities, and 38 children were withdrawn from this worst form of child labour through the provision of other non-education related services. ***The Committee encourages the Government to continue taking measures to provide the necessary and appropriate direct assistance for the removal of children from trafficking and commercial sexual exploitation and for their rehabilitation and social integration. It also requests the Government to indicate whether reception centres for child victims of trafficking and commercial sexual exploitation have been established in the country, with an indication of the number of children actually received by such centres; and whether specific medical and social follow-up programmes have been formulated and implemented for child victims of trafficking and commercial sexual exploitation.***

*Clause (d). Children at special risk.* 1. *Children in agricultural work and marginal urban activities.* The Committee previously noted the ITUC’s indication that the majority of children who work were engaged in agriculture or informal urban activities. It noted the information provided by the Government on the results achieved in the context of the implementation of the programme to prevent and eliminate child labour in the marginal urban sector (programme against child labour in the marginal urban sector) and the programme to promote the rights of girls and boys, daily child workers in the agricultural sector and the prevention of child labour (PROCEDER) in 2005 and 2006. The Committee notes the Government’s information on the results of the programme against child labour in the marginal urban sector

between 2007 and the first trimester of 2009. In particular, it notes that the total number of children and adolescents working in the marginal urban sector decreased by 17.2 per cent. Assistance was provided to 156,562 working children and 218,587 children at risk. Moreover, the 95 per cent of children who obtained education grants completed school. The Committee notes the Government's information that the Ministry of Social Development carries out the programme for assisting daily agricultural workers and their families. Since one of the objectives of this programme is reducing child labour, it also provides for cash transfers and other types of assistance to daily agricultural workers which are subject to the condition that their children between 6 and 14 years of age regularly attend basic education. According to the Government, in 2008 the programme had the following results: assistance was provided to a total of 650,277 families; 113,380 girls and 115,355 boys under 14 years benefited from the programme; 10,838 investment projects related to educational grants for 10,378 children were authorized. The Committee notes that the ILO-IPEC project, Stop Child Labour in Agriculture, has among its immediate objectives the implementation of direct action interventions to prevent child labour in agriculture and to withdraw children who work in agriculture. ***The Committee welcomes the Government's efforts to prevent and combat child labour in the marginal urban sector and in agriculture, especially through education and encourages the Government to continue its efforts to protect children from the worst forms of child labour in these sectors. It requests the Government to continue to provide information on the results of the programmes adopted to this end, such as the programme against child labour in the marginal urban sector, PROCEDER, the programme for assisting daily agricultural workers and their families and the ILO/IPEC project Stop Child Labour in Agriculture.***

2. *Street children.* The Committee previously noted the study of the System for the Integral Development of the Family (DIF), which showed that 114,497 children under 17 years of age worked and lived in the streets and that, solely in the city of Mexico, which was not covered by the study, there are 140,000 young persons working in the streets. It noted that, between 2001 and 2007 around 189,620 children benefited from the programme of prevention and assistance to girls, boys and young persons living in the streets (programme for street children). However, it noted that, according to the concluding observations of the Committee on the Rights of the Child in June 2006 (CRC/C/MEX/CO/3, paragraph 68), although the number of street children had fallen in recent years, it remained high and the measures adopted to prevent this phenomenon and protect the children involved were inadequate.

The Committee notes that according to the Government representative at the Conference Committee with a view to ensuring that own account workers under 18 years, such as street children, did not perform hazardous work, 99 projects were carried out and 1,740 education and food grants were provided in 2007, covering a total of 35,514 street children. The Committee notes the Government's information that under the programme against child labour in the marginal urban sector, between 2007 and the first trimester of 2009, assistance was provided to 3,974 street children and 668 street children were reintegrated in their families. It further notes the Government's information that 23,516 children benefited from the programme for street children in 2008. While welcoming these measures and observing that the number of street children has fallen in recent years, the Committee notes, like the Conference Committee, that the number of street children undertaking hazardous work remains high. ***Therefore, it encourages the Government to redouble its efforts to remove children from the streets and provide for their rehabilitation and social integration. It requests the Government to continue to provide information on the number of children removed from the streets and rehabilitated pursuant to the implementation of programmes and projects such as the programme against child labour in the marginal urban sector and the Programme for street children.***

*Article 8. International cooperation.* 1. "Programme OASIS". The Committee previously noted the Government's information concerning the cooperation between the United States and Mexico in the context of the "Programme OASIS". It noted that a "Programme OASIS" conference was held in San Antonio, Texas, in August 2007 and that the authorities of the two countries agreed to strengthen their cooperation to punish those responsible for the trafficking of persons, particularly children, and to extend the programme to other frontier points. The Committee notes that, according to the Government representative at the Conference Committee, in the context of the "Programme OASIS", three criminal cases were under judicial investigation or the submission of evidence in relation to the crime of trafficking of minors. It further notes that, according to Trafficking Report, in 2008 the Mexican Federal Government continued to provide significant assistance to the US Government on cross-border trafficking. ***The Committee requests the Government to continue to provide information on (1) the number of persons who are charged and found guilty as a result of the implementation of the "Programme OASIS"; and (2) the number of child victims of trafficking intercepted in frontier areas.***

2. *Border between Mexico and Guatemala.* With reference to its previous comments, the Committee noted the Government's information that the National Institute for Migration (INM) in 2006 made over 1,522 complaints concerning the trafficking and smuggling of persons. Between January and March 2007, the INM made over 353 complaints, of which 39 were referred to the courts; of these, 26 have been set aside and 462 are under examination. ***Noting the absence of information on this point in the Government's report, the Committee requests the Government to provide information in its next report on convictions and the penalties imposed as a result of the complaints made by the INM against persons working in networks engaged in the trafficking and smuggling of children.***

3. *Border with El Salvador.* The Committee notes that, according to the Government's first report under the Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child

Pornography (CRC/C/OPSC/MEX/1; paragraph 263), in 2005 the Government of Mexico signed a Memorandum of Understanding (MOU) with the Government of El Salvador in order to protect women and child victims of sale and trafficking in the border between Mexico and El Salvador. *The Committee requests the Government to provide information on the number of child victims of trafficking who have been removed from trafficking and rehabilitated pursuant to the measures taken under the MOU.*

The Committee is raising other points in a request addressed directly to the Government.

## Morocco

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report. It also notes the detailed discussion which took place in the Committee on the Application of Standards during the 99th Session (June 2010) of the International Labour Conference.

*Article 3 of the Convention and Part V of the report form. Worst forms of child labour and application of the Convention in practice. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic labour.* In its previous comments, the Committee noted the statement from the International Trade Union Confederation (ITUC) to the effect that child domestic labour, performed under conditions of servitude, is common practice in the country, with parents selling their children, sometimes as young as 6 years of age, to work as domestic servants. The ITUC also indicated that some 50,000 children, mainly girls, are employed in domestic work. Of these, about 13,000 young girls under the age of 15 are employed as servants in Casablanca, with 70 per cent of them under 12 years of age and 25 per cent under 10 years of age. The Committee noted that section 10 of the Labour Code prohibits forced labour and that section 467-2 of the Penal Code prohibits the forced labour of children under 15 years of age. It further noted that a Bill on domestic work had been adopted and was in the process of validation. The Bill sets the minimum age for admission to this type of employment at 15 years, lays down conditions of work and establishes supervisory measures and penalties.

The Committee notes the information contained in the Government's report to the effect that the Bill regulating the conditions of employment and work of domestic workers is in the process of being adopted. It also notes that this Bill has recently been reinforced by the inclusion of more stringent penalties including imprisonment for persons employing children under 15 years of age. The Committee further notes that a specific list determining hazardous types of work prohibited in the domestic work sector will be drawn up and adopted pursuant to the future law on the conditions of employment and work of domestic workers. This list will coexist with the new list determining hazardous types of work prohibited for young persons under 18 years of age revising the Labour Code promulgated by the Royal Decree of 24 December 2004.

The Committee also notes the Government's indication in its report that an initial qualitative and quantitative survey of girls under 18 years of age engaged in domestic work was undertaken in 2001 in the *wilaya* of Casablanca. In addition, a second survey was due to be carried out in Greater Casablanca during the second half of 2010, with results and data to be extrapolated at national level. The Committee notes the results of the statistical survey undertaken in 2001 and observes that nearly 23,000 girls under 18 years of age are working in Greater Casablanca as domestic workers, 59.2 per cent of whom are under 15 years of age. The vast majority of these girls (82.2 per cent) are unable to read or write and only 17.8 per cent of them have received school education. The survey also reveals that more than half of the girls engaged in domestic work (55 per cent) are subject to punishment in the course of their work and 10 per cent report being victims of physical assault. As regards the issue of sexual abuse, the report indicates that there is considerable reticence regarding this issue on the part of the girls and that 4.2 per cent of the 529 girls interviewed admitted having been subjected to sexual abuse from their employers. In addition, more than half the girls interviewed (55.4 per cent) said that they suffered from some kind of physical ailment. While noting the measures taken by the Government, the Committee expresses its *deep concern* at the exploitation of young persons under 18 years of age employed in domestic work under conditions similar to slavery or under hazardous conditions. It once again reminds the Government that under *Article 3(a) and (d)* of the Convention, work done by young persons under 18 years of age under conditions similar to slavery or under hazardous conditions constitutes one of the worst forms of child labour and, under the terms of *Article 1*, should be eliminated *as a matter of urgency*. *The Committee once again urges the Government to take the necessary steps to ensure that the Bill on domestic work is adopted as a matter of urgency. The Committee expresses the strong hope that the list determining the hazardous types of work which are prohibited in the domestic sector will take account of the domestic work of children under 18 years of age performed under conditions similar to slavery or under hazardous conditions. With reference to the conclusions of the Committee on the Applications of Standards, it requests the Government to intensify its efforts and take immediate and effective steps to ensure that thorough investigations and robust prosecutions of persons who subject children under 18 years of age to forced or hazardous domestic labour are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, the Committee requests the Government to send a copy of the 2010 survey on the situation of young girls engaged in domestic work in Casablanca.*

*Article 4(3). Periodic examination and revision of the list of hazardous types of work.* The Committee notes with *interest* the Government's communication sent to the Office in April 2010, relating to the imminent adoption of the decree applying the Labour Code promulgated by the Royal Decree of 24 December 2004 determining the list of hazardous

types of work prohibited for children under 18 years of age. The draft decree was validated during a tripartite seminar in April 2010. Moreover, according to information communicated by the Government representative at the Committee on the Application of Standards in June 2010 and also contained in the Government's report, the new list increases the number of hazardous types of work from ten to 30. ***The Committee requests the Government to send a copy of the draft decree determining the list of hazardous types of work prohibited for children under 18 years of age once it is adopted.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from these worst forms, and ensuring their rehabilitation and social integration. Child prostitution and sex tourism.* In its previous comments, the Committee expressed concern at the persistence of child prostitution and sex tourism involving young Moroccans and immigrants, particularly boys, despite an amendment to the Penal Code in 2003 making sex tourism a criminal offence. It noted that, as part of the National Plan of Action for Children (PANE) for 2006–16, a preliminary study on the problem of the sexual exploitation of children was carried out in February 2007 with a view to formulating a national strategy to prevent and combat such exploitation. It also noted that child protection units had been set up in Casablanca and Marrakesh to provide better medical, psychological and legal assistance for children who have been the victims of violence or ill-treatment, including children who have suffered from sexual or economic exploitation.

The Committee notes the indications in the Government's report that the scourge of the sexual exploitation of children remains unseen and unrecognized in Morocco, and for this reason the Government is making every effort to tackle it. It notes that a freephone number has been made available by the National Observatory for Children's Rights for use by children who have been subjected to violence. However, the Committee notes with *regret* that the formulation of the national strategy to prevent and combat the sexual exploitation of children is still at the consultation stage. It also observes that the Government's report does not supply any information on the results of the preliminary study conducted in February 2007 on the problem of the sexual exploitation of children.

The Committee notes that, according to a study on the sexual exploitation of children, with particular reference to Marrakesh, conducted by UNICEF in 2003 and whose results are based on a sample of 100 children in prostitution (62 boys and 38 girls), most children begin to engage in prostitution after breaking off their school education. In addition, only three out of the 100 children interviewed were attending school and 16 of them had never done so. As regards the latter, most of them are girls who were placed in families at a very young age to work as domestic servants. The results of the survey also reveal that 71 per cent of the children claim to have both foreign and Moroccan clients. Furthermore, many of these minors appear to work on an independent basis, even though the use of pimps appears to be more widespread among girls. According to the testimonies of children in prostitution, the police often accept bribes from the children themselves. However, if the children are arrested, they may be placed in charitable institutions. Nevertheless, given that conditions tend to be poor in such establishments, the children often run away. ***Expressing its deep concern at the lack of specific measures to prevent children under 18 years of age from becoming the victims of prostitution, to remove them from this worst form of child labour and to ensure their rehabilitation and social integration, the Committee urges the Government to take immediate and effective steps to ensure that the national strategy to prevent and combat the sexual exploitation of children is implemented as soon as possible. It requests the Government to supply information on progress made in this respect, in terms of the number of children prevented from engaging in prostitution or withdrawn from it as part of the national strategy. It also requests the Government to send a copy of the preliminary study on the problem of the sexual exploitation of children which was conducted in February 2007 with a view to the formulation of the national strategy.***

*Clause (d). Children at special risk. Child domestic labour.* The Committee previously noted the adoption of the national programme to combat the use of young girls as housemaids (INQAD) as part of the PANE. It also noted that, as part of its Strategic Plan 2008–12 and following implementation of the INQAD programme, the Ministry of Social Development, Family Affairs and Solidarity was planning to organize a second nationwide awareness-raising campaign to combat the use of young girls as housemaids and to prepare regional action plans. It also noted that, as part of the Multisectoral Programme, implemented in collaboration with UNDP, to combat gender-based violence by empowering women and girls in Morocco. ILO–IPEC launched an action programme to combat the use of young girls in domestic labour in the Marrakesh–Tensift–El Haouz region for the period from 1 January 2009 to 31 December 2010.

While noting the measures taken by the Government to combat child domestic labour, the Committee notes the lack of information on the results actually achieved in the context of the INQAD programme and ILO–IPEC programme in terms of the numbers of children under 18 years of age prevented from engaging in or removed from the worst forms of child labour in the domestic sector. ***With reference to the conclusions of the Conference Committee on the Application of Standards, the Committee urges the Government to step up its efforts with respect to the identification, withdrawal and reintegration of girls under 18 years of age working as domestic servants who are subjected to economic or sexual exploitation. It also requests the Government to supply information on the results achieved in this respect, particularly in the context of the INQAD programme.***

The Committee is raising other points in a request addressed directly to the Government.

## Niger

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1978)**

*Article 2(3) of the Convention. Compulsory schooling.* In its previous comments, the Committee had noted that, according to the report on basic education statistics for 2005–06 provided by the Government, the net school attendance rates for children between 7–12 years of age was 54.1 per cent for boys and 37.8 per cent for girls, with an average figure of 45.8 per cent. The Committee observed that poverty was one of the prime causes of child labour and when combined with a deficient education system it hampers the development of children. It therefore encouraged the Government to renew its efforts to combat child labour, especially by stepping up measures to increase the school attendance rate and reduce the school drop-out rate.

The Committee notes the information provided by the Government in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), according to which the net school attendance rate for children between 7–12 years of age increased to 53.5 per cent (61.3 per cent for boys and 45.6 per cent for girls) in 2008. The Government adds that Koranic schools have been renovated and centres for Koranic awareness established in all the regions of the country. The Committee further notes that, according to the second periodic report submitted by Niger to the Committee on the Rights of the Child (CRC) on 20 November 2008 (CRC/C/NER/2, paragraphs 321–325), the Ten-year Educational Development Programme (PDDE), drawn up in 2002, aimed at achieving 80 per cent enrolment rate in primary school by 2012 and 84 per cent by 2015, with special emphasis on narrowing the gap between girls and boys.

The Committee however notes that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 66), the CRC, while commending the major efforts made by Niger to expand access to primary education, as well as the increase in the access of girls to education, the building of new educational infrastructures in rural areas and the training programmes for teachers, expressed concern at the poor quality of the education system, the high drop-out rate and weak gender equity in education. The Committee is of the view that compulsory schooling is one of the most effective means of combating child labour and that it is important to emphasize the necessity of linking the age of admission to employment or work (14 years in Niger) to the age of completion of compulsory education. If the two do not coincide various problems may arise. If schooling ends before young persons may work legally, there may be an enforced period of idleness (see the General Survey of 1981 on minimum age, ILC, 67th Session, Report III (Part 4B), paragraph 140). The Committee therefore considers it desirable to ensure that schooling is compulsory up to the minimum age of admission to employment, in accordance with Paragraph 4 of the ILO Minimum Age Recommendation, 1973 (No. 146).

The Committee also observes that the low rate of school attendance of children between 7 and 12 years of age shows that a significant number of children drop out of school well before attaining the minimum age for admission to employment and are on the labour market. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to redouble its efforts to improve the education system in the country, particularly by envisaging increasing the age of completion of compulsory schooling so that it coincides with the age of admission to employment or work (14 years). The Committee also requests the Government to take measures to increase the school attendance rate and reduce the school drop-out rate, particularly for girls, with a view to preventing children under 14 years of age from working. The Committee further requests the Government to continue providing information on the results achieved.***

*Article 2(1). Scope of application.* The Committee had previously observed that the Labour Code did not apply to types of employment or work performed by children outside an enterprise, such as self-employed children. It noted the Government's indication that widening the scope of application of the labour legislation to children engaged in an economic activity on their own account would require formal collaboration between the Ministries of the Civil Service, Labour, Mines, the Interior, Justice and Child Protection. The Committee expressed the hope that discussions on this issue would take place between these ministries. It reminded the Government that the Convention applies to all sectors of economic activity and that it covers all types of employment or work, whether or not a contractual employment relationship exists. ***Noting the absence of information in the Government's report on this subject, the Committee requests the Government to take measures to ensure that discussions are held on this subject between the Ministries of the Civil Service, Labour, Mines, the Interior, Justice and Child Protection, and it requests the Government to provide information on any progress made in this respect. The Committee also once again requests the Government to provide information on the manner in which the protection laid down by the Convention is ensured where there is no employment relationship, especially in cases of children working on their own account or in the informal economy. In this regard, the Committee strongly encourages the Government to envisage the possibility of assigning special powers to labour inspectors with regard to children who work on their own account or in the informal economy.***

*Article 3(3). Authorization to employ young persons in hazardous work from the age of 16 years.* In its previous comments, the Committee had noted that Decree No. 67-126/MFP/T of 7 September 1967 authorizes the employment of young persons over 16 years of age in certain types of hazardous work. It also noted that health and safety committees had been established in enterprises and that they were responsible for training and awareness raising on safety. The Committee observed that these committees did not appear to provide adequate specific instruction or vocational training in the relevant branch of activity. In this respect, the Government indicated that a distinction had to be made between three categories of young persons: those whose activities are performed in the context of a formal school curriculum, namely



students in technical and vocational training schools; those who work in the context of an apprenticeship contract, supervised by one or more professional adults with many years of experience in the trade; and those who are trained under the traditional system for learning a trade and whose superior/trainer had also been trained under this system of transmission of practical knowledge. With regard to the latter category, the Committee asked the Government to provide information on the manner in which the health and safety committees ensure that the work performed by young persons does not jeopardize their health or safety. Noting once again the lack of information in the Government's report, the Committee recalls that, in addition to the requirement of training, *Article 3(3)* of the Convention allows employment or work by young persons as from the age of 16 years on condition that their health, safety and morals are fully protected. ***It therefore urges the Government to take the necessary measures to ensure that enterprise safety and health committees ascertain that the conditions of work of young persons aged between 16–18 years do not jeopardize their health and safety. It requests the Government to provide information in this respect in its next report.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee had noted the Government's indication that studies were being conducted in the country, including a national study on child labour in Niger undertaken by the National Institute of Statistics, in collaboration with ILO-IPEC, and in partnership with a consortium of NGOs.

The Committee notes the Government's indication that the National Survey on Child Labour (ENTE) has been undertaken with the support of ILO-IPEC and is currently being processed. In its report provided to the Office under Convention No. 182, the Government indicates that it will provide the findings of the ENTE once they have been published. ***The Committee trusts that the findings of the ENTE will be published in the very near future and accordingly requests the Government to provide statistical data disaggregated by sex and by age group in its next report concerning the nature, extent and trends of work by children and young persons who are engaged in work below the minimum age specified by the Government when ratifying the Convention.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee previously took due note of the measures taken by the Government to follow up the recommendations of the High-level Fact-finding Mission (the Mission) which visited Niger from 10 to 20 January 2006 pursuant to the request made by the Conference Committee in June 2005.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery and practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted the observations of the International Trade Union Confederation (ITUC) alleging the internal trafficking of girls in Niger for domestic work, as well as the trafficking of boys for economic exploitation and of girls for sexual exploitation. It also noted that, according to the information obtained by the Mission, "Niger is certainly a *transit country* since its geographical location makes it a hub for trade between North Africa and sub-Saharan Africa". The Committee further noted that, according to the information obtained by the Mission, "Niger is both a *country of origin* and a *country of destination* for human trafficking, including the trafficking of children". The Committee noted that a Bill for the prevention, repression and punishment of trafficking in Niger had been drafted by the Niger Association for Human Rights, but that the drafting of the Bill on the trafficking of children was still under consideration by the competent authorities.

The Committee notes the Government's indication that a National Plan to Combat Trafficking of Children has been drawn up and validated, and that the Office will be informed once the plan has been adopted. However, it notes that, according to the second periodic report submitted by Niger to the Committee on the Rights of the Child (CRC) on 20 November 2008 (CRC/C/NER/2, paragraphs 433–437), the trafficking legislation has still not been adopted by Parliament and that the legal vacuum therefore persists in this area. Nevertheless, the CRC observes that the national survey on trafficking in persons showed that, of the 1,540 households surveyed, 5.8 per cent answered that a member of the household had been a victim of trafficking and 29.4 per cent answered affirmatively that there had been human trafficking in their locality/village/neighbourhood. The Committee notes that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 76), the CRC notes the drafting of a Bill criminalizing trafficking and the preparation of a National Plan of Action to Combat Child Trafficking, but nevertheless expresses serious concern that, despite the extent of child trafficking within, from and to the State party, the existence of the phenomena is not fully recognized in the State party.

The Committee notes with ***concern*** that, despite the findings of the Mission in 2006 that Niger is not only a country of transit, but also a country of origin and destination for the trafficking of children, the Bill for the prevention, repression and punishment of trafficking in Niger has still not been adopted. The Committee therefore reminds the Government that under *Article 1* of the Convention immediate and effective measures have to be taken to secure the prohibition and elimination of the worst forms of child labour as a *matter of urgency*. ***The Committee therefore requests the Government to take the necessary measures to ensure the adoption of the Bill for the prevention, repression and punishment of trafficking in Niger as a matter of urgency. It requests the Government to provide a copy of the Act, together with the National Plan of Action to Combat Child Trafficking, when they have been adopted.***

2. *Forced or compulsory labour. Begging.* The Committee previously noted the comments of the ITUC that children are forced to beg in West Africa, including Niger. For economic or religious reasons, many families entrust their children from the age of 5 or 6 years to a spiritual guide (*marabout*), with whom they live until they are 15 or 16 years of

age. During this period, they are entirely under the responsibility of the *marabout*, who teaches them religion and in return requires them to carry out certain tasks, including begging.

The Committee noted that there are three different forms of begging in Niger: *conventional begging*, *educational begging* and *begging that uses children for purely economic ends*. *Conventional begging* is the form practiced by indigent people. *Educational begging* is the form practiced in Niger in accordance with the Muslim religion as a means of learning humility, for the person practicing it, and compassion, for the alms-giver. Lastly, *begging that uses children for purely economic ends* makes use of children as a source of labour. The Committee noted that the existence of this latter form of begging was acknowledged by those interviewed by the Mission, including the Government, and that in this form of begging children are especially vulnerable since their parents, even if they are concerned for the children's religious education, are unable to provide for their subsistence. The children are therefore left entirely dependent on the *marabouts*. The Committee expressed serious concern at the use of children *for purely economic ends* by certain *marabouts*, particularly since, as it would appear from the information gathered by the Mission, this form of begging seemed to be very much on the increase.

The Committee noted that a National Observatory to combat begging had been set up. It also noted with interest that Circular No. 006/MJ/DAJ/S/AJS of 27 March 2006 of the Ministry of Justice of Niger, addressed to the various judicial authorities, calls for sections 179, 181 and 182 of the Penal Code, which punish begging and any person, including the parents of minors under 18 years of age, who habitually engage in begging, who cause others to beg or who knowingly make a profit from begging, to be strictly applied through the prosecution without leniency of any person using children for begging *for purely economic purposes*. The Committee therefore requested the Government to supply information on the effect given in practice to the national legislation on begging, pursuant to Circular No. 006/MJ/DAJ/S/AJS of 27 March 2006 of the Ministry of Justice, with an indication of whether *marabouts* who use children for purely economic purposes have been convicted.

The Committee notes that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 72), the CRC expressed serious concern at the situation of child *talibés* attending Koranic schools who are sent by *marabouts* to beg in the streets. In this respect, the Committee notes the Government's indications that there have been some cases of arrest of *marabouts* presumed to use children for purely economic purposes. However, the Government indicates that in general they are released for lack of legal proof of their guilt. The Committee therefore notes with *regret* that, even though the legislation is in conformity with the Convention on this matter, the phenomenon of child *talibés* remains a cause of serious concern in practice. The Committee reminds the Government that, under *Article 1* of the Convention, immediate and effective measures have to be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labour, and that under *Article 7(1)* of the Convention it is under the obligation to take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of sufficiently effective and dissuasive penal sanctions. ***The Committee urges the Government to take the necessary measures to ensure that the national legislation on begging is applied and that marabouts who use children under 18 years of age for purely economic purposes are punished and are subject to sufficiently effective and dissuasive sanctions. The Committee also requests the Government to indicate the effective and time-bound measures taken to prevent children under 18 years of age from becoming victims of forced or compulsory labour, such as begging, and to remove these children from such situations and ensure their rehabilitation and social integration.***

*Clause (d). Hazardous types of work. Children working in mines and quarries.* In its previous comments, the Committee noted the ITUC's indication that child labour in small-scale mining (trona mining in the Boboye region, salt in Tounouga, gypsum in Madaoua and gold in Liptako-Gourma) is widespread, principally in the informal economy where the work is the most hazardous. It noted that section 152 of Decree No. 67-126/MFP/T of 7 September 1967 prohibits the employment of children in underground work in mines.

The Committee noted previously that, according to the information gathered by the Mission, work by children in hazardous types of work, particularly in mines and quarries, existed in informal locations. It noted the Government's indication to the Mission that, "when parents work at informal sites, they are often accompanied by children who are too young to stay at home alone and, in certain cases, the children carry out small tasks for their parents". The Committee however noted that, according to various interviews carried out by the Mission, the children do more than simply accompany their parents and that they become "involved in the chain of production, whether in gypsum mines or salt quarries, sometimes performing small tasks to facilitate their parents' work or, in some cases, tasks that are physically hazardous for more than eight hours a day, every day of the week, running the risk of accident or disease". The Committee noted with interest that the Minister of the Interior, acting on the instructions of the Prime Minister, issued a circular strictly prohibiting the employment of children in the mines and quarries of the areas concerned, namely Tillabéri, Tahoua and Agadez, and that the Minister for Mining had received directives to take this prohibition into account in drawing up mining agreements. The Committee requested the Government to provide information on the effect given to the circular of the Minister of the Interior.

The Committee notes the Government's indication that no conviction has yet been handed down in this respect. It further notes that, according to the technical progress report (TPR) of 15 September 2009 for the ILO-IPEC Project for the Prevention and Elimination of Child Labour in Artisanal Gold Mining in West Africa (TPR of 15 September 2009),

the revision and modification of the list of hazardous types of work were carried out at a workshop held in Ayorou on 2 and 3 July 2009. In this respect, the Committee notes the Government's indication that the list of hazardous types of work was drawn up under the responsibility of the Ministry of Labour and in collaboration with the technical ministries and the employers' and workers' organizations concerned. The Government indicates that it will provide the Office with full information on the list when it has been adopted. ***The Committee requests the Government to provide a copy of the amended list of hazardous types of work once it has been adopted. It urges the Government to take immediate measures to ensure the application of the national legislation on the protection of children against underground work in mines to informal mining and quarrying sites, and to ensure that those who employ children in mines and quarries are prosecuted and sufficiently effective and dissuasive sanctions imposed upon them. The Committee requests the Government to provide information in this respect.***

*Article 5. Monitoring mechanisms. 1. Labour inspection.* In its previous comments, the Committee noted the indication in the report of the Mission that during site visits it had been able to note that "the labour inspectorate, which plays a key role in combating child labour and forced labour, is severely lacking in both the human and material resources needed to perform its duties". The Mission recommended that a labour inspection audit be carried out to ascertain the exact nature and extent of the needs of the labour inspectorate in Niger. The Committee notes that, in the report provided to the Office under the Labour Inspection Convention, 1947 (No. 81), the Government indicates that it is making every effort to ensure that this audit is carried out in the near future. ***The Committee requests the Government to take the necessary measures to give effect to the Mission's recommendation, and accordingly strengthen the labour inspection services. It requests it to provide information on this subject in its next report.***

*2. Youth Unit.* The Committee had previously noted that a Youth Unit has been established in the national police force. It notes the Government's indication that the Youth Unit is engaged in combating all forms of abuse against children under 18 years of age, including child trafficking, in collaboration with other partners, such as NGOs, United Nations agencies and technical services. The Government further states that there have been 11 recent prosecutions for the abduction of minors and three convictions.

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. 1. Improving the operation of the education system.* In its previous comments, the Committee noted from the Mission report that underlying the problem of child labour is the problem of the access of children to education and training that meets the needs of the labour market. The Mission also indicated that "parents hesitate to send their children to school when they see that such education affords no guarantee of a job, whereas the Muslim religious schools at least train children to be good Muslims or even teachers of the Koran, which explains why such schools are on the increase in Niger". In this respect, the Committee noted that "the education dispensed by Muslim religious teachers leads to no diploma, which limits the children's potential to enter the labour market in the future". The Committee noted the Mission's recommendation that the operation "of the education system needs to be improved to ensure access for all to high-standard education".

The Committee had previously noted the information provided by the Government in its report concerning the increase in primary school enrolment, particularly among girls. It also noted that, according to the Government's report on statistics for basic education for 2005–06, the net school attendance rates for children between 7 and 12 years of age was 54.1 per cent for boys and 37.8 per cent for girls, with an average of 45.8 per cent. With regard to Muslim religious schools, the Committee duly noted the Government's indication that, in the context of the Franco-Arab education support project, measures have been taken for the restructuring of these schools.

The Committee notes the Government's indication that efforts have been made to increase the school attendance rate and that it will continue its unceasing efforts in this respect. In that regard, the Committee notes the Government's indications that the net school attendance rate for children between 7 and 12 years of age rose to 53.5 per cent (61.3 per cent for boys and 45.6 per cent for girls) in 2008. The Government adds that Muslim schools have been renovated and Muslim awareness centres established in all the regions of the country. The Committee further notes that, according to the second periodic report submitted by Niger to the CRC on 20 November 2008 (CRC/C/NER/2, paragraphs 321–325), the Ten-Year Educational Development Programme (PDDE), drawn up in 2002, aimed at achieving 80 per cent enrolment rate in primary school by 2012 and 84 per cent by 2015, with special emphasis on narrowing the gap between girls and boys. The Committee however notes that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 66), the CRC, while commending the major efforts made by Niger to expand access to primary education as well as the increase in the access of girls to education, the building of new educational infrastructures in rural areas and training programmes for teachers, expressed concern at the poor quality of the education system, the high drop-out rate and the weak gender equity in education. ***Accordingly, considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to redouble its efforts to improve the functioning of the education system, taking into account the special situation of girls. It also requests the Government to increase the school enrolment rate and reduce the drop-out rate, as well as to adopt other measures for the integration of Muslim religious schools into the national education system. It requests the Government to continue providing information on the results achieved.***

*2. Raising awareness and educating the public about the problems of child labour and forced labour.* The Committee had previously noted that, in its report, the Mission recommended "specific measures to raise awareness

among Koranic teachers and parents to prevent the instrumentalization of begging by certain *marabouts*". The Committee noted the information provided by the Government concerning the awareness-raising and training activities undertaken for combating child labour, particularly its worst forms, including political decision-makers, employers, community leaders and traditional chiefs, police officers, magistrates, current or potential working children and their parents, teachers, students and the public in general, concerning the problem of child labour. The Committee therefore encouraged the Government to pursue its awareness-raising efforts. It notes the Government's indication that it is committed to pursuing its awareness-raising efforts for traditional chiefs, civil society and local elected officials on the danger represented by child labour in general, and its worst forms in particular. ***The Committee requests the Government to provide detailed information on the awareness-raising activities undertaken by the Government for traditional chiefs, civil society and elected local officials, and on their impact.***

3. *Project in artisanal gold mines in West Africa.* With reference to its previous comments, the Committee notes that, according to the TPR of 15 September 2009, the Government, in collaboration with ILO-IPEC, is continuing to implement activities and programmes of action to prevent children from working in artisanal gold mining. For example, according to the Government's indication, a programme of action has been implemented to contribute to the establishment of schools and initiatives to promote school attendance (including support for teachers and the provision of educational materials) on gold mining sites and neighbouring villages, as well as the improvement of school infrastructure on the gold mining sites of M'Banga and Komabangou. The Government indicates that 2,195 children, including 1,515 girls, have been prevented from being exploited in gold mining in M'Banga, Komabangou and the surrounding villages and have been integrated into the traditional school system. ***The Committee requests the Government to continue providing information on the results achieved in the context of the ILO-IPEC Project for the Prevention and Elimination of Child Labour in Artisanal Gold Mining in West Africa in terms of the number of children prevented from being engaged in this worst form of child labour.***

*Clause (b). Necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* The Committee had previously noted that, according to the information contained in the ILO-IPEC activity reports for 2007 for the Project for the Prevention and Elimination of Child Labour in Artisanal Gold Mining in West Africa, over 400 children, of whom 45 per cent were girls, had benefited directly from the project activities. It also noted that several programmes of action on education and vocational training, as well as to remove children working in artisanal gold mines, have been implemented.

In this respect, the Committee notes the Government's indication that the social integration of victims of the worst forms of child labour is ensured free of charge by national associations and NGOs, with the support of technical ministries and partners, such as UNICEF. The Committee observes that, according to the TPR of 15 September 2009, 1,853 children have been removed from work in gold mines in Niger and Burkina Faso. The Government adds that, through the implementation of the activities and programmes of action under this ILO-IPEC project, 115 children, including 46 girls, have been removed from exploitation in the gold mines of M'Banga and Komabangou and then reintegrated into socio-occupational life. ***The Committee requests the Government to continue providing information on the number of children who are in practice removed from artisanal gold mines and then rehabilitated and socially integrated through the implementation of the ILO-IPEC project and programmes of action on education and vocational training.***

*Article 8. Regional cooperation.* The Committee noted previously that, in addition to the multilateral cooperation agreement to combat child trafficking in West Africa, signed in July 2005, Niger also signed the Abuja Multilateral Cooperation Agreement in 2006 and a bilateral agreement for the establishment of a mixed frontier control brigade between Niger and Nigeria. The Committee previously requested the Government to indicate whether, in the context of these agreements, child victims of trafficking have been detected and intercepted in frontier regions and whether individuals operating in networks engaged in the trafficking of children have been found and arrested.

The Committee notes the Government's indications that, further to the implementation of the various cooperation agreements to combat trafficking in children, Niger has established 30 vigilance committees and has established widespread mixed mobile brigades on all national frontiers. The Government adds that child victims of trafficking have been intercepted in border areas. In the north of the country (the Agadez region), 48 boys were intercepted in 2006, 150 children (including six girls) were intercepted in 2007 and, finally, 39 boys were intercepted in 2009 by vigilance committees in neighbouring countries and repatriated to Niger. Furthermore, 151 child victims of trafficking (72 in Agadez, 44 in Tillabéri, 16 in Makolondi, ten in Niamey and nine in Téra) have been identified and taken into the care of NGOs and associations combating this scourge. However, the Committee notes with *deep concern* the Government's indication that those presumed guilty were released by the police for lack of legal proof. ***Recalling that under Article 7(1) of the Convention, the Government is under the obligation to take all the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, the Committee urges the Government to take the necessary measures to ensure that persons involved in the trafficking of children are prosecuted and that sufficiently effective and dissuasive sanctions are imposed upon them, in the context of the agreements concluded with other signatory countries.***

*Parts IV and V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted that in its report the Mission referred to a lack of reliable data to quantify accurately the extent and

characteristics of the problem of child labour. It noted that studies were being carried out and requested the Government to provide information on the findings of these studies.

The Committee notes the information contained in the 2008 study undertaken by the National Commission on Human Rights and Fundamental Freedoms entitled “The problem of forced labour, child labour and all other forms of slave-like practices in Niger”. It also notes the Government’s indications that the transborder study on child labour in the traditional gold mining sector in Burkina Faso, Mali and Niger has been undertaken and that the report on this survey prepared by the national consultant has already been validated. When Mali and Burkina Faso have also validated their respective reports, a final and consolidated report common to the three countries will then make it possible to identify more effectively the scope of the phenomenon in the informal economy. Furthermore, the Government indicates that the National Survey on Child Labour (ENTE) has already been undertaken by the National Institute of Statistics and it will provide the findings to the Office when they have been published. However, the Committee notes that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 19), the Committee on the Rights of the Child expressed concern at the unavailability of quality data and analysis on children’s rights, especially with regard to child victims of violence and sexual abuse, street children, children working as domestic servants and children living in poverty. *As soon as the findings of the above studies are available, the Committee urges the Government to provide statistical data and information on the nature, extent and trends of the worst forms of child labour and on the number of children protected by the measures giving effect to the Convention. To the extent possible, all information provided should be disaggregated by sex and age. It hopes that statistics will also be available on child victims of commercial sexual exploitation, children living in the streets and child domestic workers, as well as children living in poverty. It requests the Government to provide information in this respect in its next report.*

The Committee is raising other points in a request addressed directly to the Government.

## Nigeria

### **Minimum Age (Underground Work) Convention, 1965 (No. 123)** (ratification: 1974)

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee recalled that for a number of years, it had been requesting the Government to indicate measures taken to give effect to the Convention (*Article 4(5)*), under which the employer shall make available to the workers’ representatives, at their request, lists of the persons who are employed in work underground and who are less than two years older than the minimum age specified by the Government which is 16 years. The lists should contain the dates of birth of persons aged between 16 and 18 years and the dates at which they were employed or worked underground in the undertaking for the first time.

The Committee noted that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his employment with particulars of their ages, the date of employment and the conditions and nature of their employment and to produce the register for inspection when required by an authorized labour officer. The Committee further noted that under section 91(1) of the same Act, “young person” means a person under the age of 18 years and “industrial undertaking” includes mines, quarries and other works for the extraction of minerals from the earth. *The Committee therefore once again requests the Government to take the necessary measures to ensure that section 62 of the Labour Act is amended so that such registers may also be made available to workers’ representatives, at their request. The Committee once again asks the Government to provide information on progress made in this regard in its next report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Pakistan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2006)**

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted that a national *Time-bound Programme (TBP)* for the elimination of the worst forms of child labour 2008–16 had been drafted in consultation with the stakeholders. It also noted the implementation of several ILO–IPEC projects, including projects entitled “Activating media to combat worst forms of child labour 2006–09” and “Pakistan earthquake – Child labour response”, in addition to the expansion of the national project for the rehabilitation of child labourers. It requested the Government to provide information on the impact of these projects.

The Committee notes the information in the Government’s report that the ILO–IPEC project entitled “Combating abusive child labour II” has been launched. The objective of this project is the elimination of child labour, and two districts have been selected to pilot the project. The main activities of the project include: (i) establishing the Federal Child Labour Unit, and Provincial Child Labour Units, to increase institutional capacity to monitor the implementation of the national child labour programme; (ii) the creation of provincial and district coordination committees on child labour; (iii) withdrawing and rehabilitating child labourers in the districts of implementation; and (iv) sensitizing the community to child labour issues. The Committee also notes the ILO–IPEC information that the project “Activating media to combat worst forms of child labour” has been extended until the end of 2010.

The Committee further notes the information from the ILO–IPEC Technical Progress Report (TPR) of 10 March 2010 for the project entitled “Pakistan earthquake: Child labour response project” that 3,626 children were enrolled in rehabilitation centres through the project, and 632 children received vocational training. This TPR also indicates that between September 2009 and March 2010, ten seminars on child labour were conducted in target union councils. Participants included workers, employers and target community members (particularly the family members of working children). Over 700 individuals participated in these seminars organized in 24 rehabilitation centres of seven union councils (Kaghan, Mohandri, Kewai, Balakot, Ghanool, Shohal Mazullah and Garhi Habib Ullah). The TPR indicates that the project has contributed substantially to sensitizing the local communities on child labour issues. ***The Committee takes due note of this information, and requests the Government to continue to provide information on the concrete measures taken pursuant to the “Combating abusive child labour II” project, the “Activating media to combat worst forms of child labour” project and the “Pakistan earthquake – Child labour response” project. It also requests the Government to provide information on the status of the implementation of the national TBP 2008–16. Finally, it requests the Government to provide information on the impact of these initiatives, including the number of children reached through these programmes.***

*Article 2(2). Minimum age for admission to employment or work.* The Committee previously noted that, at the time of ratification, Pakistan specified 14 years as the applicable minimum age. The Committee also noted that a draft Employment and Service Conditions Act 2009 had been elaborated and that pursuant to section 16(a) of this draft Act, the employment of a child who has not attained 14 years of age is prohibited.

The Committee notes an absence of information in the Government’s report with regard to progress made towards the adoption of the draft Employment and Service Conditions Act 2009. ***The Committee requests the Government to take the necessary measures to ensure that the draft Employment and Service Conditions Act 2009, which prohibits the employment of a child below 14 years of age, is adopted in the near future and to provide a copy once adopted.***

*Article 2(3). Age of completion of compulsory education.* The Committee previously noted the information provided by the Government in its report to the Committee on the Rights of the Child (CRC) of 19 March 2009 (CRC/C/PAK/3-4, paragraph 361) that three of the four provinces, Federally Administered Areas (Punjab, North-West Frontier Province and Sindh) and the Islamabad Capital Territory have compulsory primary education laws. It also noted that the Islamabad Capital Territory Compulsory Primary Education Ordinance 2001, and the Punjab Compulsory Primary Education Act 1994, provide that parents shall ensure that their children attend primary school until the completion of their primary education. However, the Committee observed that, due to the definitions of “primary education” and “child”, compulsory education could finish between the ages of 10–14. The Committee underlined the desirability of ensuring compulsory education up to the minimum age for employment, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146), and encouraged the Government to take measures in that regard.

The Committee notes an absence of information on this point in the Government’s report. However, the Committee notes that the CRC, in its concluding observation of 19 October 2009, expressed concern that not all provinces have a compulsory education law and, where this legislation exists, it is often not properly enforced. The CRC further expressed concern that nearly 7 million of the estimated 19 million primary school-age children are out of primary school and about 21 per cent drop out, many of them in the early grades (CRC/C/PAK/CO/3-4, paragraph 78). The Committee expresses its ***deep concern*** at the significant number of children under the minimum age who are not attending school. ***Considering that education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to provide free and compulsory education to all children up to the minimum age for employment (of 14 years), and to ensure that, in practice, children are attending school. In this regard, it requests the Government to provide information on the measures taken to increase school enrolment rates and reduce school drop-out rates, and on the results achieved.***

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work.* The Committee previously noted that pursuant to sections 2, 3 and 7 of the Employment of Children Act of 1991, the employment of children under 14 is prohibited in a variety of occupations. Section 12 of the Employment of Children Rules of 1995 also provides for types of work that shall not be performed by children under 14. The Committee observed that these provisions do not comply with the provisions of *Article 3(1)* of the Convention which sets 18 years as the minimum age for admission to hazardous work. However, the Committee noted that section 16(c) of the draft Employment and Service Conditions Act 2009 prohibited the employment of persons under 18 in any of the occupations and processes listed in Parts I and II of the Schedule (containing four occupations and 39 processes). The Committee urged the Government to take the necessary measures to ensure that this draft legislation was adopted.

The Committee notes the information in the Government’s report that the Road Transport Workers Ordinance prohibits the employment of persons under 18 in road transport work. The Committee also notes that the Shops and Establishments Ordinance prohibits the employment of persons under 18 in night work. ***However, noting an absence of information from the Government on the status of the draft Employment and Service Conditions Act 2009, the Committee once again urges the Government to take the necessary measures to ensure that, in conformity with Article 3(1) of the Convention, this draft Act, which prohibits the employment of persons under 18 in hazardous types of work, is adopted in the near future.***

*Article 9(1) and Part III of the report form. Penalties and the labour inspectorate.* The Committee previously requested the Government to provide information on the practical application of the penalties provided for in section 14 of the Employment of Children Act 1991. It also requested the Government to indicate any measures adopted to strengthen the labour inspectorate, particularly in the informal sector.

The Committee notes an absence of information on these points in the Government's report. However, the Committee notes the information in a 2008 report on the worst forms of child labour in Pakistan, available on the website of the Office of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), that enforcement of child labour legislation is weak due to the lack of inspectors assigned to child labour, lack of training and resources, in addition to corruption. This report also indicates that, while authorities cite employers for child labour violations, the penalties imposed are generally too minor to act as a deterrent. The Committee also notes that the CRC, in its concluding observations of 15 October 2009, expressed concern that the ineffectiveness of labour inspection machinery reduces the likelihood of investigations into reports of child labour, and hinders the prosecution, conviction or punishment of those responsible (CRC/C/PAK/CO/3-4, paragraph 88). ***The Committee expresses its concern at the lack of capacity of the labour inspectorate to effectively monitor the legislation giving effect to the Convention and therefore requests the Government to take the necessary measures to adapt and strengthen the labour inspectorate in this regard, including through the allocation of additional resources. It also requests the Government to take the necessary measures to ensure that persons who violate the provisions giving effect to the Convention are prosecuted and that sufficiently effective and dissuasive penalties are applied in practice. In this respect, the Committee requests the Government to provide information on the number and nature of violations relating to the employment of children and young people detected by the labour inspectorate, the number of persons prosecuted, and the penalties imposed.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments the Committee noted that, according to the National Child Labour Survey conducted in 1996, of the 3.3 million children aged between 5–14 years who were economically active on a full-time basis, 46 per cent worked 35 hours per week, while 13 per cent worked for 56 hours or more per week. The Committee requested the Government to provide recent statistical data on the application of the Convention in practice.

The Committee notes the information in the Government's report that, pursuant to the "Combating abusive child labour II" project, a second national survey on child labour will be undertaken. The Committee also notes that the CRC, in its concluding observations of 15 October 2009, expressed concern that the prevalence of child labour is extremely high and has increased in recent years due to growing poverty (CRC/C/PAK/CO/3-4, paragraph 88). ***The Committee expresses its concern at the high number of working children under the minimum age in Pakistan and therefore urges the Government to redouble its efforts to improve this situation, including through continued cooperation with ILO-IPEC. It also requests the Government to provide, in its next report, information from the second national survey on child labour.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)***

The Committee notes the Government's report and the communication of the Pakistan Workers' Federation (PWF) of 31 August 2010.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children.* The Committee previously noted the allegations of the International Trade Union Confederation (ITUC) indicating that human trafficking is a serious problem in Pakistan, including the trafficking of children. The ITUC also stated that women and children reportedly arrive from various countries in the region, many to be bought and sold in shops and brothels and that, in some rural areas, children are sold into debt bondage. The Committee observed that section 370 of the Penal Code prohibits the sale and trafficking of persons for the purpose of slavery and that, pursuant to sections 2(f) and 3 of the Prevention and Control of Human Trafficking Ordinance of 2002 (PCHTO), human trafficking for the purpose of sexual exploitation, slavery or forced labour is prohibited. However, the Committee also observed that a legal review of the PCHTO (undertaken within the framework of combating child trafficking for labour and sexual exploitation (TICSA project)) concluded that the definition of "human trafficking" in the PCHTO focuses on interstate trafficking and ignores trafficking within Pakistan, which is prevalent in the country. In this regard, a tripartite regional workshop made recommendations to amend the legislation.

The Committee notes an absence of information in the Government's report on any measures taken pursuant to the legal review. It notes the information in a report of 14 June 2010 on the trafficking of persons in Pakistan available on the website of the Office of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (Trafficking Report) that the Government secured convictions of 385 persons under the PCHTO in 2009, a substantial increase from 2008. Nonetheless, the Committee notes that the Committee on the Rights of the Child (CRC), in its concluding observations of 19 October 2009, expressed concern that Pakistan remains a significant source, destination and transit country for children trafficked for the purposes of commercial sexual exploitation and forced and bonded labour. The CRC also expressed concern at the growing number of children trafficked internally (CRC/C/PAK/CO/3-4, paragraph 95). Furthermore, the Committee notes the statement in the Trafficking Report that the lack of comprehensive internal anti-trafficking laws has hindered law enforcement efforts. ***Therefore, the Committee once again urges the Government to take immediate***

*measures to ensure that trafficking within the country of persons under 18 is effectively prohibited in national legislation. The Committee also requests the Government to redouble its efforts to combat and eliminate both internal and cross-border trafficking of persons under 18. It requests the Government to provide information on the measures taken in this regard and the results achieved, particularly the number of persons convicted and sentenced for cases involving victims under the age of 18.*

2. *Debt bondage.* In its previous comments, the Committee noted the ITUC's indication that Pakistan has several million bonded labourers, including a large number of children. Debt slavery and bonded labour are mostly reported in agriculture, construction (in particular in rural areas), brick kilns and the carpet-making sector. The Committee also noted that the Bonded Labour System (Abolition) Act (BLSA) 1992 abolished bonded labour, and states that no one shall make an advance under, or in pursuance of, the bonded labour system or other forms of forced labour. The Committee further noted the operation of several measures within the national policy and plan of action for the abolition of bonded labour and rehabilitation of freed bonded labourers (National Policy for the Abolition of Bonded Labour), and requested the Government to take measures to ensure the effective implementation of this policy.

The Committee notes the information in the Trafficking Report that, while provincial police in Sindh province freed over 2,000 bonded labourers in 2009 from feudal landlords, few charges were filed against the employers. The Committee also notes that the CRC, in its concluding observation of 19 October 2009, expressed concern that, despite legislation prohibiting bonded labour and the National Policy for the Abolition of Bonded Labour, bonded and forced labour continues to occur in many industries and the informal sector, affecting the poorest and most vulnerable children (CRC/C/PAK/CO/3-4, paragraph 88). The Committee also notes the information in the Trafficking Report that the largest human trafficking problem in Pakistan is bonded labour, concentrated in the Sindh and Punjab provinces, and affects over a million men, women and children. The trafficking report further indicates that Pakistani officials have yet to record a single conviction under the BLSA.

The Committee expresses its *deep concern* at the persistence of children working in bonded labour, and reminds the Government that, by virtue of *Article 1* of the Convention, it is obliged to take *immediate* measures to prohibit and eliminate this worst form of child labour. *Therefore, the Committee urges the Government to redouble its efforts to combat and eliminate this worst form of child labour, and to provide information on the measures taken within the framework of the National Policy for the Abolition of Bonded Labour in this regard. It also urges the Government to take the necessary measures, as a matter of urgency, to ensure that perpetrators of bonded labour are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.*

3. *Compulsory recruitment of children for use in armed conflict.* The Committee previously noted that the National Service Ordinance of 1970 prescribes a minimum age of 18 for compulsory enlistment in the armed forces. The Committee noted, however, the Government's indication that children aged 16 and above may begin training prior to regular service if they are willing. The Committee also noted that the CRC expressed its concern that, in spite of legislation prohibiting the involvement of children in hostilities, there were reports of children being recruited forcibly to participate in armed conflicts, especially in Afghanistan and in Jammu and Kashmir. The CRC also expressed its concern about *madrasas* (Islamic schools) being involved in recruiting children under 18 years of age, including forcibly, to participate in armed conflicts (CRC/C/15/Add.217, 27 October 2003, paragraphs 62, 64(c), 67 and 68). The Committee requested the Government to take immediate measures to combat and eliminate the compulsory recruitment of children under 18 years of age for use in armed conflict.

The Committee notes an absence of information on this point in the Government's report. However, the Committee notes that the CRC, in its concluding observation of 19 October 2009 expressed deep concern at reports of *madrasas* being used for military training, as well as instances of recruitment of children to participate in armed conflict and terrorist activities (CRC/C/PAK/CO/3-4, paragraph 80). The CRC expressed grave concern with regard to reports of forced under-age recruitment and training of children by non-State actors for armed actions and terrorist activities, including suicide attacks, and at the lack of preventive measures, including awareness raising, and physical and psychological recovery for children affected by armed conflict, in particular those who were recruited. *Recalling that the forced recruitment of children for use in armed conflict constitutes one of the worst forms of child labour, the Committee requests the Government to take immediate and effective measures to bring an end in practice to the forced recruitment of persons under 18 years of age by armed groups. In this regard, it requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and sufficiently effective and dissuasive penalties are imposed in practice.*

*Articles 3(d) and 4(1). Hazardous work.* The Committee previously noted that article 11(3) of the Constitution states that "no child below the age of 14 years shall be engaged in any factory or mine or any other hazardous employment". Section 12 of the Employment of Children Rules of 1995 also provides for types of work that shall not be performed by children under 14. The Committee also noted that sections 2 and 3 of the Employment of Children Act of 1991 provide that children under 14 years of age shall not be employed in the occupations listed in Parts I and II of the Schedule of the Act, containing a detailed list of hazardous types of work that children shall not perform.

The Committee notes the statement in the communication of the PWF that a large number of children in Pakistan are employed in hazardous work, particularly in the brick kiln, glass and leather industries, and in the informal sector. Referring to its comments made in 2009 under the Minimum Age Convention, 1973 (No. 138), the Committee notes that



a draft Employment and Service Conditions Act 2009 has been elaborated. Pursuant to section 16(c) of the draft Employment and Service Conditions Act 2009, the employment of persons *under 18* in any of the occupations and processes listed in Parts I and II of the Schedule (containing four occupations and 39 processes) is prohibited. The Committee recalls that under *Article 3(d)* of the Convention, children *under 18* shall not perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals. ***The Committee accordingly urges the Government to take the necessary measures to ensure that, in conformity with Article 3(d) of the Convention, the draft Employment and Service Conditions Act 2009, which prohibits the employment of persons under 18 in hazardous types of work, is adopted in the near future.***

*Article 5. Monitoring mechanisms.* 1. *Bonded labour.* The Committee previously noted the ITUC's indication that while the BLSA prohibits bonded labour, it remains ineffective in practice. It also noted that District Vigilance Committees (DVCs) were constituted to monitor the implementation of the BLSA but that there were reports of serious corruption within these committees. The Government indicated that efforts were being made to implement the BLSA with an Anti-Corruption Strategy and that within the framework of the National Policy for the Abolition of Bonded Labour, training workshops had been organized for key district government officials and other stakeholders to enhance their capacity and to activate the DVCs.

The Committee notes the information in the Government's report that DVCs report to the District Magistrate any cases of bonded labour being used in workplaces, and that DVCs engage in information sharing to this end. The Committee also notes the Government's statement in its reply to the list of issues of the CRC of 1 September 2009 that the DVCs have not been functioning properly. The Government indicates that it is in the process of restructuring the DVCs to improve their effectiveness and organizing orientation sessions for committee members. The Government further states that there remain problems in the enforcement of the BLSA (CRC/C/PAK/Q/3-4/Add.1, paragraph 65). The Committee also notes the information in the Trafficking Report that police lack personnel, training and equipment to confront landlords' armed guards when freeing bonded labourers. ***The Committee therefore urges the Government to redouble its efforts to strengthen the capacity of DVCs and law enforcement officials responsible for the monitoring of bonded labour, to ensure the effective implementation of the BLSA. It requests the Government to provide information on concrete measures taken in this regard and on the results achieved.***

2. *Labour inspection.* The Committee previously noted the ITUC's indications that the number of labour inspectors is insufficient, that they lack training and that they may be open to corruption. The ITUC added that inspections do not take place in undertakings employing less than ten employees, where most child labour occurs. The Committee also noted the PWF's statement that the Government should take more effective measures to monitor the use of child labour in the informal sector with the cooperation of the "Independent labour inspection machinery". The PWF indicated that the governments of the two largest provinces of the country, Sindh and Punjab, apply a policy of not inspecting a business for one year following its establishment and that inspectors may not enter a workplace without prior permission from, or notice to, the employer. The Committee further noted that, according to the technical progress report of March 2007 for the ILO-IPEC project entitled "Combating child labour in the carpet industry", the ILO's external monitoring system was in place in each district of Pakistan for the independent verification of the child labour situation. In the case of the carpet weaving industry, 4,865 monitoring visits had been made to 3,147 workplaces in the project areas.

The Committee notes the statement on the ILO-IPEC summary for the project entitled "Combating child labour in the carpet industry" that the external child labour monitoring system was a significant achievement as the labour inspection system does not extend to rural areas where most of the child labour in the carpet sector takes place. The Committee also notes the Government's statement in its report to the CRC of 19 March 2009 that the Ministry of Labour is working with the Asian Development Bank to devise a comprehensive labour inspection and monitoring mechanism, which will include child labour monitoring (CRC/C/PAK/3-4, paragraph 580). Nonetheless, the Committee notes the statement in a report on the worst forms of child labour in Pakistan available on the web site of the Office of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (WFCL report) that enforcement of child labour laws is weak due to the lack of inspectors assigned to child labour, lack of training and resources, corruption, and the exclusion of many small workplaces and informal family businesses from the inspectorate's jurisdiction. The Committee further notes that the CRC, in its concluding observations of 19 October 2009, expressed concern that the ineffectiveness of labour inspection machinery reduced the likelihood of investigations of reports of child labour (CRC/C/PAK/CO/3-4, paragraph 88). ***Therefore, the Committee requests the Government to take the necessary measures to strengthen the capacity of the labour inspection system to enable the labour inspectors to monitor the effective implementation of the provisions giving effect to the Convention. It also requests the Government to provide information on the measures taken in this regard, including measures to train labour inspectors and provide them with adequate human and financial resources. Lastly, the Committee requests the Government to provide information on the development of a comprehensive labour inspection mechanism and its impact on the monitoring of the worst forms of child labour.***

*Article 7(1). Penalties.* The Committee previously noted the ITUC's indication that persons found guilty of violating child labour legislation were rarely prosecuted and that when prosecution did occur, the fines imposed are usually insignificant. The Committee noted the All Pakistan Federation of Trade Unions (APFTU) indication that, although child labour is prohibited by national legislation, child labour and its worst forms are still widespread. The Committee recalled that by virtue of *Article 7(1)* of the Convention, the Government must take the necessary measures to

ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the application of dissuasive sanctions.

The Committee notes an absence of information on this point in the Government's report. However, the Committee notes the statement in the WFCL report that the penalties imposed on persons who violate child labour laws are generally too minor to act as a deterrent. ***The Committee expresses its serious concern at the ineffectiveness of penalties for violations of child labour legislation and, therefore, urges the Government to take the necessary measures to ensure that persons who violate the legal provisions giving effect to the Convention are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.***

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. Child victims of trafficking.* The Committee previously noted that the Child Protection and Rehabilitation Bureau (CPRB) was responsible for housing returned camel jockeys from the United Arab Emirates (UAE) and for facilitating their reintegration within their families and communities. The Committee requested the Government to provide information on the number of child victims of trafficking effectively withdrawn and rehabilitated by the CPRB or other rehabilitation shelters.

The Committee notes the Government's indication in its report to the CRC of 19 March 2009 that, through the programme to return and reintegrate under-age camel racers (implemented as a collaboration between the Government, UNICEF and the UAE), a total of 331 former camel jockeys have been repatriated and have been reunited with their families through the CPRB. The Government further indicates that various rehabilitation programmes have been initiated for the rehabilitation of these children and these services were also provided to 361 self-returned former camel jockeys (CRC/C/PAK/3-4, paragraph 677). However, the Committee notes the indication in the Trafficking Report that this collaboration with the UAE and UNICEF came to an end in 2009. The Trafficking Report also indicates that while the CPRB continued to provide services to victims of trafficking, governmental officials continued to lack adequate procedures and resources for proactively identifying victims of trafficking among vulnerable persons with whom they came into contact, especially child labourers, women and children in prostitution, and agricultural and brick kiln workers. ***The Committee therefore urges the Government to strengthen its efforts to remove, rehabilitate and provide for the social integration of child victims of trafficking. In this regard, it urges the Government to take the necessary measures to strengthen the procedures for identifying child victims of trafficking and to ensure that these children are referred to the appropriate services. It requests the Government to provide information on the concrete measures taken in this regard and the results achieved.***

*2. Child bonded labourers.* The Committee previously noted that the European Union and the ILO were assisting the Government in the setting up of 18 community education and action centres for combating exploitative child labour through prevention, withdrawal and rehabilitation of former child bonded labourers. The Committee also noted that the Government had established a "Fund for the education of working children and rehabilitation of freed bonded labourers". The Committee further noted that the 2007 ILO project to promote the elimination of bonded labour in Pakistan (PEBLIP) aimed to provide social and economic assistance to the families that have been released from bondage to help them re-establish their lives.

The Committee notes the information in the Government's report that the PEBLIB project completed its first phase in 2007. Through this project, the ILO has provided technical assistance to the Ministry of Labour, and helped in capacity building of governmental officials and the judiciary. The Government also indicates that a series of awareness-raising material on bonded labour have been published. The Committee also notes the information in the Government's report that through the "Fund for the education of working children and rehabilitation of bonded labourers", free legal aid services have been established in Lahore, Peshawar, Karachi and Quetta. ***The Committee requests the Government to continue to provide information on the impact of the abovementioned measures on removing children from bonded labour and on providing for their rehabilitation and social integration.***

*3. Children working in the carpet industry.* The Committee previously noted the ITUC's indication that 1.2 million children were reported to work in the carpet industry, which is a hazardous industry. It also noted that, according to a baseline survey on child labour in the carpet weaving industry in the province of Sindh, there are an estimated 33,735 carpet weaving children, out of which 24,023 are estimated to be below 14 years of age. The Committee further noted that the Pakistan Carpet Manufacturers' and Exporters' Association and ILO-IPEC launched a project to combat child labour in the carpet industry in 1998 and that 11,933 children had been withdrawn from carpet weaving and enrolled in non-formal education centres.

The Committee notes the ILO-IPEC information that Phase III of the "Combating child labour in the carpet industry" project began in 2007, and will be completed in 2011. The project will be implemented in the provinces of Punjab, Sindh and the North-West Frontier Province (NWFP), and aims to impact the lives of 50,000 children, 60 per cent of whom are carpet weavers. The Committee also notes the information in the WFCL report that the national project on rehabilitation of child labour, implemented by Pakistan Bait-ul-Mal (an autonomous body established by the Ministry of Social Welfare and Special Education) continues to withdraw children between the ages of 4 and 14 from several sectors, including carpet weaving. Nonetheless, the WFCL report also indicates that a significant number of children continue to work in carpet weaving, and that these children suffer eye and lung diseases due to unsafe working conditions. ***The***

**Committee therefore requests the Government to strengthen its efforts for the removal, rehabilitation and social reintegration of children working in the carpet-weaving sector. In this regard, it requests the Government to provide information on the concrete measures taken within the framework of the “Combating child labour in the carpet industry – Phase III” and the “National project on rehabilitation of child labour” project and on the results achieved.**

*Clause (d). Reaching out to children at special risk.* 1. *Child bonded labourers in mines.* The Committee previously noted that, according to the rapid assessment studies on bonded labour in different sectors in Pakistan, some miners ask their children as young as 10 years of age to work with them in mines to lighten the burden of *peshgi* (i.e. any advance whether in cash or in kind made to the labourer). In Punjab and in the NWFP, children are usually assigned the job of taking donkeys underground and bringing them out laden with coal. These children are particularly vulnerable to sexual abuse by miners.

The Committee notes the information in the Government’s report to the CRC of 19 March 2009 that an action programme is being implemented in the coal mines of Shangla, as part of the national *Time-bound Programme (TBP)* for the elimination of the worst forms of child labour 2008–16. The Committee also notes the information in the final technical progress report for the ILO–IPEC project entitled “Supporting the *TBP* on the elimination of the worst forms of child labour in Pakistan” of 14 September 2008 (FTPR) that in the context of initiatives in Shangla, 250 children received health screening, 250 children were provided with literacy and numeracy classes and 150 children received technical and vocational skills training. The FTPR also indicates that a district education plan that addressed the educational needs of child labourer was developed, printed and widely disseminated. **The Committee requests the Government to continue to take the necessary effective and time-bound measures to eliminate child debt bondage in mines as a matter of urgency.**

2. *Children working in brick kilns.* The Committee previously noted that nearly half of children aged 10–14 working in brick kilns work more than ten hours a day without any safeguards and that working in the kilns is a particularly hazardous occupation for children. It also noted that, according to the rapid assessment studies on bonded labour in different sectors in Pakistan of 2004, workers in the brick kiln sector were not aware of the general legislation that applies to bondage. The Committee further noted that an ILO–IPEC project in several sectors resulted in 3,315 children being withdrawn from hazardous work, including in the brick kiln industry. The Committee requested the Government to pursue its efforts to protect children engaged in the brick kiln sector from hazardous work.

The Committee notes the Government’s statement in its reply to the list of issues of the CRC of 1 September 2009 that most of the bonded labourers in Punjab are confined to brick kilns. The Government indicates in this report that it is working to register brick kiln workers and issue them with national identity cards to facilitate their access to benefits (CRC/PAK/Q/3-4/Add.1, paragraph 68). The Committee also notes that the project entitled “Combating child labour through education and training (Support to the *TBP*: Phase II)” gives priority to children working in six specific sectors, including boys and girls working in brick kilns. The Committee further notes the information in the WFCL report that the national project on rehabilitation of child labour continues to withdraw children in this industry. **The Committee requests the Government to continue to take measures to protect children under 18 engaged in the brick kiln sector from hazardous work and forced labour. It requests the Government to provide information on progress made in this regard and on the results achieved.**

*Article 8. International cooperation and assistance. Regional cooperation. Trafficking.* The Committee previously noted the Government’s participation in several regional initiatives to combat trafficking. These included the signing of the South Asian Association for Regional Cooperation’s convention on preventing and combating trafficking in women and children for prostitution in 2002 (which committed signatories to the development of a regional plan of action and the establishment of a regional task force against trafficking) and a Memorandum of Understanding with both Thailand and Afghanistan to promote bilateral cooperation, including on the issue of human trafficking. The Committee requested the Government to provide information on progress achieved through these initiatives.

The Committee notes the information from the International Organization for Migration (IOM) that it has been working with the Government to combat human trafficking and smuggling. The IOM is currently conducting a counter-trafficking programme to create 18 district taskforces to combat human trafficking in vulnerable districts throughout the country which will identify trafficking victims, create referral mechanisms for support to victims and build a network between stakeholders in the local government, law enforcement and civil society. The Committee also notes the IOM’s indication that its office in Islamabad is supporting the establishment of a trilateral dialogue between Pakistan, Afghanistan and the Islamic Republic of Iran on migration management within South-West Asia, to serve as a forum for discussion on developing comprehensive and compatible national and subregional migration management strategies. Nonetheless, the Committee notes the information in the Trafficking Report that transnational trafficking in the region persists and that persons, including children, are trafficked between the Islamic Republic of Iran and Pakistan, and to Pakistan from Afghanistan and Azerbaijan for the purpose of forced labour and prostitution. **The Committee therefore encourages the Government to strengthen its regional cooperation efforts and to continue its collaboration with the IOM to combat the trafficking of persons under 18 years of age. It also once again asks the Government to provide information on the progress achieved in the launching of a regional plan of action and regional task force against trafficking. It also asks the Government to provide information on the impact of the Memoranda of Understanding signed with Afghanistan and Thailand, as well as of any other bilateral agreements on the elimination of child trafficking.**

*Part V of the report form. Practical application of the Convention.* In its previous comments, the Committee pointed out that accurate data on the extent of the worst forms of child labour, including bonded labour, is essential to develop effective programmes to eliminate these worst forms. It encouraged the Government to undertake a nationwide survey to determine the extent of child debt bondage and its characteristics.

The Committee notes the information in the Government's report that, pursuant to the "Combating abusive child labour II" project, a second national survey on child labour will be undertaken. ***The Committee requests the Government to take the necessary measures to ensure that this national survey includes an examination of the worst forms of child labour, including bonded labour, trafficking, commercial sexual exploitation and hazardous work. It also requests the Government to provide information from this national survey, once completed.***

The Committee is raising other points in a request addressed directly to the Government.

## Panama

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2000)***

The Committee notes the Government's report. It also notes the comments of the National Federation of Public Employees and Public Service Enterprises Workers (FENASEP) of 5 October 2009 and the Government's reply thereto of 10 February 2010.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the statistics contained in the national report concerning the child labour survey undertaken by the Directorate of Statistics and Census and the Statistical Information and Monitoring Programme on Child Labour (SIMPOC) and published by ILO-IPEC in March 2003, the number of children between the ages of 5–17 years engaged in child labour was 47,976. According to the report, 25,273 minors worked in agriculture. It also noted that the Government took a large number of measures to eliminate child labour and its worst forms, such as the National Plan for the Elimination of Child Labour and the Protection of Young Workers 2007–11 (National Plan against Child Labour) and programmes of action in collaboration with ILO-IPEC which target, among others, child domestic work, agricultural work, hazardous types of work and work by indigenous children.

The Committee notes that, in its comments, the FENASEP expresses concern at the fact that, compared with the data of 2000, according to which 47,475 children between 5 and 17 years of age were working in Panama, the 2008 survey on child labour shows that this figure has almost doubled to 89,767. The Committee notes the Government's reply to the FENASEP's comments that: (a) the number of children aged from 5 to 17 increased from 2000 to 2008 (from 755,032 to 829,724); (b) at the moment of carrying out the second survey, society was more aware of the subject of child labour, thus 2008 statistics better reflect the existing reality. The Government also states that notwithstanding the progress achieved as a result of the measures taken, various issues still hamper the elimination of child labour. However, the recently elected Government is taking measures to achieve this goal.

The Committee takes due note of the detailed information provided by the Government in its report. In particular, it notes the results of the implementation of the ILO-IPEC Country Programme to prevent and eliminate child labour and its worst forms in Panama (ILO-IPEC Country Programme) and the results of the action programmes carried out in collaboration with ILO-IPEC in the urban, rural and indigenous areas of the provinces of Panamá and Colón, Chiriquí and Veraguas to prevent children from engaging in child labour or withdrawing them from child labour and its worst forms through the provision of educational services and assistance to their families. The Committee further notes that the Government has taken several measures – such as the programmes "Opportunities", "Educational Promotion", "Solidarity Day", "Eradication of Child Labour Scholarships" and "Prevention and eradication of child labour and protection of adolescent workers in the provinces of Panama and Colón" – to promote education as a means to contribute to the eradication of child labour, especially through the provision of cash transfers often conditioned on school attendance. Finally, the Committee notes the Government's information that in December 2007, the Government and the social partners signed the Decent Work Programme 2008–11, which has amongst its objectives the abolition of child labour. The Committee, while noting the wide range of measures taken by the Government to combat child labour, expresses its ***concern*** at the increasing number of children between 5–17 years of age who work in Panama. ***It strongly encourages the Government to redouble its efforts to combat child labour and requests it to continue to provide information on the implementation of the projects such as those referred to above, as well as the results obtained in terms of the progressive abolition of child labour. It also requests the Government to provide statistical information on the employment of children under 14 years.***

*Article 2(2). Raising the minimum age for admission to employment or work initially specified.* The Committee previously noted that the Bill on children contains a provision raising the minimum age for admission to employment or work from 14 to 15 years. It drew the Government's attention to the fact that *Article 2(2)* of the Convention envisages the possibility for a State, which decides to raise the minimum age for admission to employment or work initially specified, to notify the Director-General of the International Labour Office by a further declaration. The Committee requested the Government to provide information on the raising of the minimum age for admission to employment or work. The Committee notes the Government's information that the Bill on children has not been adopted yet and that at the moment there is no intention to increase the minimum age initially specified.

*Article 3(3). Authorization to employ young persons from the age of 16 years on hazardous types of work.* In its previous comments, the Committee noted that, under the terms of section 118 of the Labour Code and section 510 of the Family Code, hazardous work was prohibited for young persons under 18 years of age, in accordance with *Article 3(1)* of the Convention. However, it also noted that section 118(2) of the Labour Code and section 510(2) of the Family Code provide that this prohibition does not apply to work performed by minors in training establishments when the work is approved and supervised by the competent authority in listed types of hazardous work.

The Committee notes the Government's information that the labour inspectorate monitors the nature and the conditions of work of young persons and establishes whether the work permit for these young persons may be issued. Subsequently, periodic inspections are carried out to ensure compliance with the relevant legislation. The Committee, however, observes that, since the minimum age for admission to work in Panama is 14 years, it appears that, pursuant to section 118(2) of the Labour Code and section 510(2) of the Family Code, a working permit for a young person to perform hazardous work in a training context may be issued at 14 years. The Committee notes that this is not in conformity with *Article 3(3)* of the Convention, according to which national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. **The Committee therefore once again requests the Government to take the necessary measures to repeal or amend section 118(2) of the Labour Code and section 510(2) of the Family Code, in order to ensure that only young persons from 16 years who have received adequate specific instruction or vocational training may be allowed to perform types of hazardous work, in conformity with Article 3(3) of the Convention.**

*Part III of the report form. Labour inspectorate.* The Committee notes the Government's information that 1,045 inspections involving children and adolescent workers were carried out between 2006–09. Only seven cases resulted in penalties being imposed in the same period. It also notes that under the ILO–IPEC Country Programme, a guide for the labour inspectorate to eradicate child labour and its worst forms was developed and the Executive Decree “On the eradication of child labour and the protection of the rights of working minors”, which is aimed at establishing an intra-institutional protocol of inspection for child labour and at providing for the protection of working adolescents, is awaiting final adoption. **Noting the high number of children between 5–17 years of age who work in Panama, the Committee encourages the Government to continue to take measures to strengthen the labour inspectorate in order to combat child labour more effectively. In this regard, it requests the Government to provide information on the adoption of the Executive Decree “On the eradication of child labour and the protection of the rights of working minors”. It finally asks the Government to continue to provide extracts from the reports of inspection services and information of the number and nature of contraventions reported.**

The Committee notes the Government's information that the Bill on the protection of Children and Young Persons (Bill on Children) has not been adopted yet. However, the newly elected Government, through the National Office for Children and Young Persons (SENIAF), is following-up on this issue. **The Committee hopes that the Bill on children will be adopted in the near future and hopes that it will take into account the Committee's comments. It requests the Government to continue to provide information on any progress in the adoption of the Bill.**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the Government's report. It also notes the comments of the National Federation of Public Employees and Public Service Enterprises Workers (FENASEP) of 5 October 2009 and the Government's reply thereto of 10 February 2010.

*Article 3 of the Convention. Worst forms of child labour. Clause (a) and Article 7(1). Forced or compulsory recruitment of children for use in armed conflict, and penalties.* The Committee requested the Government to provide information on the measures taken to establish penalties for the violation of the prohibition on the forced or compulsory recruitment of children for use in armed conflict.

The Committee notes with **satisfaction** that the new Penal Code, as amended by Act No. 26 of 21 May 2008, punishes by up to 12 years' imprisonment anyone who recruits children under 18 years or uses them to participate actively in hostilities (section 439).

*Clause (b) and Article 7(1). Using, procuring or offering of a child for prostitution, for the production of pornography and for pornographic performances, and penalties.* The Committee previously requested the Government to provide information on the measures taken to establish penalties for the violation of the prohibition on using, procuring or offering of a child for prostitution.

The Committee notes with **satisfaction** that section 176-A of the new Penal Code, as amended by Act No. 26 of 21 May 2008, punishes pimping by penalties of up to ten years' imprisonment when the victim is under 18 years. It further notes that the new Penal Code punishes child pornography (sections 180, 181, 183–185) and sexual tourism involving children (section 186). The Committee also notes the Government's information that the penalties for child pornography and sexual tourism involving minors have been increased. Finally, the Committee notes the Government's information that 53 cases concerning child pornography were investigated between 2006 and 2009. **The Committee requests the Government to continue to provide information of the practical application of the above provisions of the new Penal**

**Code and of Act No. 22 of 2007, including statistics on the number and nature of the violations reported, investigations carried out, prosecutions, convictions and penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex and age.**

*Articles 5 and 7(1). Monitoring mechanisms and effective application of the Convention. Labour inspectorate.* Following its previous comments, the Committee notes the Government's information that labour inspections had increased remarkably during the period 2006–08 where 1,830 violations were detected by the labour inspectorate. However, of the 1,830 cases, only eight resulted in penalties being applied to the offenders, while 31 are pending before the judiciary. According to the Government, this situation shows a lack of coordination between the activities of the labour inspectorate and the judiciary. The Committee notes that while the number of violations detected by the labour inspectorate was quite high between 2006 and 2008 (1,830 cases), the number of cases in which penalties were applied was low (eight cases). The Committee reminds the Government that, by virtue of *Article 7(1)* of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions of the Convention, including through the provision and application of sufficiently effective and dissuasive penal sanctions. ***It requests the Government to redouble its efforts to strengthen the capacity of the law enforcement agencies, in order to ensure that the perpetrators are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Street children.* The Committee notes the FENASEP's comment that, according to the newspaper *La Prensa*, in Chiriquí there is a network which traffics children to make them beg. By September 2009, 28 child beggars were identified in the urban area of David. The Committee notes the Government's information that the National Office for Children and Young Persons (SENIAF) created the Office for assisting and protecting street children in situation of exploitation, which is in charge of developing programmes to assist these children. It further notes the Government's information that 52 children and adolescents were removed from the street in 2008 and 57 in 2009. In 2009, 24 of the children who were removed from the street in 2008 and 39 of the children who were removed from the street in 2009, were selected for admission to the scholarships provided by the Institute for Training and Better Use of Human Resources (IFARHU) and the Committee for the Eradication of Child Labour and Protection of the Adolescent Worker (CETIPPAT). Moreover, one family was included under the "Opportunities" conditional cash transfer programme, which is aimed at helping families in situations of extreme poverty by providing them with financial allowances subject to the condition that children of beneficiary families attend school. ***The Committee requests the Government to continue to take measures to remove children from the streets and provide for their rehabilitation and social integration, and to continue to provide information on the number of children removed from the streets and given education pursuant to the implementation of programmes and projects such as the abovementioned ones.***

The Committee is raising other points in a request addressed directly to the Government.

## Papua New Guinea

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee previously noted that, with respect to trafficking, the Criminal Code only provided protection to girls trafficked for the purpose of sexual exploitation. The Committee observed that there did not appear to be any similar provisions protecting boys or prohibiting the sale and trafficking of children for the purpose of labour exploitation. The Government indicated that Papua New Guinea was embarking on a major legislative review and that the issues of gender and age would be at the forefront of that review.

The Committee notes the information in the Government's report that the legislative review will commence shortly. The Committee also notes the statement by the Government in its report to the Committee on the Elimination of Discrimination Against Women (CEDAW) of 22 May 2009 that, although the current legislation provides some protection against the trafficking of women, compliance is partial because penalties are low and corroboration is required placing an unreasonable burden on victims (CEDAW/C/PNG/3, page 54). The Committee further notes the indication in a report on trafficking in persons in Papua New Guinea, available at the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (Trafficking Report) that trafficking is a significant problem in the country. The Trafficking Report also indicates that women and children are trafficked within the country for the purpose of commercial sexual exploitation and domestic servitude and that women and children from China, Malaysia, the Philippines and Thailand are trafficked to Papua New Guinea for forced prostitution. Men are trafficked to logging and mining camps for the purpose of forced labour. This report further indicates that Government officials facilitate trafficking by accepting bribes to allow illegal migrants to enter the country or by ignoring victims forced into prostitution or labour.

In light of this situation, the Committee expresses its ***deep concern*** that comprehensive legislation prohibiting all forms of trafficking of both boys and girls has yet to be adopted. It also expresses its ***concern*** regarding allegations of complicity by government officials in the trafficking of children. ***It urges the Government to take the necessary measures, as matter of urgency, to adopt legislation prohibiting the sale and trafficking of all persons under 18, for the purposes of labour and sexual exploitation. The Committee also urges the Government to redouble its efforts to ensure that perpetrators of human trafficking, and complicit government officials, are prosecuted and that sufficiently***

*effective and dissuasive penalties are imposed. It requests the Government to provide information in its next report on progress made in this regard.*

*Clause (b). Use, procuring or offering of a child for prostitution, or for the production of pornography or for pornographic performances.* Following its previous comments, the Committee notes with **satisfaction** that section 229K of the Criminal Code, as amended by the Criminal Code (Sexual Offences and Crimes Against Children Act) of 2003, prohibits inviting, persuading or inducing a child to engage in prostitution, in addition to prohibiting participating as a client in an act of child prostitution. The Committee also notes that pursuant to section 229J of the Criminal Code, a child is defined in this section as a person under the age of 18 years and that child prostitution is defined as the provision of any sexual service by a person under the age of 18 years for financial or other reward, whether paid to the child or some other person.

Following its previous comments, the Committee notes with **interest** that section 229R of the Criminal Code prohibits using, procuring or causing a child to be used for the production of child pornography. Section 229S of the Criminal Code also prohibits producing, distributing, publishing, selling, importing or exporting child pornography. Lastly, the Committee notes that section 229J defines child pornography as any photographic, film, video or other visual representation showing a person who is (or who is depicted as being) under the age of 18 years and is engaged in, or is depicted as being engaged in, sexual activity.

*Clause (c). Use, procuring or offering of a child for illicit activities.* The Committee previously noted that the relevant legislation does not specifically prohibit the use, procuring or offering of a child for the production and trafficking of drugs.

The Committee notes the Government's statement the Department of Labour and Industrial Relations undertook, as part of the review process of the Employment Act, a scoping mission of the Employment Act, which concluded that where other legislation does not adequately address the worst forms of child labour, it is appropriate to fill these gaps through the Employment Act. The Committee also notes the Government's statement that the use and procuring of children for illicit activities is slowly rising. **Recalling that, pursuant to Article 3(c) of the Convention, the use, procuring or offering of a child for the purpose of illicit activities is one of the worst forms of child labour, and that pursuant to Article 1, member States must take immediate and effective measures to secure the elimination of these worst forms of as a matter of urgency, the Committee urges the Government to take the necessary measures to ensure that provisions prohibiting this worst form of child labour are adopted in the near future, within the framework of the Employment Act review. It requests the Government to provide information on progress made in this regard, and to provide a copy of the relevant legislation, once adopted.**

*Articles 3(d) and 4(1). Hazardous work and determination of these types of work.* In its previous comments, the Committee noted that the legislation prohibits hazardous work, night work and work in mines for persons under 16 years of age. It also noted that apart from a definition of "heavy labour", the national legislation did not determine the types of hazardous work that were prohibited for children under 18 years of age. The Government indicated that a National Child Rights Monitoring Committee was established to examine issues affecting children, including the minimum age and working in hazardous environments. The Committee further noted the Government's indication that the review of the occupational safety and health legislation would begin in 2008 and address issues pertaining to hazardous work and determination of hazardous work.

The Committee notes the information in the Government's report that the Department of Labour and Industrial Relations will be following up with the National Child Rights Monitoring Committee on this topic. The Committee also notes the indication in the Government's report that the conditions of work for young people will be examined through the ongoing Employment Act review. It further notes the Government's statement that the review of the occupational health and safety related legislation has yet to begin, although the Government is in the process of consulting with the Government of Fiji for assistance in the process of the legislative review. **The Committee urges the Government to take the necessary measures, within the context of the ongoing legislative review, to ensure that provisions which prohibit children under the age of 18 years from performing hazardous work, and which determine these types of hazardous work, are adopted in the near future, after consultation with the social partners. It requests the Government to provide information on progress made to this end and to provide a copy of the new legislation, once it has been adopted.**

*Article 5 of the Convention and Part V of the report form. Monitoring mechanisms and the application of the Convention in practice.* The Committee previously noted the Government's indication that there were gaps and loopholes in the existing structures and monitoring mechanisms with regard to child trafficking, prostitution and children's involvement in illicit activities. Given this indication, the Committee expressed the hope that the Government would conduct a child labour survey to determine the magnitude of the worst forms of child labour and requested the Government to provide this information when available.

The Committee notes the Government's statement that the worst forms of child labour are rising in the country due to, inter alia, growth in the mining and agriculture sectors, the increasing cost of living, the breakdown of basic infrastructure and the increasing difficulties with regard to law and order. The Government identifies several steps necessary to address this growing problem: better collaboration between various decision-making actors, the strengthening of legislation regarding children's issues and the improved enforcement of legislation through inspections. The Committee

also notes the statement in the report on the worst forms of child labour in Papua New Guinea available at the website of the Office of the High Commissioner for Refugees (www.unhcr.org) that, while the Department of Police and the Department of Labour and Industrial Relations are responsible for implementing and enforcing child labour laws, enforcement by these departments is poor due to a lack of resources and cultural acceptance of child labour. The Committee expresses its *concern* at the increasing incidence of the worst forms of child labour in the country, and at the weak monitoring mechanisms for the prevention of this phenomenon. ***It urges the Government to take the necessary measures, including through the allocation of additional resources, to strengthen the capacity of the Department of Police and the Department of Labour and Industrial Relations in terms of monitoring and combating the worst forms of child labour. It requests the Government to provide information on the measures taken in this respect and on the results achieved. Lastly, the Committee urges the Government to take the necessary measures to ensure that sufficient data on the prevalence of the worst forms of child labour in Papua New Guinea is available, by conducting a child labour survey.***

*Article 7(2). Effective and time-bound measures. Clause (e). Take account of the special situation of girls. Child victims of prostitution.* The Committee previously noted the Government's indication that the number of girls (some as young as 13) engaging in prostitution as a means of survival was rising in urban centres of the country. It also noted the Government's indication that it was not doing enough to protect and safeguard victims of prostitution, and that only churches and civil society organizations were providing rehabilitation programmes.

The Committee notes the Government's statement that prostitution is a growing problem in both urban and rural areas. The Committee also notes the Government's indication that UNICEF conducted studies on this subject, which will be used to develop approaches for removing children from this worst form of child labour. The Committee further notes the Government's indication that measures will be taken within the framework of the ILO-IPEC *Time-bound Programme* entitled "Tackling child labour through education" (TACKLE project), and that the Department of Labour and Industrial Relations will coordinate with other institutions to provide the necessary assistance to these children, in addition to seeking tougher penalties for perpetrators.

The Committee notes the information in the Government's report to CEDAW of 22 May 2009, from a recent study on sex workers, that the median age for highway-based prostitutes was 16 years of age, and the median age for non-highway-based prostitutes was 17 years of age (CEDAW/C/PNG/3, page 52). The Committee also notes the indication in the Trafficking Report that the laws prohibiting prostitution are selectively or rarely enforced, even in cases involving children. ***The Committee expresses its concern at the prevalence of the commercial sexual exploitation of children in Papua New Guinea and urges the Government to take effective and time-bound measures, within the framework of the TACKLE project, to provide the necessary and appropriate direct assistance to persons under 18 to remove them from this worst form, and provide for their rehabilitation and social integration. It also requests the Government to take the necessary measures to ensure that those responsible for the commercial sexual exploitation of children are prosecuted and punished with sufficiently effective and dissuasive penalties.***

The Committee is raising other points in a request addressed directly to the Government.

## Paraguay

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee previously noted that, according to a 2005 study on the trafficking of persons in Paraguay by the NGO Grupo Luna Nueva referred to by the International Trade Union Confederation (ITUC) in its comments, the trafficking of persons, including boys and girls, at both the international and domestic levels, was on the increase in the country. The number of cases of trafficking reported increased from eight in 2002, involving 12 girls under 18 years of age, to 118 in 2005, involving 145 girls under 18 years of age. According to the same study, Paraguay is a country of origin and of destination. Of the 145 girls involved in the cases of trafficking of persons reported in 2005, around 62 per cent were taken to Argentina, approximately 28 per cent were displaced within the country and 10 per cent were removed to other countries, including Brazil. The Committee observed that, although section 129 of the Penal Code prohibits the international trafficking of persons for prostitution, it does not prohibit the international trafficking of persons for economic exploitation or domestic trafficking. Noting the convergent information demonstrating the existence of the international and domestic trafficking of young persons under 18 years of age for both economic and sexual exploitation, the Committee observed that the national legislation applicable to this worst form of child labour displayed shortcomings.

The Committee notes the Government's information that the Inter-institutional Roundtable for Trafficking for the Prevention and Combatting of Trafficking in Persons (Roundtable for Trafficking), which is coordinated by the Ministry of External Affairs, was created in 2005 with the objective of elaborating policies, programmes and projects to prevent, punish and combat trafficking in persons. It notes with *satisfaction* that, as indicated by the Report for 2004–08 of the Roundtable for Trafficking supplied by the Government (Roundtable for Trafficking Report) new sections 129b and 129c of the Penal Code, as inserted by Act No. 3440/08, punish trafficking for the purposes of prostitution, slavery and forced labour through means of force, threats, deception, or trickery, prescribing penalties of up to 12 years' imprisonment. The same penalty applies to anyone who acts for commercial purposes or as a part of an organized group. Moreover, the



consent of the victim does not constitute anymore a mitigating circumstance. The Committee notes the Government's indication that the Legislative Committee of the Roundtable for Trafficking at present is reviewing a bill on combating trafficking of persons, which would cover all aspects of trafficking, including prevention, investigation, sanctions, assistance and social rehabilitation of victims. ***The Committee requests the Government to provide information on any developments in adopting the Bill on combating trafficking in persons and to supply a copy of it once adopted.***

*Clause (b). Use, procuring or offering of children for prostitution.* The Committee previously noted the ITUC's comments that the majority of child victims of prostitution were girls; however, also transsexual boys began to work in prostitution from the age of 13 years and were often the victims of trafficking to Italy. It further noted that, according to a study carried out by ILO-IPEC in June 2002 on the commercial sexual exploitation of girls and boys and to the Report of the Special Rapporteur on the sale of children, child prostitution and child pornography of 9 December 2004 (E/CN.4/2005/78/Add.1), two out of three sex workers were minors. It also noted that, since 2004, as a result of the awareness-raising campaigns undertaken in the various cities of the country on this subject and the adoption of regulations on the closure of bars and brothels, the problem became more clandestine and children engaged in prostitution were more likely to be found in flats and on the outskirts of towns. Finally, the Committee observed that, although the national legislation is in conformity with the Convention, the use, procuring or offering of children under 18 years of age for prostitution still occurred in practice.

The Committee notes the Government's information that in 2009 the National Committee for Childhood and Adolescence (SNNA) reactivated the Inter-institutional Roundtable for the Elimination of the Commercial Sexual Exploitation of Children, one of the objectives of which is to be recognized at the national level. It further notes the Government's indication that a study on transsexual child victims of sexual exploitation was carried out in collaboration with the ILO. The Committee notes that, according to the Roundtable for Trafficking Report, the Government of Paraguay jointly with the government members and associates of MERCOSUR, are carrying out the Niño Sur initiative to defend the rights of children and adolescents in the region. The initiative aims to raise awareness of commercial sexual exploitation, improve country legal frameworks, and exchange best practices to tackle issues related to victim protection and assistance. The Paraguayan Ministry of Tourism is part of the Joint Group for the Elimination of Commercial Sexual Exploitation of Children in Tourism, which conducts prevention and awareness-raising campaigns to combat the commercial exploitation of children in Latin America. ***The Committee requests the Government to provide information on any activities carried out by the Inter-institutional Roundtable for the Elimination of the Commercial Sexual Exploitation of Children, in the framework of the Niño Sur initiative and by the Joint Group for the Elimination of Commercial Sexual Exploitation of Children in Tourism, and the results achieved. It also requests the Government to provide information on the results of the study on transsexual child victims of sexual exploitation, and on any action taken following this study. It finally requests the Government to provide information on the application of sanctions in practice, including, for instance, reports on the number of convictions.***

*Article 5. Monitoring mechanisms. Trafficking and commercial sexual exploitation.* The Committee previously noted the ITUC's comments that very few controls were carried out at borders, which made it very easy to transport children from Ciudad del Este or from Pedro Juan Caballero to Foz de Iguazú in Brazil, and from Encarnación and Puerto Falcón to Posadas and Clorinda in Argentina. It noted the ITUC's indication that Argentinian customs officers regularly apprehend minors who have crossed the Paraguayan border without being intercepted and either do not have identity documents or have documents belonging to other persons. By way of example, according to a study carried out by the International Organization for Migration (IOM), up to November 2004 Argentinian customs officers on the borders of Puerto and Falcón-Clorinda refused entry to around 9,000 persons, of whom 40 per cent were minors without proper documentation. The ITUC added that several Paraguayan officials in the Department of Migration and Identification and the Department of Immigration believed that they did not have the authority to intervene in cases of trafficking and supposed that the offence of the trafficking of persons could only be committed in the country of destination of the victims. Accordingly, victims of trafficking were unlikely to lodge complaints as they lacked confidence in the judicial system and feared reprisals from the traffickers. The Committee further noted the ITUC's information that few cases of trafficking of persons were reported and there were few prosecutions also due to the lack of awareness of the phenomenon in society, particularly among the police. It finally noted the ITUC's statement that the police did not have personnel specialized in investigations into the commercial sexual exploitation of children and that law enforcement agencies did not clearly understand that children engaged in prostitution may be victims of crime and that, in practice, they were often treated as prostitutes and criminals.

The Committee notes the information contained in the Roundtable for Trafficking Report that a special Unit for Trafficking of Persons has been created within the police. It further notes the information contained in the Government's report that, in the framework of an inter-institutional five-year project to address situations of abuses against children, adolescents and women (2008–13), special units dealing with children, adolescents and women have been created and trained. These units will also intervene in cases of the commercial sexual exploitation of children. It finally notes that one of the objectives of the ILO-IPEC project "Combating the worst forms of child labour through horizontal cooperation in South America 2009–13", is strengthening the labour inspection and other law enforcement agencies, such as labour courts, judges and prosecutors. ***The Committee requests the Government to redouble its efforts to strengthen the capacity of the law enforcement agencies, particularly the police, the judiciary and custom officers in combating the***

*trafficking and commercial sexual exploitation of children, and to provide information on any further measures taken in this regard. It also requests the Government to provide information on the results of the ILO–IPEC project “Combating the worst forms of child labour through horizontal cooperation in South America” in terms of strengthening law enforcement agencies.*

*Article 7(1). Penalties. Trafficking.* The Committee previously noted the ITUC’s indication that, between 2002 and 2004, penal sanctions were only imposed in 21 cases of trafficking. It notes the information contained in the Roundtable for Trafficking Report that, according to data of the SNNA, the Women Unit, and the Attorney-General’s Office, 84 cases of trafficking persons for sexual and labour exploitation, which involved 103 women and 43 children and adolescents (42 girls and one boy under 18 years of age), were reported between 2004 and 2008. According to the same source, in February 2009, 15 persons were condemned for trafficking of persons, whilst another 50 were being prosecuted by the Attorney-General. However, the Attorney-General’s Office indicate that only 50 per cent of the cases of trafficking occurring between 2004 and 2008 had been brought before the judicial authorities. The Roundtable for Trafficking Report also indicates that, whilst actions taken in 2008 to address trafficking led to an increase in the number of cases reported in the same year compared with previous years, the number of non-reported cases of trafficking is still very relevant. The Committee notes information contained the Government’s report that, according to data provided by the Anti-Trafficking Prosecutorial Unit established by the Paraguayan Attorney-General’s Office in 2008, between 2008 and 2009, 22 trials regarding cases of trafficking were concluded with the punishment of the offenders.

The Committee, however, notes that, according to the 2009 report on trafficking of persons in Paraguay, available on the Office of the High Commissioner for Refugees website ([www.unhcr.org](http://www.unhcr.org)) (Trafficking Report 2009), during 2008 some government officials, including police, border guards and elected officials reportedly facilitated trafficking crimes by accepting payments from traffickers; other officials reportedly undermined investigations or alerted suspected traffickers of impending arrests. Despite the serious nature of such allegations, Paraguayan authorities took only some limited steps to investigate acts of trafficking-related corruption and there were no prosecutions related to official complicity in trafficking offences. It also notes that the Committee on the Rights of the Child (CRC), in its concluding observations of 29 January 2010, while welcoming the measures adopted by Paraguay to combat trafficking, was concerned that Paraguay continued to be a source and destination country for women and children victims of trafficking for sexual exploitation and forced labour and urged the state party, amongst others, to investigate and prosecute all cases of trafficking of children to avoid impunity (CRC/C/PRY/CO/3, paragraphs 72 and 73). The Committee expresses its *deep concern* at the weakness of the national institutions responsible for enforcing the legislation on trafficking, as well as at allegations of complicity of government officials with human traffickers. *The Committee therefore urges the Government to redouble its efforts to strengthen the capacity of law enforcement agencies in order to ensure that persons who traffic in children for the purposes of labour or sexual exploitation are in practice prosecuted, and that sufficiently effective and dissuasive penalties are imposed. It finally requests the Government to continue to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children.*

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from becoming engaged in the worst forms of child labour, removing them from these worst forms of child labour and ensuring their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* The Committee previously noted that one of the objectives of the ILO–IPEC project on the prevention and elimination of domestic work by children and the commercial sexual exploitation of children was to prevent the engagement of children in commercial sexual exploitation and to remove children who are already engaged in this activity. It noted that, during the course of 2006, around 150 children were removed from this worst form of child labour and received psychological help and assistance in their schooling. At the beginning of 2007, around 50 children were detected in situations of commercial sexual exploitation. The Committee also noted that shelters for child victims of commercial sexual exploitation were established.

The Committee notes the Government’s information that a trafficking unit has been created within the SNNA, aimed at assisting child victims of trafficking until their social integration. The operational plan of the SNNA for 2009 is also aimed at strengthening this unit with appropriate human resources. Moreover, in order to prevent trafficking of children and assist child victims of trafficking, regional offices of the SNNA were created in the border departments of Alto Paraná, Ciudad del Este and Encarnación. The Committee notes the Government’s information that, according to the data of the trafficking unit of the SNNA, between 2007 and 2008, 20 cases of children or adolescents victims of trafficking were reported and addressed, while 24 cases were reported between January and August 2009.

The Committee notes the Government’s indication that two programmes were launched with the support of the EU and in collaboration with ILO–IPEC. The first – Alas Abiertas – is aimed at eliminating the trafficking and commercial sexual exploitation of children in Encarnación and is carried out by the NGOs BECA and CECTEC. The second is aimed at eliminating the internal trafficking of children through the rehabilitation of child victims of trafficking and is implemented by the NGOs Luna Nueva and INECIP. As a result of the second project: (a) the number of child victims of trafficking and commercial sexual exploitation decreased; (b) assistance to child victims of trafficking and commercial sexual exploitation improved; and (c) enforcement mechanisms were improved. The Committee notes the Government’s information that the SNNA funds NGOs in charge of preventing the trafficking and commercial sexual exploitation of children and protecting and assisting child victims of these worst forms of child labour. In this framework, the Foundation

Arco Iris is carrying out a one-year project (May 2009–May 2010) for assisting, through medical, psychological and legal assistance, children and adolescents victims of trafficking, and ensuring their rehabilitation and social integration, while Luna Nueva is in charge of providing a shelter for child victims of commercial sexual exploitation. ***The Committee requests the Government to provide information on the number of child victims of trafficking and commercial sexual exploitation who have been effectively removed, rehabilitated and socially integrated as a result of the measures implemented.***

*Clause (d). Children at special risk. Children working in domestic service – the “criadazgo” system.* In its previous comments, the Committee noted the ITUC’s indication that, according to a study carried out between 2000 and 2001, over 38,000 children between the ages of 5 and 17 years worked in domestic service in the houses of others. Moreover, children engaged under the “criadazgo” system, lived and worked in the houses of others in exchange for accommodation, food and basic education. The numbers involved were not known since, as these children were normally considered not to be working, they were not taken into account in statistics. However, the ITUC indicated that a study undertaken in 2002 by the Documentation and Studies Centre showed that nearly 60 per cent of children working in domestic service and those engaged under the “criadazgo” system were aged 13 years and under. According to the ITUC, in so far as these children do not control their conditions of employment, a majority of them work under conditions of forced labour. The Committee noted that section 2(22) of Decree No. 4951 of 22 March 2005, issued under Act No. 1657/2001 and approving the list of hazardous types of work, provides that domestic work by children and work under the “criadazgo” system are considered to be hazardous types of work. It also noted that, according to ILO–IPEC information relating to the implementation of the project on the prevention and elimination of domestic work by children and the commercial sexual exploitation of children, children at risk of being engaged in domestic service and children who worked as domestics were enrolled in school.

The Committee notes the Government’s information that a study on child domestic work in urban and rural areas of Paraguay was carried out in collaboration with ILO–IPEC in 2005. It notes that this study indicates that, according to data of 2002, almost 11 per cent of children between 10 and 17 years work as remunerated domestic workers. Moreover, approximately one third of the child domestic workers are employed as remunerated domestic workers, whilst two-thirds work under the “criadazgo” system. The Committee further notes that the CRC, in its concluding observations of 29 January 2010, expressed its deep concern on the persistence of the practice of “criadazgo” and recommended the state party to continue to eliminate this practice (CRC/C/PRY/CO/3, paragraphs 66 and 67). ***Noting the absence of information on this point, the Committee urges the Government to take effective and time-bound measures to protect children working as domestic workers or under the “criadazgo” system from the worst forms of child labour. It also requests the Government to provide information on the manner in which the enforcement of section 2(22) of Decree No. 4951 of 22 March 2005, which prohibits children under 18 years from performing domestic work and work under the “criadazgo” system as types of hazardous work, is ensured in practice, including information on the number and nature of penalties applied.***

*Clause (e). Special situation of girls.* The Committee previously noted that, according to the ITUC’s comments, activities relating to commercial sexual exploitation are linked to international trafficking networks and particularly affect girls. ***Noting that no information was provided on this point, the Committee requests the Government to provide information on the manner in which it intends to pay particular attention to such girls and thereby prevent them from being engaged in commercial sexual exploitation and remove them from this worst form of child labour.***

*Article 8. Enhanced international cooperation.* Following its previous comments, the Committee notes with ***interest*** that the Government is carrying out various projects of regional cooperation to combat the trafficking of children for sexual exploitation. It notes the Government’s information that the project “Ciudades gemelas”, which is aimed at establishing a regional strategy for combating trafficking of children and adolescents for sexual exploitation in MERCOSUR and is funded by the Inter-American development Bank (IDB), is at its initial stage. It involves 14 border cities of MERCOSUR (Argentina, Brazil, Uruguay and Paraguay), including Ciudad des Este (Paraguay), Foz de Iguazu (Brazil) and Puerto Iguazú (Argentina). The project is aimed at preventing and addressing trafficking through the mobilization, organization, strengthening and integration of local networks and services. The Committee notes the Government’s information that the project called “Exchange of experiences and legal Argentinian framework on combating trafficking, with special emphasis on children and adolescents” between Paraguay (through the SNNA) and Argentina, is awaiting approval. This is aimed, among others, at: training Paraguayan officials at the National Committee for Childhood, Adolescence and Family in Argentina; elaborating a bill on trafficking in persons for Paraguay; developing protocols for assistance to victims of trafficking; and a procedural manual for assisting victims. ***The Committee requests the Government to continue to supply information on the measures taken to eliminate the cross-border trafficking of children, and on results achieved.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes the statistics supplied by the Government on children involved in trafficking between 2008 and 2009. ***It requests the Government to continue to provide information on the nature, extent and trends of the worst forms of child labour, including updated statistics on the number of children under 18 years involved in domestic work, working under the “criadazgo” system, and involved in commercial sexual exploitation.***

The Committee is raising other points in a request addressed directly to the Government.

## Senegal

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that the Government is participating in the ILO–IPEC project entitled “Contribution to the abolition of child labour in French-speaking Africa”. It also noted that the Government is participating in the ILO–IPEC **Time-bound Programme (TBP)** on the worst forms of child labour. In the context of these two projects, the Government has adopted a strategy for the implementation of national initiatives to combat child labour through education, vocational training and apprenticeship. As a result of the implementation of the abovementioned ILO–IPEC project and the **TBP**, 6,208 children have been prevented from entering the labour market prematurely. Furthermore, 6,023 children have been prevented from working through the provision of education services. However, the Committee noted that, according to the statistics published in the 2007 analysis report on the national survey of child labour in Senegal carried out in 2005, of an estimated 3,759,074 children aged between 5–17 years, 1,378,724 (36.7 per cent) are involved in some activity or work in Senegal and that in 2005 more than two out of ten (21.4 per cent) children aged between 5–9 years had already worked. The large majority of child workers are found in the agricultural sector (75.4 per cent) followed by the stock breeding and fisheries sectors (8 per cent), handicrafts and work on looms (4 per cent), domestic and household jobs (3.1 per cent), sales and services to private persons (5.5 per cent), construction and public works (2.5 per cent) and other (1.5 per cent).

The Committee notes the Government’s indication that information on the impact of the action programmes under way will be communicated at a later date. It notes that, according to the joint report of the ILO–IPEC, UNICEF and the World Bank entitled “Understanding children’s work and youth employment in Senegal”, dated February 2010, in 2005, the number of children aged between 5–14 years who were economically active was estimated at more than 450,000, that is more than 15 per cent of children in this age group. The percentage is much higher in rural environments (21 per cent) than in urban environments (5 per cent). Agriculture is the sector that employs the largest number of children, that is 80 per cent of working children aged between 5–14 years, and nearly 85 per cent of these children are unpaid family workers. The report also indicates that child domestic labour is common and that nearly 22 per cent of children at work are involved in this activity in urban environments. Furthermore, those children aged between 5–14 years who are working as paid domestic servants devote an average of 52 hours per week to this activity. Taking into account all types of economic activity, children aged between 5–14 years work 27 hours per week on average. The study also shows that more than 160,000 young persons aged between 15–17 years are forced to carry out hazardous work. ***Expressing its serious concern at the high number of children under 15 years of age working, as well as at the number of hours devoted to these activities, the Committee once again urges the Government to redouble its efforts to combat child labour, paying particular attention to children engaged in hazardous work. Furthermore, it once again requests the Government to provide information in its next report on the number of children prevented from entering the labour market prematurely and the number of children withdrawn from work in the context of the action programmes currently under way.***

*Article 2(1). Scope of application.* In its previous comments, the Committee noted that, although the national legislation excludes all forms of self-employment by children, in practice, poverty has facilitated the development of such activities among children (shoe cleaners, street vendors), who engage in them illegally. It noted the allegations made by the National Confederation of Workers of Senegal (CNTS) on 1 September 2008 that even if children working on their own account can be regarded as traders, the minimum age is not respected in the informal sector. In this regard, a number of activities have been carried out by the Government in collaboration with the ILO–IPEC with a view to withdrawing self-employed children from work.

The Committee notes the information provided by the Government in its report concerning the impact of these activities. The Government indicates that under the project to support the social reintegration of children working in refuse scavenging at the Mbeubeuss dump, led by the NGO ENDA–GRAF, 149 children have been removed and enrolled in alternative training. Furthermore, 300 children aged between 12–14 years working in the handicrafts sector in the outlying suburbs of Dakar have benefited from basic training and training in skills in the context of the experimental project to combat child labour through skills development and the elimination of illiteracy, developed in collaboration with the ILO–IPEC. ***The Committee requests the Government to redouble its efforts to ensure that children under 15 years of age who are working on a self-employed basis are removed from work. It requests the Government to continue providing information on the measures taken in this regard and the results achieved.***

*Minimum age of admission to employment or work.* The Committee previously noted that section L.145 of the Labour Code allows waivers from the minimum age of admission to employment by order of the Minister in charge of labour, taking account of local circumstances and the tasks to be performed.

The Committee notes with **regret** the Government’s indication that the reform of its legislation is still being considered. It reminds the Government that it specified a minimum age of 15 years upon ratifying the Convention and that the waiver from the minimum age of admission to employment, provided for under section L.145 of the Labour Code, is inconsistent with this provision of the Convention. ***Noting that the Government has been referring to the reform of its legislation since 2006, the Committee once again urges it to take the necessary steps to ensure the amendment of its***

**legislation as soon as possible to bring it into line with the Convention by allowing waivers from the minimum age for admission to employment or work only in the cases strictly set forth in the Convention. It requests it to provide information on the progress made in this regard.**

*Article 3(3). Admission to hazardous work from the age of 16 years.* In its previous comments, the Committee noted that section 1 of Order No. 3748/MFPTEOP/DTSS of 6 June 2003 on child labour provides for a minimum age of 18 years for admission to hazardous work. It noted, however, that, according to Order No. 3750/MFPTEOP/DTSS of 6 June 2003 determining types of hazardous work prohibited for children and young persons (Order No. 3750), certain types of hazardous work could be performed by persons under 16 years of age. For example, under section 7 of Order No. 3750 of 6 June 2003, male children under 16 years of age may carry out the lightest work in underground mines, quarries and other mineral extraction plants, such as the sorting and loading of ore, the handling and haulage of trucks within the weight limits set by section 6 of the same Order, and the overseeing or handling of ventilation equipment. Furthermore, children of 16 years of age are allowed to perform the following types of work: work using circular saws provided that authorization in writing has been obtained from the labour inspector (section 14); operation of vertical wheels, widgets and pulleys (section 15); operation of steam valves (section 18); work on mobile platforms (section 20); and the performance of hazardous feats in public performances in theatres, cinemas, cafes, circuses and cabarets (section 21). It also noted that the Government had undertaken to remedy all the provisions that are inconsistent with the Convention in the context of the legislative revision under way and to take the Committee's comments into account.

The Committee notes the information provided by the Government that the announced legislative revision is still under way. It also notes that the 13 decrees relating to occupational safety and health adopted on 15 November 2006 do not specifically take into account the situation of children under 18 years of age who are engaged in hazardous work, as authorized under Order No. 3750 of 6 June 2003. The Committee reminds the Government that, under *Article 3(3)* of the Convention, hazardous work, such as the tasks provided for in Order No. 3750 of 6 June 2003, may be performed by young persons of over 16 years of age provided that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***Noting that the Government has been referring to the reform of its legislation since 2006, the Committee urges it to take the necessary measures to ensure that its legislation is amended as soon as possible so as to ensure that children under 16 years of age may not be employed in underground mines and quarries. It also once again requests the Government to take the necessary measures to ensure that, as part of the ongoing legislative revision, the conditions laid down in Article 3(3) of the Convention are fully ensured for young persons aged between 16–18 years engaged in the work provided for in Order No. 3750 of 6 June 2003. It requests the Government to provide information on the progress made in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee takes note of the communication of 23 March 2010 from the National Federation of Independent Trade Unions of Senegal (UNSA) and of the Government's report.

*Articles 3(a) and 7(1) of the Convention.* 1. *Sale and trafficking of children and penalties.* The Committee noted previously that according to section 2 of Act No. 02/2005 of 29 April 2005 on measures to combat the trafficking of persons and similar practices and the protection of victims, the maximum sentence is applied when the offence of trafficking is committed against a minor. The Committee nonetheless observed, that although prohibited by law, in practice the trafficking of children for economic or sexual exploitation remains a cause of concern.

The Committee notes the information from the Government to the effect that prosecution and penalties are established in Act No. 02/2005 of 29 April 2005 and Order No. 3749 of 6 June 2003 defining and prohibiting the worse forms of child labour, and constitute measures to combat child trafficking effectively. However, the Committee notes that although the Act to combat human trafficking has been in force since April 2005, according to the Global Report on Trafficking in Persons published in 2009 by the United Nations Office on Drugs and Crime (UNODC) the number of persons arrested for trafficking in persons and related offences fell from 37 in 2004 to 15 in 2006. It further notes that according to the report entitled "Trafficking in Persons Report 2010 – Senegal", published on the website of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), Act No. 02/2005 of 29 April 2005 has primarily been used to combat the smuggling of migrants to Spain. Furthermore, according to the framework document of the National Action Plan to combat the trafficking of persons, particularly women and children, in Senegal of 24 June 2008, Act No. 02/2005 of 29 April 2005 has never been used to prosecute the offence of trafficking. According to the abovementioned document, this is largely because those responsible for its enforcement very often have little or no knowledge of Act No. 02/2005 of 29 April 2005 because the texts of laws are not disseminated.

According to the Trafficking in Persons Report 2010, in March 2009 the Senegalese police dismantled a human trafficking network sending girls from Senegal to Morocco for forced domestic work. However, this report indicates that the traffickers were released a few weeks after their arrest and no charges were brought because they were highly placed and influential members of Senegalese society. The Committee expresses its *deep concern* at the failure to apply Act No. 02/2005 of 29 April 2005 and the allegations of the impunity of certain traffickers. ***The Committee urges the Government to take immediate and effective measures to ensure that thorough investigations and the robust prosecution of persons engaging in the sale and trafficking of children under 18 years of age are carried out, taking***

*particular care to build the capacity of law enforcement bodies by disseminating Act No. 02/2005 of 29 April 2005. It requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied to the persons concerned.*

2. *Forced or compulsory labour and penalties. Begging.* In its previous comments the Committee noted that the Committee on the Rights of the Child, in its concluding observations on the second periodic report of Senegal in October 2006 (CRC/C/SEN/CO/2, paragraphs 60 and 61), expressed concern at the large number of working children and in particular at the practices of the Koranic schools run by *marabouts* who use *talibé* children on a large scale for economic gain by sending them to agricultural fields or to the streets for begging and other illicit work to earn money, thus preventing them from having access to health, education and good living conditions. It further noted that although section 3(1) of Act No. 02/2005 of 29 April 2005 forbids the organization, for economic gain, of begging by others or the employment, procuring or deceiving of someone with a view to getting that person to beg, or the exertion of pressure on someone to beg or to continue to beg, including where the offence is against a minor, the *talibé* phenomenon remains a concern in practice.

The Committee takes note of the comments by UNSAS indicating that the situation of street children is more worrying than ever because begging is on the rise, particularly in the country's large urban areas. It notes the Government's statement that the necessary measures are being taken to enforce the national legislation on begging. It notes, however, from the framework document the National Action Plan to combat trafficking in persons, particularly women and children, in Senegal of 24 June 2008, that Act No. 02/2005 of 29 April 2005 has never been used to prosecute the offence of begging. Furthermore, according to the Trafficking in Persons Report 2010, there was evidence of some official tolerance on a local and institutional level for the trafficking of *talibé* children for forced begging.

The Committee notes that according to recent information (of 26 March 2008) from UNICEF, there are an estimated 100,000 street children in Senegal. Furthermore, according to a joint report of November 2007 by ILO-IPEC, UNICEF and the World Bank entitled "Child begging in the Dakar region", in Dakar alone around 7,600 children are affected by the widespread phenomenon of begging. *Talibé* account for most of the child beggars (90 per cent). Child beggars are mostly very young, the average age being between 11 and 12, and most of them (95 per cent) come from other regions of Senegal or neighbouring countries such as Guinea-Bissau, Guinea, Mali and the Gambia. The report also reveals that the *talibé* children spend six hours a day begging on average, which would appear to leave them little time for Koranic study.

The Committee recalls that in its 2006 observation addressed to Niger on the Worst Forms of Child Labour Convention, 1999 (No. 182), it noted that three forms of begging were to be observed: *conventional begging*, *educational begging* and *begging that uses children for purely economic ends*. *Conventional begging* is the form practiced by indigent people. *Educational begging* is the form practiced in accordance with the Muslim religion as a means of learning humility for the person practising it and compassion for the alms-giver. Lastly, *begging that uses children for purely economic ends* makes children a source of business. ***Expressing its deep concern at the extent to which talibé children are used for purely economic purposes, the Committee urges the Government to take immediate and effective measures to ensure that marabouts who use begging by children under 18 years of age for purely economic purposes are, in practice, prosecuted and that sufficiently effective and dissuasive sanctions are applied to them pursuant to Act No. 02/2005 of 29 April 2005. In this connection the Committee asks the Government to take the necessary steps to ensure that thorough investigations and robust prosecutions are carried out. It requests the Government to send information on the measures taken and the results obtained, including the number of investigations held and the number of prosecutions and convictions. To the extent possible, all information provided should be disaggregated by sex and age.***

*Article 6. Programmes of action. National Action Plan to combat trafficking in persons.* The Committee notes with *interest* the adoption in June 2008 of a National Action Plan to combat trafficking in persons, particularly women and children (2008–13). According to the framework document of the National Action Plan, the plan focuses inter alia on the following goals: (i) reinforcing and adapting the legal framework for the protection of victims; (ii) applying the legislation effectively; (iii) ensuring free compulsory schooling; (iv) strengthening the system of social protection for the most vulnerable children in the areas that are the main sources of trafficking; (v) providing effective protection for witnesses and victims; and (vi) improving the care and rehabilitation of victims of trafficking. ***The Committee requests the Government to provide information on the implementation of the National Action Plan to combat trafficking in persons, particularly women and children, and on the measures taken and the results obtained under the Plan to eliminate the sale and trafficking of children under 18 years of age.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Street children and talibé children.* Further to its previous comments, the Committee notes the comments by UNSAS indicating that the measures taken for *talibé* children, although effective, are still inadequate. It notes in this connection the recommendation made by UNSAS that the social partners should be more closely involved in the search for solutions, particularly as regards fostering, education and social integration. The Committee notes the information from the Government to the effect that a project for education on family life in the *daaras* (Koranic schools) has been produced by the Ministry of the Family, National Solidarity, Women's Entrepreneurship and Microfinance. According to the Government, the project aims in particular to contribute to combating begging and the phenomenon of street children, to prepare *talibé* children for social and professional life by developing projects for educational and vocational activities and to promote the development of income-generating activities. It further notes that a partnership for the withdrawal and reintegration of

street children (PARRER) was established in February 2007 and is made up of members of the Senegalese administration, NGOs, the private sector, development partners, religious organizations, civil society and the media. The partnership has set itself the objective of encouraging the public authorities to apply the national legislation effectively while engaging in advocacy at the national, subregional and international level in order to abolish the phenomenon of street children. It further notes the information from the Government to the effect that between 2001 and 2009, 1,080 children were removed from begging. The Committee also notes from the “2008 Findings on the Worst Forms of Child Labour – Senegal”, a report published on the website of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), that the Ministry of the Family, National Solidarity, Women’s Entrepreneurship and Microfinance runs a programme of support to 48 Koranic schools that have undertaken not to engage *talibé* children in begging. ***The Committee is of the view that street children and talibé children are particularly exposed to the worst forms of child labour, and accordingly encourages the Government to redouble its efforts to identify, withdraw and reintegrate street children, particularly child beggars. It requests the Government to provide additional information on the measures taken and the results obtained under the project for education on family life in the daaras and by the partnership for the withdrawal and reintegration of street children.***

The Committee is raising other points in a request addressed directly to the Government.

## Sierra Leone

### **Minimum Age (Industry) Convention (Revised), 1937 (No. 59) (ratification: 1961)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation, which read as follows:

In its previous comments, the Committee had taken note of the draft Employment Act prepared with the ILO’s technical assistance. The Committee noted the information provided by the Government that section 34(4) of the draft Employment Act provides that “no child under the age of 18 years may work or be employed to perform any work that is likely to jeopardize his/her health, safety, or physical, mental, spiritual, moral or social development, or to interfere with his/her education. No employer shall continue to employ such a child after being notified in writing by a labour officer that the employment or work is injurious to health or dangerous”. The Committee observed that this section 34(4) of the draft Employment Act gives effect to *Article 5 of the Convention. It once again expresses the hope that the new Act will be adopted in the very near future in order to ensure complete conformity of the national legislation with the Convention on this point. The Committee requests the Government to communicate the text of the new Employment Act as soon as it is adopted.*

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

## Thailand

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* Following its previous comments, the Committee notes with *satisfaction* the adoption of the Anti-Trafficking in Persons Act which prohibits the trafficking of children for labour and sexual exploitation. Section 6(2) of the Anti-Trafficking in Persons Act defines trafficking of children as the procuring, buying, selling, vending, bringing from or sending to, detaining, confining, harbouring of a child for the purpose of exploitation, and section 4 defines a child as all persons under 18 years of age.

*Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously requested a copy of section 287 of the Penal Code. In this regard, the Committee notes that section 287 of the Penal Code prohibits, inter alia, producing or making any document, drawing, print, picture, photograph, film or tape which is “obscene”. However, the Committee notes the information in a document entitled “UNICEF urges quick government action on child pornography” of 11 October 2010, available on the UNICEF website ([www.unicef.org](http://www.unicef.org)), that reports indicate the open display and sale in the country of graphic sexual videos involving children. In this document, UNICEF urged the Thai authorities to bring to bear “the full force of the law” on those found to be producing, distributing or selling videos or any other material related to the sexual exploitation of children, and urged the Government to investigate where and how such videos are produced. Therefore, while noting that the production of child pornography appears to be prohibited in law, the Committee notes with *concern* that this worst form of child labour continues to be a problem in practice. ***The Committee accordingly urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions are carried out in practice for persons who use, procure or offer persons under 18 years of age for the production of pornography or pornographic performances. The Committee further requests the Government to provide information on whether the involvement of children in non-recorded pornographic performances (such as live performances) is prohibited in law.***

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular, for the production and trafficking of drugs.* In its previous comments, the Committee noted that while the production, importation, exportation, possession or consumption of narcotics is prohibited under the Narcotics Act of 1979, the use procuring or offering of a child under 18 years of age for this purpose did not appear to be prohibited. It also observed that, according to a rapid

assessment conducted by ILO–IPEC in 2002, children as young as 10 years of age participate in drug trafficking, and the majority of these are children are between 12 and 16 years and are used to buy or sell drugs.

The Committee notes the Government’s statement that, on this point, it is in the process of collecting information from relevant agencies. The Committee reminds the Government that pursuant to *Article 3(c)* of the Convention, the involvement of a person under 18 in illicit activities constitutes one of the worst forms of child labour, and that pursuant to *Article 1* of the Convention member States are required to take “immediate” measures to prohibit these worst forms as a matter of urgency. ***Observing that Thailand ratified the Convention in 2001, and that the use of children in the production and trafficking of drugs appears to be a problem in practice, the Committee urges the Government to take immediate measures to explicitly prohibit the use of children in the illicit activities in legislation as a matter of urgency.***

*Article 5. Monitoring mechanisms. Trafficking.* The Committee previously noted that the Royal Thai Police was in the process of establishing a specific unit responsible for combating trafficking of children and women (Division on the Suppression of Offences against Children, Youth and Women), and it requested information on the measures taken by this Division with regard to combating the trafficking of children.

The Committee notes the information in the Government’s report that the Division on the Suppression of Offences against Children, Youth and Women has formed teams for the investigation of particular persons and locations suspected to be linked to human trafficking and the use of child labour. It has assigned police officers (at deputy commander or commander levels) to monitor and accelerate the investigation of human trafficking cases, while coordinating with other relevant agencies. The Government indicates that the Division on the Suppression of Offences against Children, Youth and Women has formed campaign teams to sensitize communities, villages and factories and has launched a campaign against human trafficking, in conjunction with other government agencies and private sector organizations. The Committee also notes the information in the Government’s report that it has engaged in capacity building for officials to improve their understanding of the phenomenon and to ensure the efficiency of their anti-trafficking efforts. The Committee further notes the information in the ILO–IPEC Technical Progress Report on the second phase of the ILO–IPEC “Project to combat trafficking in children and women in the Mekong subregion” (TICW II Project) of 30 January 2008 (TICW II TPR) that “Operational Guidelines on identification of victims of trafficking in labour cases” have been developed, as a collaboration between the Ministry of Social Development and Human Security (MSDHS) and the Ministry of Labour as a coordinated response to cases of trafficking for the purpose of labour exploitation. The ILO–IPEC Technical Progress Report for the project “Support for national action to combat child labour and its worst forms in Thailand” of 10 September 2010 (ILO–IPEC TPR 2010) indicates that training was provided to labour inspectors and other key stakeholders on these Operational Guidelines in 2009. Nonetheless, the Committee notes the information in the UNODC report entitled “Global Report on Trafficking in Persons” of 2009 (UNODC Report) that the vast majority of foreign victims of trafficking identified between October 2006 and December 2007 were minors (76 per cent of trafficking victims) and that Thailand remains a source country of trafficking victims. ***The Committee therefore strongly urges the Government to redouble its efforts to strengthen the capacity of law enforcement officials responsible for the monitoring of trafficking in children, including those in the Division on the Suppression of Offences against Children, Youth and Women and border control officials, to ensure the effective implementation of the Anti-Trafficking in Persons Act. The Committee requests the Government to continue to provide information on measures taken in this regard.***

*Article 6. Programmes of action to eliminate the worst forms of child labour.* 1. *The ILO–IPEC TICW project and the National Plan on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women (NPA on Trafficking in Children and Women 2003–07).* The Committee previously noted the launching of the TICW Project in 2000 and noted that within the TICW II Project (2003–08), the National Committee on Combating Trafficking in Children and Women launched the NPA on Trafficking in Children and Women 2003–07. It requested information on the concrete impact of measures taken through these initiatives.

The Committee notes the information in the Government’s report that the implementation of the TICW II Project resulted in interventions in Phayao, Chiang Mai, Chiang Rai, Mukdaharn, and Bangkok. The Government indicates that the Chiang Mai Coordination Centre for the Protection of Children’s and Women’s Rights (Chiang Mai Coordination Centre) (under the MSDHS), developed a database on persons at risk for trafficking, as well the destination sites of vulnerable persons, and that this information was used by partnering agencies in the implementation of initiatives. The Government indicates that 306 community watchdog volunteers were trained in 124 villages in the Phayao Province, and efforts were made to include awareness raising on trafficking in a secondary school curricula. In this regard, the Committee notes the information from ILO–IPEC that within the context of the TICW II Project, the action programmes implemented included “Integrated hill tribe community development project for the prevention of trafficking in children and women (phase II)”, “Programme for the prevention of trafficking in children and women in Chiang Rai province”, “Strengthening the capacity of Ban Mae Chan School to launch a prevention programme on trafficking”, and “Trafficking in children and women for forced labour and sexual exploitation in Chiang Mai”. The Committee further notes the information in the Government’s report that combating the trafficking in persons is a top priority for the Government, and specific policies announced in this regard include capacity building, intelligence exchange between countries and awareness-raising campaigns. ***Observing that the NPA on Trafficking in Children and Women 2003–07 ended in 2007, and the TICW II Project concluded in 2008, the Committee urges the Government to take the necessary measures to***



*ensure that comprehensive national efforts are undertaken to combat the sale and trafficking of persons under the age of 18. It requests the Government to provide information on any ongoing or envisaged national plans of action addressing this phenomenon, and on the implementation of these programmes.*

2. *Child commercial sexual exploitation.* The Committee previously noted that the Office of the National Commission on Women's Affairs estimated that there were between 22,500 and 40,000 children under 18 years of age in prostitution (representing approximately 15–20 per cent of the overall number of prostitutes) in the country, and that these estimates did not include foreign children in prostitution. The Committee further noted that the National Plan of Action on the Elimination of the Worst Forms of Child Labour (2004–09) included initiatives to address child prostitution, and requested information on the concrete measures taken in this regard.

The Committee notes the Government's statement that it is in the process of collecting information from relevant agencies on this point. It also notes the information in the Government's report that a National Plan for the Elimination of the Worst Forms of Child Labour (2009–2014) was adopted in 2008. The Committee observes that although the commercial sexual exploitation of persons under 18 is prohibited by law, it remains an issue of serious concern in practice. ***The Committee accordingly urges the Government to take comprehensive measures, including within the framework of the National Plan for the Elimination of the Worst Forms of Child Labour (2009–2014), to combat this worst form of child labour. It requests the Government to provide information on the concrete results achieved in combating the commercial sexual exploitation of children.***

*Article 7(1) of the Convention and Part V of the report form. Penalties and the application of the Convention in practice. Child victims of trafficking and commercial sexual exploitation.* The Committee previously noted that the enforcement of the existing penalties for the offences of child trafficking and child commercial exploitation were very ineffective. However, it noted the Government's indication that, according to the statistical figures of the Office of the Court of Justice, in the period 2003–04 there were 823 prosecutions concerning the offences of procuring and trafficking children for the purposes of prostitution and sexual abuse under the Penal Code. It welcomed the Government's efforts to develop a more comprehensive system of data collection and analysis of these offences, and requested that the Government provide statistical information on the trafficking and commercial sexual exploitation of children.

1. *Trafficking.* The Committee notes the information in the Government's report that the Division on the Suppression of Offences against Children, Youth and Women undertakes the collection and management of basic data. The Committee also notes the information in the Government's report that interviews conducted by the police to determine whether foreign children were victims of trafficking revealed 112 suspected child victims of this worst form of child labour. However, the Committee observes that the trafficking of children remains a much broader phenomenon, noting the information in the UNODC Report that between October 2006 and December 2007, 416 child victims of trafficking were detected. Moreover, the Committee notes an absence of information on the number of persons investigated and prosecuted as a result of the identification of child victims of trafficking. ***The Committee urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons who traffic in children for the purpose of labour or sexual exploitation are carried out. It requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied in this regard, as well as any additional information from the Division on the Suppression of Offences against Children, Youth and Women on the prevalence of the trafficking of children. To the extent possible, all information provided should be disaggregated by sex and age.***

2. *Commercial sexual exploitation.* The Committee notes the information in the Government's report from the Division on the Suppression of Offences against Children, Youth and Women that in 2006 two child victims of commercial sexual exploitation were reported, in addition to two offenders. The Government also indicates that there were no reported victims or offenders in 2007, and that in 2008, 23 child victims and 16 offenders were recorded. The Committee observes an absence of information on the penalties applied to these offenders, and observes that these figures appear to represent only a fraction of the number of children engaged in prostitution (with previous Government estimates indicating that tens of thousands of persons under 18 are victims of this worst form of child labour). In this regard, the Committee notes the information in the ILO–IPEC TPR 2010 that, within the framework of the ILO Project “Support for national action to combat child labour and its worst forms in Thailand”, a study has been conducted (by the Khon Kaen University) on the commercial sexual exploitation of children in three provinces in the Northeast of Thailand including Nong Khai, Udon Thani and Khon Kaen (which are major source areas for girls and women in prostitution within Thailand). ***The Committee requests the Government to provide information from the study conducted on the commercial sexual exploitation of children in Nong Khai, Udon Thani and Khon Kaen, with its next report. It also strongly urges the Government to redouble its efforts to ensure that persons who engage in the use, procuring or offering of persons under 18 for the purpose of commercial sexual exploitation are prosecuted and that sufficiently effective and dissuasive penalties are applied in practice. In this respect, the Committee requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied with regard to the commercial sexual exploitation of persons under 18 years.***

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking.* 1. *Services for child victims of trafficking.* The Committee previously noted

the various measures adopted by the MSDHS to assist child victims of trafficking, and noted that 3,062 foreign trafficking victims had been protected in Thai shelters and repatriated to their home countries.

The Committee notes the information in the Government's report that the specific policies to combat trafficking announced include measures to protect victims, such as the provision of assistance to those at risk of trafficking, the establishment of a fund to assist victims of trafficking and campaigns to eliminate discriminatory attitudes against victims of trafficking to facilitate their reintegration into communities. The Committee also notes the Government's statement that the Baan Kred Trakarn Protection and Occupational Development Centre was established, and a learning centre was developed as part of its holistic assistance to victims of trafficking. Services provided to trafficked women and children through these centres include the provision of basic necessities, education, vocational training and assistance with psychological recovery. The Government also indicates that the four Protection and Development Centres in Ranong, Pratumthani, Songkhla and Chaing Rai provide assistance, protection and rehabilitation services to victims. The Government further indicates that the Division on the Suppression of Offences against Children, Youth and Women coordinates with agencies involved in the rehabilitation and repatriation of trafficking victims. Lastly, the Committee notes the information in the Government's report that the National Policy and Plan for the Elimination of the Worst Forms of Child Labour (2009–2014) includes measures to integrate children back into society by preparing their families and communities for their return, to repatriate children in a manner consistent with their needs and safety, and to follow-up on their reintegration, following rehabilitation. ***The Committee takes due note of the measures implemented by the Government, and requests it to pursue its efforts to provide direct assistance to child victims of trafficking, with a view to ensuring that victims of trafficking under the age of 18 receive appropriate services for their rehabilitation and social reintegration with child participation.***

2. *Measures aimed at securing compensation for victims of trafficking.* The Committee previously noted that the Government had taken a number of measures aimed at securing justice and compensation for victims of trafficking, including children. It noted that the Prevention and Suppression of Human Trafficking Act provides for the possibility for victims of trafficking to claim compensation from the offenders and the provision of funds amounting to 500 million baht for their rehabilitation, occupational training and development. The Government also indicated that the Accused Act, BE 2544 (2001) states that children who are deceived into trafficking, prostitution, or forced labour, shall receive compensation.

The Committee notes Government's statement that it is in the process of collecting information from relevant agencies on this point. ***The Committee therefore once again requests the Government to indicate in its next report the number of former child victims of trafficking who have received compensation either from the offenders or through funds set up by the Government under the Accused Act BE 2544 (2001) or the Prevention and Suppression of Human Trafficking Act.***

*Article 8. International cooperation and assistance. Regional cooperation and bilateral agreements.* The Committee previously noted several measures taken by the Government to combat trafficking at the regional level, including meetings of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). The Committee requested information on measures taken in this regard and on the concrete measures adopted under bilateral MOUs for the elimination of the interstate trafficking of children.

The Committee notes the statement in the Government's report that, pursuant to the MOU of the COMMIT signed in 2004, and following the review of the first Subregional Plan of Action (2005–07), member countries endorsed the Subregional Plan of Action for 2008–10. This subregional action plan focuses on several particular areas, including training and capacity building, multi-sectoral and bilateral partnerships, re-enforcing legal frameworks, law enforcement, victim identification, protection and reintegration and cooperation with the tourism sector. The Committee also notes the information in the Government's report that the Government signed an agreement with the Government of Vietnam on Bilateral cooperation for Eliminating Trafficking in Persons on 24 March 2008, and that pursuant to this agreement, the two governments developed an Action Plan for 2008–09. The Committee further notes that, pursuant to MOUs to combat human trafficking with the governments of Cambodia (signed in 2003) and Laos (signed in 2005), cooperation projects have been formulated and some measures implemented, including a workshop on human trafficking for Laos–Thai border officials. The Government also indicates that it is the process of initiating similar bilateral MOUs with the Governments of Myanmar, China and Japan. The Government further indicates that within the framework of the TICW II Project, technical assistance and support was provided for combating trafficking efforts related to the MOUs between Thailand and its neighbouring countries. ***Noting that cross-border trafficking remains an issue of concern in practice, the Committee urges the Government to pursue its international cooperation efforts with regard to combating the trafficking of persons under 18. It requests the Government to continue to provide information on the concrete measures implemented in this regard, and on the results achieved.***

The Committee is raising other points in a request addressed directly to the Government.

## Togo

### Minimum Age Convention, 1973 (No. 138) (ratification: 1984)

The Committee notes the adoption of Act No. 2006-010 of 13 December 2006 issuing the Labour Code (the Labour Code of 2006) which repeals the Labour Code of 8 May 1974, as well as the adoption of Order No. 1464/MTEFP/DGTLIS of 12 November 2007 determining the types of work prohibited for children, which repeals Order No. 15/MTAS-FP of 6 December 1958.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* Further to its previous comments, the Committee notes the information provided by the Government to the effect that a national policy for the protection of children and a five-year strategic plan (2008–13) were prepared in 2008 to serve as a reference framework for the preparation and implementation of child protection programmes. Among the expected results at the halfway stage of the implementation of the five-year strategic plan, the Committee observes that it is envisaged that 25,000 children and their parents in situations of extreme vulnerability will benefit from support and social assistance measures, with the strengthening of the capacities of 40 social centres and 14 education, activation and training centres for underprivileged young persons outside the school system. It is also expected that by 2013 a total of 2,400 children at risk between the ages of 12–17 years will benefit from a national programme of training, integration and assistance for the commencement of occupational activities. The Committee further notes that the Government is currently participating in a project to combat child labour through education implemented with the support of ILO–IPEC. It notes from the information provided by the Government in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that various action programmes have been adopted in the context of this project, including the implementation of measures to prevent the use of children as porters and for the removal and reintegration of 625 child porters from the markets of the city of Lomé and the protection and integration into the school system of 200 children removed from domestic work in the city of Lomé, as well as strengthening the capacities of community structures for the removal and social reintegration of 1,800 children engaged in hazardous agricultural work. According to the technical progress report for the project of September 2010, a total of 3,063 children have been prevented from working through the provision of educational services and 719 children were removed from work between the months of March and August 2010.

While taking due note of the measures adopted by the Government for the abolition of child labour, the Committee notes that, according to UNICEF statistics for the years 1999–2008, 29 per cent of children between the ages of 5 and 14 years are engaged in work in Togo. According to the report of the quantitative survey undertaken in four economic regions of the country (Maritime, Plateau, Central and Lomé) in 2009–10 by the General Directorate of National Statistics and Accounting, which was attached to the Government’s report under Convention No. 182, children principally work in the agricultural sector, household work and the urban informal economy. Moreover, the majority of children working in these three sectors are between 5–14 years of age. ***Expressing its concern at the number of children who work and whose age is lower than the minimum age for admission to employment or work, the Committee requests the Government to continue its efforts to combat child labour, affording particular attention to children engaged in work in agriculture and the informal economy. It requests the Government to continue providing information on the number of children between the ages of 5–14 years who are prevented from prematurely entering the labour market and on the number of children removed from work in the context of the current action programmes.***

*Article 2(1). Scope of application.* With reference to its previous comments, the Committee notes with **satisfaction** that section 150 of the Labour Code of 2006 provides that children under 15 years of age may not be employed in any enterprise or perform any type of work, even on their own account. ***The Committee requests the Government to provide information on the measures adopted or envisaged, including strengthening the capacities of the labour inspection services, with a view to ensuring the protection afforded by the Labour Code of 2006 to children who work on their own account or in the informal sector.***

*Minimum age for admission to employment or work.* The Committee notes that, under section 150 of the Labour Code of 2006, the minimum age for admission to employment or work is set at 15 years, unless derogations are envisaged by order of the Minister responsible for labour. It notes the Government’s indication that, in accordance with section 150 of the Labour Code, an order derogating from the minimum age for admission to employment has been prepared and is awaiting approval by the National Council for Labour and Labour Laws, which includes membership by employers’ and workers’ organizations. ***The Committee requests the Government to provide additional information on the nature of the exceptions covered by the Order derogating from the application of section 150 of the Labour Code of 2006 and requests it to provide a copy of the Order as soon as possible.***

*Article 2(2). Raising the minimum age initially specified.* The Committee notes that Togo initially specified a minimum age for admission to employment or work of 14 years when it ratified the Convention. It notes with **interest** that section 150 of the Labour Code of 2006 provides that, “subject to the provisions respecting apprenticeship, children of either sex may not be employed in any enterprise or perform any type of work, even on their own account, before the age of fifteen (15) years”. It draws the Government’s attention to the fact that *Article 2(2)* of the Convention envisages the possibility for a State which decides to raise the minimum age for admission to employment or work initially specified to notify the Director-General of the International Labour Office by a further declaration with a view to harmonizing the age established in the national legislation with that envisaged at the international level.

*Article 2(3). Age of completion of compulsory schooling.* With reference to its previous comments, the Committee notes that article 35 of the Constitution of 1992 provides that schooling is compulsory up to the age of 15 years, which coincides with the minimum age for admission to employment or work set out in section 150 of the Labour Code of 2006.

*Article 3(1) and (2). Minimum age for admission to hazardous types of work and determination of such types of work.* Further to its previous comments, the Committee notes that section 151(4) of the Labour Code of 2006 provides that children may not be assigned to types of work which are liable to harm their health, safety or morals. Furthermore, it notes with **satisfaction** that Order No. 1464/MTEFP/DGTLs of 12 November 2007 (Order No. 1464), adopted following consultation of the National Council for Labour and Labour Laws, determines the nature of the types of work prohibited for children under section 151(4) of the Labour Code of 2006 and that it contains in annex a list of the types of work on which it is prohibited to employ children under 18 years of age.

*Article 3(3). Admission to hazardous work from the age of 16 years.* Further to its previous comments, the Committee notes that certain provisions of Order No. 1464 authorize the employment of children from the age of 16 years on work likely to harm their health, safety or morals. For example, under section 9 of Order No. 1464, children may be engaged to operate vertical wheels, winches and pulleys from the age of 16 years, and section 11 authorizes the employment of young girls of 16 years of age on the external displays of shops and boutiques. The Committee also notes that section 12 authorizes children over 15 years of age to carry, drag or push loads of a weight of up to 140 kgs for boys of 15 years of age employed in transport by wheelbarrow. It also observes that no protection measures are envisaged relating to the performance of these types of work. The Committee reminds the Government that, under the terms of *Article 3(3)* of the Convention, national laws or regulations may, after consultation with employers' and workers' organizations, authorize the performance of hazardous types of work as from the age 16 years on condition that the *health, safety and morals* of the young persons concerned are *fully protected* and that they have received *adequate specific instruction or vocational training* in the relevant branch of activity. **The Committee therefore requests the Government to provide information on the measures adopted to ensure that the conditions set out in Article 3(3) of the Convention are fully guaranteed for young persons between 16–18 years of age engaged in the types of work covered by Order No. 1464. It also requests the Government to take the necessary measures to ensure that the legislation is in conformity with the Convention by guaranteeing that in no case may the performance of hazardous types of work be authorized for children under 16 years of age.**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the communication of the International Trade Union Confederation (ITUC) of 24 August 2010 and the Government's report. It also notes the adoption of Act No. 2006-010 of 13 December 2006, issuing the Labour Code (the Labour Code of 2006), which repeals the Labour Code of 8 May 1974, and the adoption of Act No. 2007-017 of 6 July 2007 issuing the Children's Code (the Children's Code of 2007).

*Article 3 of the Convention. The worst forms of child labour. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted that there was no provision in the current legislation prohibiting this worst form of child labour. It noted that Togo had prepared on 23 January 2003 a preliminary draft of a Bill to define the trafficking of children, which was awaiting adoption by the Council of Ministers, and that a draft Children's Code had been forwarded to Parliament in 2002.

The Committee notes with **satisfaction** the adoption of Act No. 2005-009 on the trafficking of children of 3 August 2005 (the Act on the trafficking of children). It observes that, by virtue of section 3 of this Act, the term "trafficking" is defined as the process by which any child is recruited or abducted, transported, accommodated or hosted, both within and outside the national territory, by one or more persons, for the purposes of her or his exploitation. Under the terms of section 2, the term "child" is defined as any person under the age of 18 years. The Committee also notes that those who engage in or are accomplices to the trafficking of children are liable to a sentence of imprisonment of five years (section 10) and that the penalty is doubled in cases where acts of the trafficking of children result in the death or disappearance of the victim (section 11). Section 11 also envisages the existence of aggravating circumstances which may result in the person committing the offence serving a penal sentence of ten years of imprisonment. This is the case, among others, where the victim of the trafficking is under 15 years of age at the time of the offence or where the child has been subjected to the worst forms of child labour. The Committee also notes that, under the terms of section 264(a) of the Children's Code of 2007, the sale and trafficking of children are considered to be one of the worst forms of child labour.

However, the Committee notes the allegations made by the ITUC to the effect that internal and international trafficking of children for domestic work exists in Togo. The internal trafficking affects children from poor and rural communities who are directed towards domestic work in towns, and particularly Lomé, or in fertile agricultural regions. Trans-border trafficking takes place, both from and towards Togo, from Nigeria, Gabon, Côte d'Ivoire, Burkina Faso, Niger, Benin and Ghana.

The Committee further notes the findings of the qualitative survey of the worst forms of child labour undertaken in 2009–10 by the General Directorate of Statistics and Accounting among 2,500 households in four economic regions of the country (Maritime, Plateau, Centrale and Lomé), which are appended to the Government's report. It observes that, according to the report of the discussion by the central region group, girls who are victims of trafficking are used for

prostitution and domestic work, while boys are used as manual workers in plantations and quarries. The Committee notes the information provided in the United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons of February 2009, indicating that, according to the Ministry of Labour of Togo, 1,758 victims of trafficking were identified in 2003 and 1,301 in 2004, most of whom were children. It notes that, according to the report, the number of investigations for trafficking in persons fell from 21 in 2005 (the year of the adoption of the Act on the trafficking of children) to nine in 2007. It observes that, of the nine persons investigated in 2007, six men were convicted of trafficking in persons, one for trafficking for sexual exploitation and the five others for trafficking for the purpose of slavery. The sentences received by these persons did not however exceed one year of imprisonment. The Committee also observes that, according to the indications contained in the report entitled “Trafficking in Persons Report 2010 – Togo” published on the website of the Office of the United Nations High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), certain traffickers appear to obtain their release through the corruption of state officials. While taking due note of the measures adopted by the Government to combat the trafficking of children, the Committee expresses *concern* at the fall in the number of investigations conducted following the adoption of the Act on child trafficking, and with regard to the allegations of corruption from which certain traffickers benefit to evade justice. ***The Committee therefore requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons engaged in the sale and trafficking of children under 18 years of age are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the number of investigations conducted, prosecutions carried out and convictions obtained under Act No. 2005-009 on the trafficking of children.***

*Clauses (a) and (d). Forced or compulsory labour and hazardous types of work. Child domestic work.* The Committee notes the ITUC’s communication reporting conditions of work which are hazardous and/or similar to forced labour encountered by many children engaged as domestic workers. According to the ITUC’s allegations, there are thousands of child domestic workers in Togo, the large majority of whom are girls from poor and rural areas of the country, and who perform various potentially hazardous household tasks in private homes and may also be called upon to sell products in the street or in markets on behalf of their employers. These children work very long days (ten hours or more), frequently have no rest days and receive no or very little remuneration. They live in the house of their employers, are dependent upon the latter, and are isolated from their families, which makes them vulnerable to abuse and forced labour. Child domestic workers are also regularly subjected to verbal and physical violence and to sexual abuse, and are often deprived of education opportunities. The ITUC’s communication also refers to a survey carried out in Togo between 2007 and 2008 of 61 girl domestic workers, which shows that the average age at which they enter into domestic service is nine.

The Committee notes that section 151(1) of the 2006 Labour Code prohibits forced labour, which is defined as one of the worst forms of child labour. It further notes that, in accordance with Order No. 1464/MTEFP/DGTLs of 12 November 2007 (Order No. 1464) determining the types of work prohibited for children, domestic work is considered to be a hazardous type of work prohibited for children under 18 years of age.

The Committee observes that, although the national legislation is in conformity with the Convention on this point, child domestic work performed under conditions similar to forced labour or under hazardous conditions remains a concern in practice. It reminds the Government that, under the terms of *Article 3(a) and (d)* of the Convention, work or employment of children under 18 years of age under conditions similar to slavery or under hazardous conditions are some of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, immediate and effective measures shall be taken to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee therefore requests the Government to take immediate and effective measures to ensure that children under 18 years of age engaged in domestic work under conditions similar to slavery or under hazardous conditions benefit from the protection afforded by the national legislation. In this respect, it requests the Government to provide information on the application of the provisions respecting this worst form of child labour, including statistics on the number and nature of the violations reported, investigations conducted, prosecutions, convictions and penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex and age.***

*Article 6. Programmes of action to eliminate the worst forms of child labour. Trafficking of children and child domestic work.* The Committee notes the conclusions of the ITUC which recommends, inter alia, the implementation of measures to assist children engaged in domestic work to leave their work and to facilitate their rehabilitation. The Committee notes the information provided in the Government’s report indicating that, in the context of the ILO–IPEC project to combat child labour through education, two workshops were organized in June 2009 with a view to the preparation of a plan of action on the trafficking of children and a plan of action to combat domestic work. According to the technical progress report of the project of September 2010, these sectoral action plans would have been adopted in December 2009. The Committee also notes that, in the context of this ILO–IPEC project, 126 children were prevented from entering domestic work and 22 were removed from this worst form of child labour between March and August 2010. All of them benefited from rehabilitation measures through education services. The Committee further notes that between June and September 2010, workshops were conducted for the training of labour inspectors on the issue of child domestic work. ***The Committee requests the Government to provide information on the measures taken and the results achieved in the context of the plan of action on the trafficking of children and the plan of action to combat domestic work in***

*terms of the identification, removal and reintegration of children under 18 years of age. It requests the Government to provide copies of these plans of action.*

*Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Sale and trafficking of children. 1. National Commission for the Shelter and Social Reintegration of Child Victims of Trafficking.* With reference to its previous comments, the Committee notes the Government's indications that a National Commission for the Shelter and Social Reintegration of Child Victims of Trafficking (CNARSEVT) was established in April 2002. The responsibilities of the CNARSEVT include: (i) organizing the repatriation to Togo of child victims of trafficking identified at the borders and in the various destination countries; (ii) coordinating the shelter and care (accommodation and health care) of repatriated child victims of trafficking; (iii) supervising the family and social reintegration of repatriated child victims of trafficking; (iv) centralizing information and statistical data on child victims of trafficking, sheltered and reintegrated at the national level; and (v) mobilizing the necessary resources for the repatriation, shelter and social reintegration of child victims of trafficking. The CNARSEVT has regional committees to discharge its functions. ***The Committee requests the Government to provide additional information on the activities of the CNARSEVT, including extracts of reports or documents, as well as the results achieved in terms of the number of child victims of trafficking who are repatriated, cared for and reintegrated.***

*2. Measures adopted in the context of various ILO–IPEC projects.* With reference to its previous comments, the Committee notes the Government's indications that, in the context of the implementation of the ILO–IPEC–LUTRENA project, the direct action taken for children and their families between 2001 and 2007 resulted in the removal of 4,038 children from trafficking and the reintegration in the school system of 173 children removed from this worst form of child labour. The Committee also notes the information contained in the Government's report indicating that four transitional shelter centres for children removed from trafficking have been established, that a system to shelter and refer children removed from trafficking has been created and that 165 vigilance committees have become operational in village communities. Furthermore, according to the technical progress report of September 2010 of the ILO–IPEC project to combat child labour through education, a total of 87 children, including 63 girls and 24 boys, were removed from trafficking between March and August 2010 and have benefited from educational services and training opportunities. ***The Committee strongly encourages the Government to continue to take immediate and effective measures to remove child victims of sale and trafficking and requests it to continue providing information on the number of children who are, in practice, removed from this worst form of child labour and placed in transitory shelter centres.***

*Article 8. International cooperation and assistance. Regional cooperation in relation to the sale and trafficking of children.* Further to its previous comments, the Committee notes the information provided by the Government in its report indicating that several multilateral agreements have been concluded with neighbouring countries in the context of the measures to combat the trafficking of children. The Committee notes that Togo signed the Cooperation Agreement between Member States' Police Forces on Investigation in Criminal Matters adopted in Accra in 2003 by the Member States of ECOWAS, the Multinational Cooperation Agreement to Combat Child Trafficking of Abidjan (2005) and the Abuja Multilateral Cooperation Agreement to Combat Trafficking in Persons, especially Women and Children (2006). It also notes that Togo has concluded a quadrilateral agreement with Benin, Ghana and Nigeria on border crime. It further notes the Government's indication that discussions are under way with Nigeria for the signature of a bilateral agreement to combat the trafficking of children. ***The Committee strongly encourages the Government to continue its efforts and to take measures to cooperate with countries that are signatories to the multilateral cooperation agreements referred to above, thereby strengthening security measures on frontiers, with a view to detecting and intercepting child victims of trafficking and apprehending and arresting persons involved in networks engaged in the trafficking of children. It also requests the Government to continue providing information on the progress made in the discussions for the adoption of a bilateral agreement with Nigeria.***

The Committee is raising other points in a request addressed directly to the Government.

## Turkey

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

The Committee notes the Government's report, in addition to the communication of the Turkish Confederation of Employers' Associations (TİSK) dated 1 March 2010, and the communications of the Confederation of Turkish Trade Unions (TÜRK-İS) dated 1 September 2009 and 1 March 2010.

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* In its previous comments, the Committee noted the indication of TÜRK-İS that no national policy was being pursued in Turkey to ensure the effective abolition of child labour and that the number of child workers was increasing. The Committee also noted that one of the objectives of the national ***Time-bound Policy and Programme Framework (TBPPF)*** was to establish a coherent policy for the elimination of child labour. It noted that the Child Labour Unit (CLU), established by the Ministry of Labour and Social Security had developed a policy framework for the elimination of child labour in Turkey, which was presented for comment to the various organizations concerned with child labour. The Committee

further noted that the Government was implementing programmes in collaboration with ILO–IPEC, and requested it to provide information on the results achieved through these programmes.

The Committee notes the Government’s statement that the framework for a national programme and policy for the elimination of child labour has been elaborated by the CLU, in response to feedback received from various parties consulted, to create a wide-ranging and integrated national policy that is participative and time-bound. The Government indicates that, through this framework, it will implement activities aimed at eliminating child labour through awareness raising, poverty reduction and the improvement of the quality and the accessibility of education.

The Committee notes the information in the Government’s report that measures to progressively eliminate child labour have been integrated into a wide variety of governmental initiatives and policies, including the Government’s Ninth Five-Year Development Plan and the Ministry of Labour and Social Security’s strategic programme for the years 2009–13. The Committee also notes that the issue of child labour is included as a priority in the Government’s Joint Inclusion Memorandum with the EU, and that the EU has provided pre-accession assistance to address this phenomenon. The Committee further notes the information in the Government’s report that the programme of collaboration between the Government and UNICEF for the years 2006–10 included activities focused on the reduction of child labour. In addition, the Committee notes that on 10 February 2009, the Government signed a Memorandum of Understanding with the ILO on the implementation of a Decent Work Country Programme, which includes the elimination of child labour as a priority.

The Committee notes the Government’s indication that the project entitled “Combating child labour through education” was implemented between 2004–08 by the firm IMPAQ under the coordination of the CLU, with support from the ILO, the Ministry of Education and the Ministry of Agriculture. The Government’s report indicates that the project reached 4,224 families, directing 118 family members and 108 children towards vocational courses. The Government’s report also indicates that through this project, 838 training programmes were organized for teachers and school directors and 927 children benefited from the distribution of hygiene kits and school materials, in addition to the provision of classroom support and clothing. The Committee also notes the information in the Government’s report that the Ministry of National Education implemented a direct action programme on child labour in seasonal commercial agriculture, with the participation of TÜRK-İS and TİSK, from 2005 to 2007. The Committee further notes the information in the Government’s report that between 2007–08 the CLU implemented a project to raise awareness on child labour through media organizations.

While taking note of these measures, the Committee observes the statement in the UNICEF draft country programme document of 5 April 2010 that, despite progress, child labour continues to be a serious issue in Turkey, particularly in the agricultural sector (E/ICEF/2010/P/L.6, paragraph 4). **Therefore, the Committee requests the Government to strengthen its efforts for the progressive elimination of child labour, particularly with regard to children working in agriculture. It also requests the Government to continue to provide detailed information on the results achieved through the implementation of the abovementioned initiatives.**

*Article 8. Artistic performances.* In its previous comments, the Committee noted that section 16 of the Civil Code provides that children under 15 years may appear in artistic performances with the consent of their family or legal representative. It also noted the Government’s indication that activities were being undertaken in collaboration with ILO–IPEC to prepare the necessary regulations to improve national legislation concerning the permits for the participation of children in artistic activities granted by the competent authority, and requested information on progress made in this regard.

The Committee notes the statement by TÜRK-İS that a system regulating children’s involvement in artistic endeavours is necessary, to allow for the monitoring and protection of these children. The Committee notes the Government’s indication that Chapter 19 (entitled “Social Policy and Employment”) of the National Programme of Turkey for the Adoption of the EU Acquis (NPAA) (published in the *Official Gazette* of the Republic of Turkey on 31 December 2008 (No. 27097)), provides for the adoption of regulations in conformity with EU Council Directive 94/33, concerning the participation of persons under 18 in artistic activities. It also notes the Government’s indication that preparatory technical work was completed in this regard. The Committee further notes that the Schedule of Legislative Alignment (table 19.4.1) of the NPAA indicates that amendments on the employment of children below the age of 18 in the field of fine arts is necessary, and shall be introduced in Turkish legislation by 2010 through the draft law amending Labour Law No. 4857 (page 210). **Recalling that, pursuant to Article 8(1) of the Convention, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment under the general minimum age, for such purposes as participation in artistic performances, the Committee requests the Government to take the necessary measures to ensure that the forthcoming amendments, pursuant to Chapter 19 of the NPAA, are in conformity with the Convention. The Committee requests the Government to provide a copy of the relevant legislation, once adopted.**

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that the third Child Labour Study (conducted in 2006 by the Turkish Statistics Institution with ILO–IPEC support) indicated that, while the proportion of working children had dropped significantly, there remained 320,000 working children between the ages of 6 and 14 and 638,000 working children between the ages of 15 and 17 in 2006.

The Committee notes the statement by TÜRK-İS that, while the number of working children has significantly decreased, there are still a number of children between the ages of 6–14 engaged in economic activity. TÜRK-İS indicates that to address this issue, poverty reduction is necessary and education should be encouraged. The Committee also notes the information in the Government's report that the percentage of children between the ages of 6–14 who are working has dropped from 8.8 per cent in 1994, to 5.1 per cent in 1999 and to 2.6 per cent in 2006. ***Noting the absence of recent statistical data in the Government's report, the Committee strongly urges the Government to take the necessary measures to ensure that up-to-date information on the number of working children in Turkey is available. The Committee requests the Government to provide this information, particularly on the percentage of children below the age of 15 who are engaged in economic activity, in its next report.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report, in addition to the communication of the Turkish Confederation of Employer Associations (TISK), dated 1 March 2010 and the communications of the Confederation of Turkish Trade Unions (TÜRK-İS) dated 1 September 2009 and 1 March 2010.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children for commercial sexual exploitation.* In its previous comments, the Committee noted the indication of the International Trade Union Confederation (ITUC) that Turkey is a transit and destination country for trafficked children, who are forced into prostitution and debt bondage. The Committee also noted that a national plan of action to combat trafficking in human beings was adopted in 2003. The Committee requested the Government to provide information on the measures taken to ensure that the sale and trafficking of children under 18 years is eliminated.

The Committee observes that the Government's report contains few details on anti-trafficking efforts, although the Government does indicate that the Children's Office (in the Commission of the Provinces) organizes a yearly course entitled "combating the trafficking and sexual harassment of children" for workers of this office. The Committee also notes the information in the 2009 UNODC Global Report on Trafficking in Persons that a second national plan of action to combat trafficking in human beings was prepared in 2007, and is awaiting adoption. This report also indicates that eight child victims of trafficking were identified by state authorities in 2005, and 14 were identified in 2006.

The Committee notes the information in a 2009 report on the trafficking in persons in Turkey available at the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (Trafficking Report), that in 2008, the Government prosecuted 69 trafficking cases involving 273 suspected traffickers, a significant increase from the 160 suspected traffickers prosecuted in 2007. This report also indicates that the Government reported securing convictions for 58 trafficking offenders in 2008. The Committee also notes the information in the Trafficking Report that the Government is taking measures to prevent complicity by law enforcement agents; in 2008, 25 security officials were investigated for trafficking-related complicity, and one court official was convicted for trafficking-related complicity. The Committee expresses its **concern** at allegations of complicity by law enforcement officials with human traffickers. ***The Committee urges the Government to pursue its effort to ensure that perpetrators of human trafficking, and complicit law enforcement officials, are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, it requests the Government to provide information on the number of persons convicted and sentenced for cases involving victims under the age of 18. The Committee also requests the Government to provide information on the second national plan of action to combat trafficking in human beings, and if this plan has not yet been adopted, to take the necessary measures to ensure its adoption.***

*Article 7(2). Effective and time-bound measures. Clause (b). Necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. Children working in the agricultural sector.* The Committee previously noted that the protection afforded by the Labour Code does not cover children who work in agricultural undertakings employing fewer than 50 workers. It noted that the Labour Inspection Board indicated that 87 per cent of working children were employed in small enterprises with between one and nine workers. The Committee also noted that in 2006, 41 per cent of the 958,000 working children between the ages of 6 and 17 years were employed in agriculture. The Committee further noted the implementation of the Project for Combating Child Labour through Education (2004–08) to increase access to basic and vocational education for children employed in agriculture, particularly children engaged in, or at risk of engaging in, seasonal work as migrant labourers. It requested information on the final results of this programme.

The Committee notes the information in the Government's report that, within the context of the Project for Combating Child Labour through Education (2004–08), 8,365 children were reached. The Government's report indicates that the Project for Combating Child Labour through Education (2004–08) reached 4,224 families, directing 118 family members and 108 children towards vocational courses. The Government's report also indicates that through this project, 838 training programmes were organized for teachers and school directors and 927 children benefited from the distribution of hygiene kits and school materials, in addition to the provision of classroom support and clothing. The Committee further notes the Government's indication that the implementation of an ILO–IPEC project entitled "Guiding working children towards school" in the provinces of Adana and Karatas resulted in visits to over 2,000 children working



in agriculture (or at risk of working in this sector), of which 1,620 were directed towards school. The Government indicates that 286 of these children benefited from catch-up courses during the summer, and 73 families received services.

The Committee notes the information in the Government's report regarding a project started in 2005 which will continue until 2015, that (in collaboration with relevant institutions and NGOs) aims to eliminate the worst forms of child labour (2005–15 project). The 2005–15 project targets three particular groups of children, including migrant children performing paid agricultural work outside of family enterprises on a temporary basis. In this regard, the Committee also notes the information on the UNICEF website that working children in Turkey travel for much of the year in search of low-paid employment in the agricultural sector, living in squalid conditions without access to health care or education. ***The Committee therefore urges the Government to pursue its efforts to eliminate the engagement of children in hazardous agricultural work. It requests the Government to provide information on the results achieved through the 2005–15 project to eliminate the worst forms of child labour, particularly on the number of children removed from work in the agricultural sector and provided with rehabilitation and social reintegration services.***

2. *Children working in the furniture sector.* The Committee previously noted that an action programme for the elimination of the worst forms of child labour in the furniture sector was implemented in the provinces of Ankara, Izmir and Bursa, and ended on 30 June 2007. Noting the results of this project, the Committee encouraged the Government to pursue its efforts in removing children from hazardous work in the furniture sector and reintegrating them in education or vocational training.

The Committee notes the statement by TÜRK-İS in its communication that the worst forms of child labour continue to be seen in the furniture industry. The Committee also notes the Government's statement that the final number of children who received services and educational opportunities through the ILO–IPEC action programme was 5,909, and that 1,767 poor families received educational scholarships, medical services and assistance in finding employment.

The Committee notes that the results of the survey on the worst forms of child labour in the Government's report indicate that while generally the proportion of working children engaged in the furniture industry is relatively low, in some provinces a significant number of children continue to be engaged in this dangerous work; in the province of Çankırı, the survey indicates that 5.1 per cent of the working children surveyed worked in the furniture industry. It also notes the indication in the 2009 report on the worst forms of child labour in Turkey, available at the website of the Office of the High Commissioner for Refugees (www.unhcr.org), that Turkish children working in the furniture sector continues to be an issue, and that these children face health and safety risks, including exposure to dangerous chemicals and dangerous machinery. ***The Committee therefore urges the Government to redouble its efforts to remove, rehabilitate and provide for the social integration of children engaged in hazardous work in the furniture industry, as a matter of urgency. It requests the Government to provide information on the results achieved in its next report.***

*Clause (d). Children at special risk. Children living or working on the streets.* In its previous comments, the Committee noted the indication of the TISK that there were nearly 10,000 children working on the streets of Istanbul and nearly 3,000 in Gaziantep, who were working under dangerous conditions without protection. The Committee requested the Government to provide information on its efforts to protect children living and working on the streets from the worst forms of child labour.

The Committee notes the statement of TÜRK-İS that children engaging in street work was the most dangerous form of child labour in Turkey, and that while accurate estimates of children working in other sectors is available, the total number of street children remains unknown. TÜRK-İS indicates that additional projects are needed to prevent child labour on the streets, and that social and economic measures are necessary to address this phenomenon. The Committee also notes the information in the Government's report on the results of the survey on the worst forms of child labour that, of the nearly 21,000 working children surveyed in the province of Van, 6.7 per cent were working on the streets. Other provinces with high proportions of children working on the streets include Erzurum, where 4 per cent of the nearly 28,000 children surveyed were found to be working on the streets, and Elazığ, where 6.7 per cent of the approximately 10,000 children surveyed were found to be working on the streets.

The Committee further notes the information in the Government's report that since 1997, the General Directorate of Social Services and Child Protection (SHÇEK) has operated 36 centres and six homes in 28 different regions that offer rehabilitative services to children in difficult situations, including children who work in the street. The Government's report indicates that by the end of 2008, in Istanbul, 4,270 children who lived or worked in the street and their families were provided with housing, social services (including educational services) and social protection. The Government's report also indicates that 119 such children in Adana and 542 such children in Diyarbakir also received services in similar centres. In addition, the Committee notes the information in the Government's report that the 2005–15 project focuses on children working in the street as one of the three main target groups. Finally, the Committee notes the information in the Government's report submitted under the Minimum Age Convention, 1973 (No. 138) that, within the context of a multi-sectoral project covering south-east Anatolia (GAP), the "Project for rehabilitation of children working in the streets" was implemented, with UNDP funding. ***The Committee requests the Government to continue its efforts to ensure that persons under 18 years of age who live and work on the streets are not engaged in work which, by its nature, is likely to harm their health, safety or morals, and to provide information on the results achieved. It also requests the Government to provide information on the impact of the "Project for rehabilitation of children working in the streets", specifically the number of street children who benefited from its implementation.***

*Article 8. International cooperation and assistance.* In its previous comments, the Committee noted that the European Union (EU) had been supporting the **Time-bound Policy and Programme Framework** to enhance institutional capacities to combat child labour, notably in the context of projects on children working on the streets, in dangerous work or in the agricultural sector. It requested the Government to provide information on the measures taken with the assistance of the EU to combat the worst forms of child labour.

The Committee notes the information in the Government's report that the EU provided funding for a research project on the worst forms of child labour in seven provinces. The Committee also notes the information in the Government's report submitted under Convention No. 138 that the issue of child labour is included as a priority in the Government's Joint Inclusion Memorandum with the EU, and that the EU has provided pre-accession assistance to address this phenomenon. The Committee further notes the information on the website for the Turkish Minister of Foreign Affairs that the preparation of the second national plan of action to combat trafficking in human beings was funded by the EU–Turkey Financial Assistance Programme.

The Committee notes the information in the 2009 UNODC Global Report on Trafficking in Persons that voluntary return is provided to victims of trafficking in Turkey, through the cooperation of law enforcement officials, the IOM and relevant institutions in the source country. The Committee also notes the statement in the 2009 Trafficking Report that while cooperation on combating trafficking between the Government and foreign governments has improved, a lack of cooperation with some source countries continues to hamper the Government's ability to investigate and prosecute some traffickers. **Therefore, the Committee urges the Government to redouble its international cooperative anti-trafficking efforts to eliminate this worst form of child labour. It requests the Government to provide information on the measures taken in this regard, and on the results achieved.**

The Committee is raising other points in a request addressed directly to the Government.

## Uganda

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee took note of the report of the Technical Advisory Mission (the Mission) on Child Labour Issues that was carried out in Uganda in July 2009.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Abductions and the exaction of forced labour.* The Committee had previously noted that article 25:1 of the Constitution of Uganda stipulates that no person shall be held in slavery or servitude and that section 25:2 states that no person shall be required to perform forced labour. It had noted that the Penal Code punishes as offences abduction (section 126); detention with sexual intent (section 134); and abduction for the purpose of reducing to slavery (section 245). Moreover, section 5 of the Employment Act of 2006 states that anyone who uses or assists any other person in using forced or compulsory labour commits an offence. Finally, section 252 of the Penal Code provides that any person who unlawfully compels any other to labour against their will commits a misdemeanour.

However, in its previous comments under Convention No. 29, the Committee had noted that the armed group Lord's Resistance Army (LRA) abducted children of both sexes, forcing them to provide work and services as concubines, these alleged activities being associated with the killings, beatings and rape of these children. The Committee had noted that, according to the report of the United Nations Secretary-General on children and armed conflict in Uganda of 7 May 2007 (Secretary-General's report of 2007) (S/2007/260, paragraph 10), the figures from 2005 suggested that as many as 25,000 children may have been abducted since the onset of the conflict in northern Uganda in Kitgum and Gulu districts. However, the total number of abductions had significantly reduced since its peak in 2004. The total number of abductions in January 2005 was estimated to be approximately 1,500, significantly reducing to 222 over the first six months of 2006. Since September 2006, there had been no confirmed reports on the abduction of children in Uganda by the LRA. Moreover, the peace talks between the Government of Uganda and the LRA had officially opened on 14 July 2006 and the parties had signed a formal cessation of hostilities agreement in August 2006, which was extended until 30 June 2007. It was initially expected that the prospects of the signing of a peace agreement would mean a potentially significant increase in the number of children released by the LRA. However, despite repeated pleas by various stakeholders, the LRA had not released children from its ranks.

The Committee noted that, in its concluding observations for the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 17 October 2008, the Committee on the Rights of the Child expressed concern over continued abductions of children living in border regions by the LRA, to be used as child soldiers, sex slaves, spies and to carry goods and weapons (CRC/C/OPAC/UGA/CO/1, paragraph 24). The Committee on the Rights of the Child was further concerned over the inhuman and degrading treatment of the abducted children. Moreover, the Committee noted that, according to the report of the Secretary-General on children and armed conflict in Uganda of 15 September 2009 (Secretary-General's report of 2009), the LRA has not knowingly operated in Ugandan territory since the cessation of hostilities in August 2006. Over the past four years, however, the LRA, including a substantial but unknown number of Ugandan children associated with its forces, has increasingly moved into neighbouring countries to establish additional bases; and children and their communities in the Sudan, the Democratic Republic of the Congo and the Central African Republic have been the victims of attacks that have claimed hundreds of lives and resulted in the disappearance of hundreds of children. In the Democratic Republic of the Congo, 233 abductions of children by the LRA were documented by child protection partners between 1 December 2008 and 30 June 2009. The Secretary-General further indicates that efforts to sign a Comprehensive Peace Agreement with the LRA failed and, as a result, the LRA has increasingly become a regional actor. Since December 2008, LRA elements, operating in small groups, reportedly conducted attacks against several localities in the Democratic Republic of the Congo, killing civilians, burning houses and abducting children and adults. In total, it is estimated that more than 1,000 civilians have been killed and several hundred abducted by the LRA since it increased its violent activities in 2008.

The Committee therefore once again expressed its *deep concern* at the situation of children abducted by the LRA and forced to provide work and services as informants, porters, hostages, as well as becoming victims of sexual exploitation and violence. It observed that, although national legislation appears to prohibit abductions and the exaction of forced labour, this remains a serious issue of concern in practice, in particular in the context of renewed violence and conflict. In this regard, the Committee once again recalled that, by virtue of Article 3(a) of the Convention, the exaction of forced labour from children is considered as one of the worst forms of child labour and that, by virtue of Article 1 of the Convention, member States are required 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 strongly urges the Government to take effective and time-bound measures to eradicate abductions and the exaction of forced labour from children under 18 years, as a matter of urgency. In this regard, it requests the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It also urges the Government to take measures to cooperate with the neighbouring countries and accordingly reinforce security measures, particularly on the common borders with the Democratic Republic of the Congo, the Central African Republic and Sudan, with a view to bringing an end to this worst form of child labour.*

*Compulsory recruitment of children for use in armed conflict.* The Committee had previously noted that, according to the Secretary-General's report of 2007 (paragraph 5), Uganda is among the countries where parties to armed conflicts – the Ugandan People Defence Force (UPDF), the local defence units and the LRA – recruited or used children and were responsible for other grave violations. According to this report, it was estimated that, notwithstanding various peace agreements, up to 2,000 women and children may still have been held by the LRA within its ranks and had not been released. Regarding children recruited by the national military forces, the Secretary-General's report of 2007 indicated that the UPDF recruited young boys to serve in its armed forces, especially within the local defence units, which are UPDF auxiliary forces. The report of 2007 also indicated that during recruitment, age verification was rarely carried out. After training, many of these children were said to be fighting alongside the UPDF. Although the Government of Uganda incorporated, in 2005, in the Uganda People's Defence Forces Act, a provision prohibiting the recruitment and use of child soldiers, the lack of effective monitoring at the local level led to children continuing to join some elements of the armed forces. However, according to the Secretary-General's report of 2007, the Government had committed itself to strengthening the implementation of the existing legal and policy frameworks on the recruitment and use of children in armed conflict. Moreover, in December 2006, the UPDF agreed to undertake inspection and monitoring, including to verify age during the recruitment process. Furthermore, the Uganda Task Force on Monitoring and Reporting (UTF) had committed itself to working with the UPDF and the local defence units to ensure immediate and appropriate follow-up to remove any person under 18 years of age found within the UPDF and local defence units, including through referral to appropriate child protection agencies.

The Committee noted that, according to the Secretary-General's report of 2009 (paragraphs 3–7), on 16 January 2009, the Government of Uganda and the UTF signed an action plan regarding children associated with armed forces in Uganda, which obligates the Government to prevent and end the association of children under the age of 18 with armed auxiliary forces; appoint focal points at the highest level of the Government on the implementation of the action plan; provide access on a regular and ad hoc basis to the UPDF and auxiliary facilities to the UTF to monitor and verify compliance; and promptly investigate allegations of recruitment and use of children and ensure the prosecution of perpetrators. Furthermore, the action plan identifies time-bound activities relating to children associated with the armed forces in Uganda. Among others, the measures include verification visits to all UPDF facilities and regular access to all relevant UPDF units by the UTF. In compliance with the action plan, the Government of Uganda and the UTF agreed upon a series of visits by the UTF to UPDF facilities in northern Uganda in early 2009, with a view to verifying that no persons under the age of 18 were present within, or recruited into, its ranks.

The Committee noted with satisfaction that no case of recruitment or use of children by the UPDF or its auxiliary forces has come to the attention of the UTF. Throughout its visits, the UPDF extended excellent cooperation to the verification team. Furthermore, the UTF observed the UPDF recruitment process in the northern districts of Uganda from 12 to 14 February 2009. It was noted that age requirements for recruitment into the UPDF, as set forth in existing laws and regulations, were strictly observed and followed by UPDF officers in compliance with the UPDF internal circular of February 2009 containing instructions on recruitment criteria. The Committee noted that, according to the Secretary-General's report of 2009, the UTF will nevertheless continue to monitor compliance of the UPDF within the action plan framework to ensure that continuous efforts are made to prevent the recruitment and use of children and that the implementation of the action plan continues.

However, the Committee noted that the LRA, whose leadership originates in Uganda and a significant number of whose forces are also from Uganda, remains listed on the Secretary-General's annexes to his reports on children and armed conflict because of the continued practice of recruitment of children within its ranks. Although LRA violations against children were originally reported solely under Uganda country situation reporting, the geostrategic situation of that group, which is expanding its armed activities to the wider region, has prompted the request of a strategy for increased regional joint capability to monitor and report on cross-border recruitment and use of children by the LRA. The UTF has therefore been engaged in consultations with the Resident Coordinator of the United Nations Country Team in Uganda, the United Nations Children's Fund headquarters and regional offices, the Department of Peacekeeping Operations missions in Sudan and the Democratic Republic of the Congo and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, on appropriate steps to establish a subregional strategy to monitor and report on grave child rights violations committed by the LRA in the region.

The Committee welcomed the measures taken by the Government and the positive results it has registered with regard to the UPDF. However, it expressed its *concern* at the situation of children who continue to be recruited for armed conflict by the LRA. The Committee refers to the Secretary-General's call upon the Government of Uganda to prioritize the protection of children in its military actions against LRA elements, either on Ugandan territory or in joint operations in neighbouring countries (S/2009/462, 15 September 2009, paragraph 28). *The Committee therefore urges the Government to intensify its efforts to improve the situation and to take, as a matter of urgency, immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by the LRA. In this regard, it urges the Government to take the necessary measures to ensure that a strategy for increased regional joint capability to monitor and report on cross-border recruitment and use of children by the LRA is adopted as soon as possible. It also requests the Government to take the necessary measures to ensure that persons who forcibly recruit children under 18 years for use in armed conflict are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.*

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Children who have been affected by armed conflict.* The Committee had previously noted that the orphans and vulnerable children policy

includes interventions to mitigate the impact of the conflict on vulnerable children, especially by providing them with psychological support and with health-care services. It had also noted that a number of measures had been taken in order to rehabilitate children affected by conflict: (a) the psychological support programme for the care of children in conflict areas; (b) the creation of the National Core Group for Psychological Support, responsible for advocacy against abduction and conflict-related child abuse; and (c) the project implemented by Save the Children from Denmark and Sweden, in collaboration with the UPDF and Gulu Support Children Organization (GUSCO) with the aim of training officers in the UPDF's Child Protection Unit and promoting the observance of rights of children affected by armed conflict. Moreover, according to the Secretary-General's report of 2007 (paragraph 62), interim care centres, known as reception centres, were established in the north of Uganda in order to receive formerly abducted children, including those referred by the UPDF Child Protection Unit.

The Committee noted that, according to the mission report, the Ministry of Education and Sports (MoES) made interventions for child victims of armed conflict, as well as abducted children, and specialized schools have been built in the north of the country to give support and rehabilitate these children. Indeed, the Committee noted that, according to the report on Education Needs Assessment for Northern Uganda of February 2008 (ENA report) prepared by the Education Planning Department, the MoES has, among other things, provided psychosocial back-up support by training 50 trainers in psychosocial training, helped with the demobilization of 53 child soldiers, supported eight reception centres for former child abductees. The MoES has also constructed 27 learning centres with 114 classrooms in Kitgum, Pader and Lira for 6,000 displaced primary school children, as well as a primary boarding school at Laroo in Gulu with a capacity for 1,000 pupils. Furthermore, the ENA report indicates that many education provider organizations have contributed to the interventions of the MoES with a view to provide an interim response to the needs of northern Uganda in terms of education. The Committee also noted that, according to the Secretary-General's report of 2009, the action plan regarding children associated with armed forces in Uganda signed by the Government of Uganda and the UTF on 16 January 2009 covers different areas of activities, including preventing the recruitment of children under 18 years for use in armed conflict and releasing and reintegrating underage recruits. ***The Committee strongly encourages the Government to continue its efforts and take effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration. In this regard, it requests the Government to provide information on the number of children under 18 years of age who have been rehabilitated and reintegrated into their communities through these measures, in particular through the action of the MoES and through the activities undertaken under the action programme regarding children associated with armed forces in Uganda.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Uzbekistan

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2008)**

The Committee notes the Government's communication of 25 January 2010 in reply to the 2009 communication of the International Organisation of Employers (IOE), and the Government's reports dated 3 February 2010 and 7 June 2010. The Committee also notes the communication of the International Trade Union Confederation (ITUC) dated 25 August 2010. The Committee further notes the joint communication dated 22 November 2010 from the ITUC, the European Trade Union Confederation (ETUC), the European Trade Union Federation: Textiles, Clothing and Leather (ETUF:TCL), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), as well as the joint communication dated 22 November 2010 from the European Apparel and Textile Confederation (EURATEX) and the ETUF:TCL. The Committee finally takes note of the detailed discussions that took place at the 99th Session of the Conference Committee on the Application of Standards in June 2010 concerning the application by Uzbekistan of Convention No. 182.

*Article 3, clauses (a) and (d), and Article 7(1) of the Convention. Worst forms of child labour and penalties. Forced or compulsory labour in cotton production and hazardous work.* The Committee previously noted the various legal provisions in Uzbekistan which prohibit forced labour, including article 37 of the Constitution, section 7 of the Labour Code, and section 138 of the Criminal Code. It also noted that section 241 of the Labour Code prohibits the employment of persons under 18 years of age in work in unfavourable conditions or which may harm their health, safety or morals. The Committee further noted that the "List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age" prohibited children from watering and gathering cotton by hand and noted the IOE's indication that the Uzbek Prime Minister signed a decree banning child labour in cotton plantations in Uzbekistan in September 2008. However, the Committee also noted the IOE's assertion that, despite the legislative framework against forced labour, schoolchildren (estimates ranging from half a million to 1.5 million schoolchildren) are forced by the Government to work in the national cotton harvest for up to three months each year. Moreover, the Committee noted that the Committee on Economic, Social and Cultural Rights expressed its concern at the situation of school-age children obliged to participate in the cotton harvest instead of attending school during this period (24 January 2006, E/C.12/UZB/CO/1, paragraph 20), and that the Committee on the Rights of the Child expressed concern at the serious health problems (such as intestinal and respiratory infections, meningitis and hepatitis) experienced by many schoolchildren as a result of this participation (2 June 2006, CRC/C/UZB/CO/2, paragraphs 64–65).

The Committee notes the statement in the ITUC's allegations that state-sponsored forced child labour continues to underpin Uzbekistan's cotton industry. The ITUC contends that a vast disparity exists between legal commitments made to eradicate forced child labour and the practical implementation, as seen in the forcible involvement of hundreds of thousands of schoolchildren in the autumn 2009 harvest. In this regard, the ITUC asserts that, despite the Government's denial, sources in the country confirm the widespread mobilization of forced labour (particularly of children) in the 2009

cotton harvest in at least 12 of Uzbekistan's 13 regions: Andijan, Bukhara, Jizzakh, Ferghana, Karakalpakstan, Kaskadrya, Khoresm, Navoi, Samarkland, Syrdarya, Surkhandarya and Tashkent. The ITUC communication emphasizes that this involvement is not the result of family poverty, but state-sponsored mobilization which benefits the Government. The ITUC further states that production quotas (originating from the central Government and distributed through district education departments) are supplied to head teachers who then mobilize students, and that this forced labour involves children as young as 9 years old (though the majority of schoolchildren involved are 11 years or older). The ITUC alleges that these children are required to work every day, even on weekends, and that the work involved is hazardous, involving carrying heavy loads, the application of pesticides and harsh weather conditions, with accidents reportedly resulting in injuries and deaths. These children are provided with insufficient drinking water, and often resort to drinking water contaminated with pesticides out of the irrigation system. Moreover, the ITUC underlines that, although forced labour was again part of the harvest in 2010, there was an increase in surveillance operatives in cotton fields to prevent documentation of the issue, and that accurate figures on the issue are impossible to obtain. The ITUC recommends that the Government take urgent action, including measures to publicly renounce the use of forced child labour in the cotton industry, to commit all necessary resources to address this phenomenon, to improve ethical and technical standards in the cotton industry and to strengthen social dialogue in the country.

The Committee notes the Government's reply to the IOE's communication which states that the allegations concerning widespread forced labour in agriculture are an unfounded attempt by foreign actors to undermine the reputation of Uzbek cotton in the global market. The Government states that almost all of the cotton produced in the country is produced on private cotton farms, and that the well-developed education system is an obstacle to the employment of children in forced labour. The Government further indicates that it is traditional for older children to assist in family businesses, and that this practice is not prohibited. With regard to penalties, the Government states that on 21 December 2009 the Act on additions and amendments to the Uzbekistan Code of Administrative Liability was adopted which increased the penalty for violations of labour legislation and compulsory labour of persons under 18 years of age.

The Committee notes the statement in the UNICEF publication entitled "Risks and Realities of Child Trafficking and Exploitation in Central Asia" of 31 March 2010 that the issue of seasonal mobilization of children for the cotton harvest in Uzbekistan is a growing concern internationally and at home (page 49). The Committee also notes that the Committee on the Elimination of Discrimination Against Women, in its concluding observations of 26 January 2010, expressed its concern regarding the educational consequences of girls and boys working during the cotton harvest season, and requested the Government to guarantee that the cotton harvest season does not compromise the right of these children to education (CEDAW/C/UZB/CO/4, paragraphs 30–31). Moreover, the Committee notes that the UN Human Rights Committee, in its concluding observations of 7 April 2010, stated that it remained concerned about reports that children are still employed and subjected to harsh working conditions, in particular for cotton harvesting. The UN Human Rights Committee emphasized that the Government should ensure that its national legislation and international obligations regulating child labour are fully respected in practice (CCPR/C/UZB/CO/3, paragraph 23).

Furthermore, the Committee notes that the Conference Committee on the Application of Standards concluded that, although various legal provisions prohibit forced labour and the engagement of children in hazardous work, this remains an issue of grave concern in practice. It accordingly urged the Government to take the necessary measures to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children.

The Committee notes the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of employers and workers and NGOs, regarding the continued practice of mobilizing schoolchildren for work in the cotton harvest. The Committee must therefore echo the *serious concern* expressed by these bodies at the continued practice whereby a significant number of children under 18 are taken from school each year and made to work in the cottons fields under hazardous conditions. In this regard, the Committee recalls that, by virtue of *Article 3(a) and (d)* of the Convention, forced labour and hazardous work are considered as worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the elimination of the worst forms of child labour, as a matter of urgency. Furthermore, the Committee recalls that, by virtue of *Article 7(1)*, of the Convention, ratifying countries are required to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions. ***The Committee joins the Committee on the Application of Standards in urging the Government to take immediate and effective time-bound measures to eradicate the forced labour of, or hazardous work by, children under 18 years in cotton production, as a matter of urgency. In this regard, it requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice.***

*Articles 5 and 6. Monitoring mechanisms and programmes of action to eliminate the worst forms of child labour. National Plan of Action for the application of ILO Conventions Nos 138 and 182 (NPA on Convention No. 138 and Convention No. 182).* The Committee previously noted that the NPA on Convention No. 138 and Convention No. 182 (approved in 2008) included measures to address the forced labour of children, in particular in the agricultural sector, including: monitoring of the prohibition of the use of school pupils in forced labour; public control of the prohibition of the use of forced child labour in territories of self-governing bodies of citizens; the establishment of a working group to locally monitor the prohibition of the use of forced labour in cotton picking of school pupils; and initiatives to inform

farmers on matters related to the prohibition of violating legislation on the engagement of children in agricultural work. However, the Committee also noted the IOE's allegation that it remained uncertain as to whether the implementation of these adopted measures would be sufficient to address the deeply rooted practice of forced child labour in the cotton fields.

The Committee notes the ITUC's statement that the NPA on Convention No. 138 and Convention No. 182 requires improvement. For the NPA on Convention No. 138 and Convention No. 182 to be credible and effective, forced child labour needs to be eradicated, and the monitoring of this phenomenon must be completely independent. The ITUC recommends that a comprehensive national action plan which recognizes and addresses the root causes of this practice must be put in place.

The Committee notes the detailed report submitted by the Government dated 3 February 2010 on the implementation of the NPA on Convention No. 138 and Convention No. 182. The Government indicates in this report that on 3 November 2009, the Ministry of Public Education and the Ministry of Higher and Secondary Special Education adopted and implemented a joint resolution on "Measures to apply the Minimum Age Convention and the Worst Forms of Child Labour Convention in the education system" (No.1-04/340, No. 43 and No. 322). Pursuant to this resolution, heads of educational institutions have personal responsibility for the protection of students and their attendance at school and that monitoring will be carried out concerning the prohibited use of compulsory labour of students in schools. The Committee also notes that, by February 2010, information seminars were held in 11 provinces to explain the prohibition on employing children in agricultural work to farmers. The Committee further notes the information in the Government's report of 7 June 2010, that an interdepartmental working group was established, and a programme approved, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. The Government indicates that the supervision of labour legislation and regulations (including the prohibition on employing children in adverse working conditions) is carried out by the specifically authorized stated legal and technical inspections of the Ministry of Labour and Social Protection and trade union workers, pursuant to section 9 of the Labour Code and Government Resolution No. 29 of 19 February 2010. In addition, the Committee notes the Government's indication in this report that it is collaborating with UNICEF, which is carrying out a subproject entitled "Support for the implementation of the NPA on child labour" within the framework of the UNICEF Child Protection Programme for the country. In this regard, the Committee notes that the 2009 UNICEF factsheet entitled "Uzbekistan Fast Facts" (available on the UNICEF website: [www.unicef.org](http://www.unicef.org)) states that ensuring all children stay in school throughout the entire academic year and are not forced to harvest cotton is a priority for the Child Protection Programme. Another document on the UNICEF website entitled "The situation of women and children in Uzbekistan" states that the issue of child labour in the cotton sector remains to be fully addressed.

While noting the Government's information on the numerous measures taken to monitor the involvement of schoolchildren in the cotton harvest, including measures taken within the framework of the NPA on Convention No. 138 and Convention No. 182, the Committee notes an absence of information from the Government on the concrete results of this monitoring, particularly information on the number of children, if any, detected by the labour inspectorate (or any other national monitoring mechanism) engaged to work in the cotton harvest. ***The Committee accordingly requests the Government to provide information on the concrete impact of the various measures taken to monitor the prohibition of the use of forced child labour in the agricultural sector. Furthermore, the Committee urges the Government to strengthen the capacity and expand the reach of the labour inspectorate in enforcing the laws giving effect to the Convention to ensure that school-age children in rural and disadvantaged areas are not removed from school for the purpose of cotton production and harvesting. It requests the Government to provide detailed information on the results achieved in this regard, particularly the number and nature of violations detected with regard to children under 18 working in the cotton harvest, and the penalties imposed.***

*Part V of the report form. Application of the Convention in practice. Forced or compulsory labour in cotton production and hazardous work.* The Committee notes that, while the Government provides information on the application of labour legislation and the employment of children in general, the Government does not provide any information on the engagement of children in the autumn 2010 cotton harvest, including their use in situations of forced labour or hazardous work. Nonetheless, it appears to the Committee that this practice remains prevalent in the country, especially in view of the ongoing project carried out with the assistance of UNICEF to address the situation of child labour in the cotton sector. In light of the Government's assertion that children are not involved in the cotton harvest, the Committee considers it essential that independent monitors be granted unrestricted access to document the situation during the cotton harvest. In this regard, the Committee observes that the ITUC, ETUC, IUF, EFFAT, ETUF:TCL and EURATEX believe that a mission must be carried out as soon as possible in order to address the practice of child labour in the cotton sector and to initiate steps towards its eradication. The Committee further observes that the Conference Committee on the Application of Standards urged the Government to accept a high-level ILO tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention No. 182. ***Noting that the Government has yet to respond positively to this recommendation, the Committee strongly encourages the Government to accept a high-level ILO tripartite observer mission, and expresses the firm hope that such an ILO mission can take place in the very near future.***

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]*

## **Bolivarian Republic of Venezuela**

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1987)**

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted that the Bolivarian Republic of Venezuela cooperates with ILO–IPEC and launched several projects for the elimination of child labour and the protection of young workers. It noted that a Pilot Action Plan for Street Children was adopted and that social programmes to eliminate child labour had been implemented. The Committee further noted that the Government launched a programme for the protection of boys, girls and young people (PRONAT) which was aimed at supervising the working conditions of boys, girls and young workers in the formal and the informal sector, thus securing better protection of their health and their personal and social development.

The Committee notes the Government's information that the Ministry for Participation and Social Protection, jointly with the National Committee for the Rights of Children and Adolescents (IDENA), launched the programme Neighbourhood Children Mission, which is aimed at guaranteeing the rights of children and adolescents, especially those in situations of extreme poverty, in the framework of the goals of the National Economic and Social Development Plan 2007–13. Among the programmes implementing the mission, the Programme for decent work of boys, girls and adolescents (PRODINAT) has been launched in 2008 and is aimed at ensuring the young workers' labour rights (working time, wages, social security, etc.) in order to progressively abolish child labour and protect the work of adolescents. In 2009, PRODINAT was implemented through five projects in five states, respectively, and benefited in total 427 young workers. The Committee also notes the Government's information that in 2008 the Ministry of Environment and the Ministry of Participation and Social Protection jointly participated in a project for ensuring decent conditions to people who live and work in the garbage dumps in the outskirts. In this framework, IDENA carried out a rapid assessment on children and adolescents who worked in the garbage dumps in conditions harmful for their health. Following the results of this assessment, the Neighbourhood Children Mission, through its programme Integral Protection Community Centres, took action to address the situation of children and adolescents working in San Vicente. The Committee notes that, according to the 2008 Findings on the Worst Forms of Child Labour in the Bolivarian Republic of Venezuela, Phase I of the Neighborhood Children Mission is planned to offer services to 3,600 vulnerable children, including street children, working children and children at risk of working. Phase II of the programme plans to provide educational, sports and cultural activities to poor children. *The Committee appreciates the steps taken by the Government to combat child labour and requests it to continue to provide information on the implementation of the projects referred to above and the results obtained in terms of the progressive abolition of child labour.*

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that, according to UNESCO statistics for 2005, 92 per cent of girls and 91 per cent of boys attended primary school whereas only 67 per cent of girls and 59 per cent of boys attended secondary school. It noted that, in its concluding observations on the Government's second periodic report in October 2007 (CRC/C/VEN/CO/2, paragraphs 66–67), the Committee on the Rights of the Child, while welcoming the progress made particularly with regard to enrolment rates and school attendance by disadvantaged children, expressed concern at the low secondary-school enrolment rate of indigenous children, children of African descent and children living in rural areas, and at the high school drop-out rate.

The Committee notes the Government's information that the increased school attendance rates are the result of policies implemented by the Government in the last ten years, such as the elimination of tuition fees and construction and rehabilitation of school infrastructures. It notes that, according to the statistics from the Ministry of Education provided by the Government, the number of children enrolled in basic education increased from 4,885,779 in 2005–06 to 4,984,453 in 2006–07. The number of children enrolled in secondary education also increased from 671,140 in 2005–06 to 711,305 in 2006–07. Moreover, drop-outs rates in primary education decreased from 191,454 in 2004–05 to 128,423 in 2005–06. Drop-out rates in the first year of secondary education also slightly decreased from 35,375 in 2004–05 to 35,231 in 2005–06. It also notes that, according to UNESCO statistics for 2007, secondary-school attendance rates increased from 67 per cent for girls and 59 per cent for boys in 2005 to 73 per cent for girls and 64 per cent for boys in 2007. The Committee also notes the Government's statement that between 2002 and 2007 the percentage of the population living in conditions of extreme poverty decreased from 20.1 per cent to 9.7 per cent. It also notes the Government's indication that it is developing a policy for social inclusion addressed in particular at vulnerable children and adolescents. This policy aims, inter alia, at increasing school attendance rates and decreasing school drop-out rates. This policy is implemented through various missions, projects and programmes, which have the objective of ensuring the right of all children and adolescents, including indigenous children, to a full education, as well as improving school infrastructures, training teachers and addressing child nutritional issues. These programmes include: the Bolivarian School project; the Bolivarian Secondary Schools project (which especially targets youth living in rural or border areas and indigenous youth); and the Programme of Bilingual Intercultural Education (aimed at training indigenous teachers). The Committee notes that, according to the Government, the Neighbourhood Children Mission through its implementation programmes also

addresses the right to education of vulnerable children and adolescents. Furthermore, PRODINAT ensures the rights of child and adolescent workers by integrating in schools those who do not attend school and ensuring time for education to those who attend school.

The Committee notes the measures taken by the Government to increase school enrolment rates and reduce drop-out rates, including through reducing poverty and addressing the situation of vulnerable children such as indigenous children and those living in rural areas. However, it is still concerned at the net school attendance rate, which is lower in secondary education. ***In view of the fact that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to intensify its efforts to improve the functioning of the education system in the country, especially in secondary education, with special attention to the situation of vulnerable children such as indigenous children, children of African descent and children living in rural areas. In this regard, it requests the Government to supply information on the effective and time-bound measures taken in the context of the abovementioned programmes, to further increase school attendance rates and reduce school drop-out rates. It finally requests the Government to continue to provide updated statistical information on school attendance rates and drop-out rates.***

*Article 3(1) and (3). Age of admission to hazardous work and authorization to work from the age of 16.* The Committee noted previously that section 96(1) of the 1998 Act on the protection of children and young people prohibits the employment of young persons aged between 14–18 years in the types of work expressly prohibited by the law. It nonetheless noted that, under the terms of section 96, the national executive authority may, by decree, determine minimum ages that are higher than 14 years for types of work that are hazardous or harmful to the health of young persons. It also noted the Government's indication in this connection that the National Institute for Prevention, Safety and Health at Work (INPSASEL) was exploring whether it was necessary to adopt a decree determining minimum ages higher than 14 years and that, once the list of hazardous types of work was adopted, minimum ages would be recommended taking into account the overarching interests and the health of young people. It finally noted the Government's information that in its research INPSASEL would take account of the provisions of *Article 3(1) and (3)* of the Convention.

The Committee notes that no information on the results of the INPSASEL's study is contained in the Government's report. The Committee understands that no decree fixing an age higher than 14 years for performing types of hazardous work has been adopted so far.

The Committee reminds the Government that, in accordance with *Article 3(1)* of the Convention, the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. It also reminds the Government that *Article 3(3)* of the Convention authorizes, under strict conditions respecting protection and prior training, the employment or work of young persons between the ages of 16–18. It also recalls that this provision of the Convention constitutes a limited exception to the general rule of the prohibition on young persons under 18 years of age from performing hazardous types of work, and does not constitute an overall authorization to undertake hazardous work from the age of 16 years. ***The Committee accordingly urges the Government to take the necessary measures to ensure that its legislation is amended so that hazardous work may only be authorized for young persons over 16 years of age, provided that the requirements set forth by Article 3(3) of the Convention are met.***

*Article 3(2). Determination of types of hazardous work.* The Committee previously noted the Government's information that INPSASEL completed its study on the classification of types of work that are hazardous for children and young persons and that a multidisciplinary team would conduct further studies to determine, on a scientific basis and using test cases, what exactly is to be understood by hazardous work.

The Committee notes the Government's information that IDENA is studying and elaborating a proposal for a Guide for Prevention for the Classification of types of hazardous work for child and adolescent workers. However, it notes with ***deep concern*** that no list of the types of hazardous work appears to have been established. ***Noting that the Bolivarian Republic of Venezuela ratified this Convention more than 20 years ago, the Committee urges the Government to take the necessary steps to adopt the list of types of hazardous work to be prohibited for children under 18 years at the earliest possible date and requests it to provide information on any progress made in this respect in its next report. The Government is also asked to send information on the consultations held with employers' and workers' organizations to determine these types of work.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted the statement of the International Trade Union Confederation (ITUC) to the effect that child labour was widespread in the informal sector and in non-regulated activities in the country. According to certain estimates, some 1.2 million children were working, particularly in agriculture, the domestic service and as street vendors, and more than 300,000 were working in the informal economy. It noted the Government's indication that the INPSASEL, together with the inspection service of the Ministry of Labour, were carrying out inspections in the area of child labour both in the formal and in the informal sectors. It also noted that, according to the Government, the implementation of the PRONAT programme showed that there were boys, girls and young people working in the streets or in the agricultural sector and that their activities increased during holiday periods. It further noted the Government's statement that, notwithstanding the lack of official statistics on the number of children and young people who work, it doubted the accuracy of the ITUC's estimates on the number of working children.



However, the Committee notes that the Government itself provides no updated statistical information on the global number of children working in the formal and informal economy in the Bolivarian Republic of Venezuela. It further observes that, in its concluding observations on the Government's second periodic report in October 2007 (CRC/C/VEN/CO/2, paragraph 70), the Committee on the Rights of the Child expressed its concern at the lack of information on the reality and scope of child labour as well as at the number of cases reported on children working in slavery-like conditions. *The Committee urges the Government to take the necessary measures to ensure that sufficient data on the number of children and young persons who are engaged in economic activity is made available. It also asks the Government to supply updated statistical information, disaggregated by sex and age, relating to the employment of children and young persons throughout the national territory, including extracts from the reports of the inspections of the Ministry of Labour and the INPSASEL and information on the number and nature of contraventions reported.*

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)**

*Article 3(a) and (b) and Article 7(1) of the Convention. Sale and trafficking of children, the use, procuring or offering of a child for prostitution, and penalties.* The Committee previously noted, in its comments under the Forced Labour Convention, 1930 (No. 29), the comments made by the International Trade Union Confederation (ITUC) in which it referred to the "widely reported" trafficking of women and children for prostitution. It further noted that the national legislation contains various provisions penalizing the sale and trafficking of children under 18 years of age or their use, procuring or offering for prostitution. It noted that, in its concluding observations on the Government's combined fourth, fifth and sixth periodic reports of January 2006 (CEDAW/C/VEN/CO/6, paragraphs 27 and 28), the Committee on the Elimination of Discrimination against Women (CEDAW), while noting the preventive efforts in place aimed at addressing the root causes of prostitution, expressed concern that insufficient steps had been taken to curtail the exploitation of prostitution and to discourage demand. The Committee finally noted that, according to the information contained in the Government's second periodic report to the Committee on the Rights of the Child (CRC) in December 2006 (CRC/C/VEN/2, paragraph 187), child prostitution is one of the most serious problems confronting the country.

The Committee takes note of the information provided by the Government in its report on the measures taken to prevent and combat the trafficking and commercial sexual exploitation of children. As part of these measures, government officials were trained on trafficking of persons, including illicit trafficking of migrant workers. It also notes the Government's information that, in the framework of the anti-trafficking collaboration with UNICEF, a bill on trafficking of persons is pending. The Committee notes that the 2009 Report on Trafficking in Persons in the Bolivarian Republic of Venezuela, available on the website of the Office of the High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)), indicates that the Bolivarian Republic of Venezuela is a source, transit and destination country for men, women and children trafficked for the purposes of commercial sexual exploitation and forced labour. Venezuelan women and girls are trafficked within the country for commercial sexual exploitation, lured from poor interior regions to urban and tourist areas such as Caracas and Margarita Island. Some Venezuelan children are forced to work as street beggars or as domestic servants. Venezuelan women and girls are trafficked transnationally for commercial sexual exploitation to Mexico, in addition to Caribbean destinations such as Trinidad and Tobago, Netherlands Antilles and the Dominican Republic. Furthermore, men, women and children from Colombia, Peru, Ecuador, Brazil, Dominican Republic and Asian nations such as the People's Republic of China are trafficked to and through the Bolivarian Republic of Venezuela, and may be subjected to commercial sexual exploitation and forced labour. A more recent trend appears to be increased human trafficking activity in the Bolivarian Republic of Venezuela's Orinoco River Basin area and border regions of Tachira state, where political violence and infiltration by armed rebel groups are common.

The Committee further notes that, according to the United Nations Office on Drugs and Crime (UNODC) 2009 Global Report on Trafficking in Persons, which contains information for the period 2004–07, the number of persons prosecuted for the offence of trafficking of persons and other related offences decreased from 18 in 2005 to four in 2007 (12 persons were convicted for these offences in 2005 and only one in 2007). Moreover, the Committee notes that the 2009 Report on Trafficking in Persons in the Bolivarian Republic of Venezuela indicates that the Government did not show evidence of progress in convicting and sentencing trafficking offenders and providing adequate assistance to victims. In particular, the Bolivarian Republic of Venezuela made limited anti-trafficking law enforcement efforts over 2008: despite existing legal tools for punishing many forms of human trafficking, the Venezuelan Government did not report any convictions or sentences of trafficking offenders in 2008. However, the Government opened six investigations of transnational sex trafficking, one investigation of transnational labour trafficking, and one investigation of suspected internal trafficking. There were no confirmed reports of government complicity with human trafficking in 2008, though corruption among public officials, particularly related to the issuance of false identity documents, appeared to be widespread. Moreover, many Venezuelan law enforcement officials reportedly did not distinguish between human trafficking and alien smuggling offences.

The Committee expresses its *concern* at the information concerning the persistence of the problem of trafficking of children for commercial sexual exploitation and forced labour in the country as well as at the limited anti-trafficking law enforcement efforts to address the issue. *The Committee therefore urges the Government to redouble its efforts to strengthen the capacity of law enforcement agencies in order to ensure that persons who traffic in children for the purposes of sexual or labour exploitation are in practice prosecuted, and that sufficiently effective and dissuasive penalties are imposed. It requests the Government to continue to provide information on the number of infringements*

**reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children. It finally requests the Government to provide information on any developments in adopting the bill on trafficking of persons.**

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Trafficking and commercial sexual exploitation.* The Committee previously noted that the Government adopted a National Plan of Action against Abuse and Commercial Sexual Exploitation (PANAESC), the objectives of which include the prevention and protection of children under 18 years of age from sexual exploitation and their rehabilitation. It further noted that, in its concluding observations of January 2006 (CEDAW/C/VEN/CO/6, paragraphs 27 and 28), CEDAW, while noting the socio-economic and preventive measures in place to address the root causes of prostitution, expressed concern that insufficient steps had been taken for rehabilitation.

The Committee notes the Government's information that it has adopted, especially through the National Committee for the Rights of Children and Adolescents (IDENA) and the Ministry for Internal Affairs and Justice, various measures to prevent the trafficking and commercial sexual exploitation of children. The more recent measures include: the adoption of the National Plan to prevent, combat and sanction trafficking of persons as well as assist its victims (National Plan to combat trafficking); and the development and publication of guidelines for the protection of child and adolescent victims of pornography as a form of commercial sexual exploitation. Various public awareness campaigns were also carried out against the dangers of human trafficking and commercial sexual exploitation. **The Committee requests the Government to continue to take measures to prevent the engagement of children in trafficking and commercial sexual exploitation and to provide information in this regard.**

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* The Committee notes the Government's information that, in the framework of the anti-trafficking collaboration with UNICEF, a guide for protecting and assisting victims of trafficking of persons, especially women, children and adolescents, was elaborated. It also notes that the National Plan to combat trafficking also targets assistance to victims of trafficking. It finally notes that one of the objectives of the PANAESC is rehabilitating child victims of commercial sexual exploitation. **Noting the absence of information on any effective and time-bound measures taken in the context of the National Plan to combat trafficking and the PANAESC with a view to providing the necessary and appropriate direct assistance for the removal of children from trafficking and commercial sexual exploitation and for their rehabilitation and social integration, the Committee once again requests the Government to provide information on the measures adopted in this regard. In this respect, it requests the Government to indicate whether reception centres for child victims of trafficking and commercial sexual exploitation have been established in the country, with an indication of the number of children actually received by such centres; and whether specific medical and social follow-up programmes have been formulated and implemented for child victims of trafficking and commercial sexual exploitation.**

*Article 8. International cooperation.* Following its previous comments, the Committee notes the Government's information that since 2006 the Bolivarian Republic of Venezuela is cooperating with various international organizations, such as the International Organization for Migration (IOM), UNICEF and the Organization of American States (OAS), as well as at the regional level in the framework of MERCOSUR, in order to eliminate the sale and trafficking and commercial sexual exploitation of children. It also notes that, according to the Trafficking Report, the Venezuelan Ministry of Tourism is part of the Joint Group for the Elimination of Commercial Sexual Exploitation of Children in Tourism, which conducts prevention and awareness-raising campaigns to combat the commercial exploitation of children in Latin America. Moreover, the Government of the Bolivarian Republic of Venezuela, jointly with the government members and associates of MERCOSUR, is carrying out the Niño Sur initiative to defend the rights of children and adolescents in the region. The initiative aims to raise awareness of commercial sexual exploitation, improve country legal frameworks, and exchange best practices to tackle issues related to victim protection and assistance. The Committee notes the Government's information that, in the framework of the Niño Sur initiative, a regional legislative database on the prevention and fight against the sale, trafficking and commercial sexual exploitation of children has been created. It also notes the Government's indication that proposals of cooperation with the Governments of Brazil and Uruguay on the elimination of the sale and trafficking and commercial sexual exploitation of children are being carried out. The Committee finally notes that, according to the information available at the Office, in 2007 the Bi-national Forum between the Bolivarian Republic of Venezuela and Brazil on trafficking of persons was carried out with the objective of exchanging information and cases of good practice on the subject. In this framework, the two governments committed to develop actions against the crime of trafficking of persons, especially in the border areas, and to sign a bilateral agreement against trafficking of persons. Furthermore, in January 2007, the forum "Latin American experiences in assisting victims of trafficking of persons" was carried out, in which the Governments of the Bolivarian Republic of Venezuela, Colombia, Ecuador, Panama and Peru participated. **The Committee requests the Government to continue to take measures to cooperate with countries with which it shares frontiers in order to eliminate the trafficking and commercial sexual exploitation of children. It also requests it to provide information on further measures taken in this regard and results achieved.**

*Parts IV and V of the report form. Application of the Convention in practice.* The Committee previously noted that, in its conclusions on the Government's second periodic report of October 2007, the CRC regretted the lack of

information and data on the sexual exploitation and sale of children. It further noted that, in its concluding observations of January 2006 (CEDAW/C/VEN/CO/6, paragraph 28), the CEDAW requested the Government to include in its next periodic report a comprehensive assessment, based on appropriate studies, on the causes and extent of prostitution, as well as the trafficking of women and girls, with information disaggregated by age and geographical area, and to provide details of the results achieved. The Committee requested the Government to take the necessary measures to conduct a global evaluation of the causes and extent of the trafficking and prostitution of children under 18 years of age.

The Committee notes the Government's information that it will take the necessary measures in this regard and provide the relative information. It also notes the Government's information that, in the framework of the annual work plan of the National Statistical Office in collaboration with UNICEF, and in the context of the implementation of the PANAESC, various activities were carried out to ensure the visibility of children and adolescents within national statistics. Moreover, a central national system is planned for reporting the violations of the rights of children and adolescents. *The Committee hopes that the Government will carry out in the very near future a global evaluation of the causes and extent of the trafficking and prostitution of children under 18 years of age, and requests it to provide information on its results, once undertaken. Noting the measures taken by the Government to ensure the visibility of children and adolescents within national statistics and to improve the system for reporting the violations of their rights, the Committee also requests the Government to provide information on the nature, extent and trends of the worst forms of child labour, including updated statistics on the number of children under 18 years involved in trafficking and commercial sexual exploitation, as well as information on the number of infringements reported regarding the violation of the provisions giving effect to the Convention. To the extent possible, all information provided should be disaggregated by sex and age.*

The Committee is raising other points in a request addressed directly to the Government.

## Zimbabwe

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes the communication of the Zimbabwe Congress of Trade Unions (ZCTU) dated 21 September 2009, as well as the Government's brief report.

*Article 2(1) of the Convention. Scope of application.* In its previous comments, the Committee noted that the Labour Act of 2002 and the Labour Relation Regulations of 1997 do not apply to self-employed workers. The Committee noted, however, the Government's indication that it planned to undertake consultations with the social partners with a view to amending the legislation in order to explicitly cover all types of employment or work, within the framework of the ongoing labour law reform.

The Committee notes the ZCTU's contention that the informal economy is among the sectors where child labour is the most common. The Committee also notes with *regret* an absence of information in the Government's report on any ongoing labour legislation reform, or on any other measures taken to protect children engaged in work on their own account. However, the Committee notes the information in the ILO-IPEC Draft Rapid Assessment Survey on the worst forms of child labour in Zimbabwe (ILO-IPEC Rapid Assessment Survey), conducted in September 2008, that, of the working children surveyed, a full 87 per cent were self-employed. Therefore, the Committee reminds the Government that the Convention applies to all branches of economic activity, including the informal sector, and that it covers any type of employment or work, whether or not it is performed on the basis of an employment relationship and whether or not it is remunerated. *In this regard, the Committee urges the Government to take the necessary measures to ensure that children working outside an employment relationship, particularly in the informal economy or on a self-employed basis, benefit from the protection afforded by the Convention. It also requests the Government to provide information any other measures taken or envisaged in this respect, in addition to up-to-date information on the status of the proposed labour law reform.*

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, while section 5 of the Education Act of 1996 states that it is the objective for primary education to be compulsory for every child of school-going age, in practice, primary education is neither free nor compulsory and that the quality of education is low. The Committee also noted that, according to the 2004 labour force survey, out of a significant number of children between the ages of 5–14 years involved in economic activities, 4 per cent had never attended school and 14 per cent had left school. Among children between the ages of 5–14 years performing non-economic labour, such as household chores, 6 per cent had never attended school and 35 per cent had left school. The Committee further noted the ZCTU's contention that very young children engaged in work to pay for their school fees. The ZCTU stated that the Government should reintroduce free education at the primary level in order to contribute to eradicating child labour. In addition, the Committee noted the Government's indication that it had launched various programmes, such as the Basic Education Assistance Module (BEAM) and the National Action Plan for orphans and other vulnerable children (OVC NPA), aimed at ensuring that children attend school. The Government also indicated that consultations would be held with the Ministry of Education, Sports and Culture concerning legislation fixing a specific age for the completion of compulsory schooling.

The Committee notes that the ZCTU, in its more recent allegations of 2009, contends that school drop-outs are a common phenomenon, with children below the age of 13 seeking employment. The Committee notes the Government's

statement that the review of legislation with respect to fixing a specific age for the completion of compulsory schooling will be pursued in the context of phase II of the Worst Forms of Child Labour Project (WFCL Project). The Committee further notes the statement in the draft Five-Year National Programme for the Elimination of the Worst Forms of Child Labour of April 2009, from the Ministry of Labour and Social Services (draft WFCL document) that the number of school drop-outs has been constantly increasing in recent years, affecting girls disproportionately, and that children are not attending school to save on educational expenses and increase the labour supply. In addition, the Committee notes the information in the ILO-IPEC Rapid Assessment Survey that the cost of education was a major obstacle in access to education: of the children surveyed who had dropped out of school, 48 per cent had done so because their parents could not pay for school fees and, of the children who had never attended school, 59 per cent said that this was due to financial reasons. **Recalling that compulsory schooling is one of the most effective means of combating child labour, the Committee requests the Government to pursue its efforts, within the framework of the WFCL Project, to provide for compulsory education up to the minimum age of admission to employment of 14 years. The Committee also requests the Government to redouble its efforts to improve the functioning of the education system, and to take measures to address the financial barriers that prevent children from attending school. Furthermore, noting an absence of information in the Government's report on the BEAM and the OVC NPA, it once again requests the Government to provide information on the impact of these programmes on increasing school attendance and reducing school drop-out rates, so as to prevent the engagement of children in child labour**

*Article 6. Apprenticeship.* The Committee previously noted that section 11(1)(a) and (3)(b) of the Labour Act of 2002 permits the employment of apprentices from the age of 13 years, while Chapter 4, Part IV, subsection 1(a), of the Manpower Planning and Development Act prescribes that the minimum age for apprenticeship is 16 years. The Committee observed that permitting the employment of apprentices from the age of 13 years, pursuant to the Labour Act, was not in conformity with *Article 6* of the Convention. The Committee further noted the Government's statement that it recognized the need for harmonized legislation in the area of apprenticeships, and indicated that this would be addressed in the ongoing labour law reform, in consultation with the social partners. **Noting an absence of information on this point in the Government's report, the Committee once again requests the Government to take the necessary measures, within the framework of the ongoing labour law reform, to harmonize the relevant legislation, in particular section 11(1)(a) and (3)(b) of the Labour Act, and Chapter 4, Part IV, subsection 1(a), of the Manpower Planning and Development Act, in order to ensure conformity with Article 6 of the Convention.**

*Article 7(1) and (4). Minimum age for admission to, and determination of, light work.* The Committee previously noted that section 3(4) of the Labour Relations Regulations establishes that children over 13 years of age may perform light work where such work is an integral part of a course of education or training and does not prejudice their education, health and safety. The Committee also noted that quite a number of children below 13 years of age were economically active; the 2004 labour force survey indicated that 406,958 children aged 5–14 were engaged in work at least three hours per day. The Committee further noted the Government's statement that it intended to consult with the social partners with a view to amending its legislation so as to detail the types of light work, which may be undertaken by children from the age of 13 years and the conditions in which such work may be undertaken. The Government indicated that this would be conducted within the framework of the WFCL Project.

The Committee notes the ZCTU's contention, that children in Zimbabwe often start work below the age of 13. The Committee also notes, once again, the Government's statement that the detailing of light work will be pursued in the context of phase II of the WFCL Project, though notes that this objective is not included in the draft WFCL document. **Therefore, the Committee requests the Government to take the necessary measures, within the framework of the implementation of phase II of the WFCL Project, to ensure the determination of types of light work which may be performed by children from the age of 13 years and the conditions in which such work may be undertaken.**

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that the 2004 labour force survey indicated that 42 per cent of children between the ages of 5–14 years were involved in economic child labour (defined as engaging in economic activities for at least three hours a day and that 2 per cent of these children were involved in non-economic child labour (defined as non-economic work for at least five hours a day). The Committee encouraged the Government to take measures to improve this situation, and requested the Government to provide statistical data on the employment of children and young persons, especially regarding the agricultural and domestic sectors.

The Committee notes the ZCTU's allegations that, despite legislation applying the Convention, there is lack of enforcement of these regulations, due to the incapacity of labour inspectors. The ZCTU contends that legislative protection has become irrelevant due to poverty in the country, stemming from poor governance and ill-conceived economic policies. In addition, when breaches of the relevant legislation are detected, the cases take more than a year to be processed, both at the Department of Labour, and in the courts of law.

The Committee notes the Government's indication that comprehensive data on child labour will be collected in 2010, within the framework of the Zimbabwe labour force survey. The Committee further notes the Government's statement that the agricultural and domestic sectors will be prioritized in the implementation of phase II of the WFCL Project. Finally, the Committee notes the information in the ILO-IPEC Rapid Assessment Survey that 68 per cent of child agricultural workers surveyed and 53 per cent of child domestic workers surveyed were 14 years old and younger.

The Committee expresses its *deep concern* at the allegations of weak enforcement of child labour legislation, and at the large number of children under the age of 14 who are found to be working, especially in the agricultural sector and in household activities. *The Committee strongly urges the Government to redouble its efforts, within phase II of the WFCL Project, to improve this situation. It also requests the Government to provide detailed information on measures taken in this regard, especially with respect to children working in the agricultural sector and domestic services. The Committee further requests the Government to provide information from the Zimbabwe labour force survey on the number of children below the minimum age who are engaged in economic activities when it becomes available, as well as extracts from the reports of inspection services, information on the number and nature of contraventions reported and penalties applied.*

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the communication of the Zimbabwe Congress of Trade Unions (ZCTU) dated 21 September 2009, as well as the Government's brief report.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted that section 11 of the Sexual Offences Act No. 8 of 2001 prohibits procuring any person to leave Zimbabwe for purposes of sexual exploitation. It also noted the Government's statement that the Children's Protection and Adoption Act (Children's Act) would be amended in order to deal explicitly with the sale and trafficking of children. The Committee further noted that Zimbabwean children were trafficked both internally and to other countries, for forced agricultural labour, domestic servitude and sexual exploitation, though observed that the existing legislation only covered trafficking for purposes of sexual exploitation.

The Committee notes the ZCTU'S statement of the existence of trafficking of children to other countries in the region, such as Botswana and South Africa. The Committee notes the Government's statement that it is in the process of enacting legislation to address trafficking in persons, for the purposes of both sexual and labour exploitation. However, the Committee observes that the Government has referred to forthcoming amendments prohibiting the trafficking of children since 2005. It also notes the information in the 2009 Report on the Trafficking in Persons, available on the website of the Office of the UN High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (Trafficking Report) that, although the Government indicated that it was drafting comprehensive trafficking legislation, such a draft was neither publicly available nor introduced into Parliament.

The Committee notes the statement in the 2009 UNODC Global Report on Trafficking in Persons that, due to the absence of a specific provision on human trafficking, no prosecutions or convictions were recorded for trafficking in persons during the recent years. The Committee notes that the Trafficking Report indicates that internal trafficking had increased during the previous year (largely due to the closure of schools, worsening political violence and a faltering economy). The Trafficking Report further indicates that children in rural areas were trafficked within Zimbabwe, to farms for agricultural labour and to cities for forced domestic labour and commercial sexual exploitation. The Committee observes that the current legislation does not appear to prohibit this internal trafficking, nor the trafficking of children to other countries for the purpose of labour exploitation. *Therefore, recalling that Article 1 of the Convention requires member States to take immediate measures to prohibit the worst forms of child labour as a matter of urgency, the Committee urges the Government to take the necessary measures to ensure that legislation prohibiting the sale and trafficking of children (including internal trafficking) for both labour and sexual exploitation is adopted in the very near future. It requests the Government to provide information on progress made in this regard, and to provide a copy of the relevant legislation, once adopted.*

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee previously noted the information contained in the report for the Project on the Elimination of the Worst Forms of Child Labour in Zimbabwe (WFCL Project report) that Zimbabwe, while making significant progress towards the achievement of universal primary education in the 1990s, faced a decline in its net enrolment and completion rates of primary education, due to ongoing socio-economic challenges. It noted that the resources allocated to education by the Government were largely inadequate and, as a result, the number of school drop-outs had been constantly increasing in recent years, affecting girls disproportionately. The Committee also noted the information in the 2004 labour force survey that, out of the 3 million children aged 5–17 years, 8.2 per cent had never attended school, while 10.6 per cent had left school. However, the Committee noted that the Government had embarked, in 2001, upon the Basic Education Assistance Module (BEAM) with the primary objective of reducing the number of children dropping out of school, and to reach those who had never been to school due to economic hardship. It requested the Government to provide updated statistical information on the primary education enrolment and drop-out rates.

The Committee notes the ZCTU's contention that school drop-outs are a common phenomenon in Zimbabwe. The Committee also notes the Government's indication that the statistical information requested by the Committee will be compiled and supplied in due course. The Committee further notes the information in a UNICEF report of 26 May 2010 entitled "UNICEF Humanitarian Action Update: Zimbabwe" that the BEAM was revitalized in 2009 with strong support from several donors, and has supported over 550,000 children across 5,400 primary schools. However, the Committee notes the information in the Rapid Assessment Survey identifying the worst forms of child labour in Zimbabwe,

conducted in September 2008 (Rapid Assessment Survey), that, of the children surveyed, 70 per cent had dropped out or never attended school (the Survey focused on children working in the worst forms of child labour). This Survey further indicates that, for these children, the cost of education was a major obstacle in their access to education: of the children surveyed who had dropped out of school, 48 per cent had done so because their parents could not pay for school fees, and of the children who had never attended school, 59 per cent said that this was due to financial reasons. ***Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to redouble its efforts to ensure access to free basic education to all children in Zimbabwe. The Committee requests the Government to provide information on concrete measures taken in this regard, particularly with respect to addressing the financial barriers to education, with a view to increasing attendance rates and reducing drop-out rates. It also requests the Government to provide information, in its next report, on the number of children who have received free basic education under the BEAM.***

*Clause (d). Identify and reach out to children at special risk.* 1. *Child victims and orphans of HIV/AIDS.* The Committee previously noted that Zimbabwe is one of the countries worst affected by HIV/AIDS; many children are orphaned due to the HIV/AIDS pandemic and most of these children find themselves involved in the worst forms of child labour. The Committee noted the ZCTU's allegation that the HIV/AIDS pandemic had contributed to the phenomenon of child labour, as the number of child-headed families increased. The Committee noted the Government's indication that in 2004 it had implemented the Orphans and other Vulnerable Children National Action Plan (OVC NAP), which seeks to ensure that orphans and other vulnerable children have access to education, food, health services, and that they are protected from abuse and exploitation. The Committee requested the Government to provide information on the impact of the OVC NAP.

The Committee notes the ZCTU's contention, in its more recent allegations of 2009, that HIV/AIDS is a major contributor to child poverty. The Committee notes an absence of information on this point in the Government's report. However, the Committee notes the information in the Government's report, submitted to the UN General Assembly as a follow up to the Declaration of Commitment on HIV/AIDS in January 2008, that the OVC NAP, spearheaded by the Ministry of Public Service, Labour and Social Welfare, had been implemented in 68 out of 83 districts. This report also indicates that, as of 2008, the OVC NAP had reached 147,012 beneficiaries through various interventions, including educational, medical, legal and psychosocial assistance. This report further indicates that, while there has been a continued decline in the prevalence of HIV/AIDS in the population, there are approximately 1,000,000 orphans under the age of 18 due to HIV/AIDS in Zimbabwe.

The Committee expresses its ***concern*** at the high number of children orphaned in Zimbabwe as a result of HIV/AIDS. ***Recalling that children orphaned by HIV/AIDS, and other vulnerable children, are at an increased risk of being engaged in the worst forms of child labour, the Committee requests the Government to strengthen its efforts, within the framework of the OVC NAP, to protect such children from these worst forms. It requests the Government to provide information on the effective and time-bound measures taken in this regard, and on the results achieved.***

2. *Street children.* The Committee previously noted that, according to official estimates, there were approximately 5,000 street children in Harare, the majority of whom were boys between the ages of 14 and 18. The Committee requested the Government to indicate the measures taken within the WFCL Project with regard to this group.

The Committee notes the Government's statement that the objective of phase I of the WFCL Project was to ascertain the nature of the worst forms of child labour in Zimbabwe, and that there has not, as of yet, been action to deal with these worst forms. The Government indicates that it will implement remedial measures in the context of phase II of the project. The Committee also notes the information in a report on the worst forms of child labour, available on the website of the Office of the UN High Commissioner for Refugees ([www.unhcr.org](http://www.unhcr.org)) (WFCL Report) that, in recent years, the number of street children has increased. The Committee further notes that street children were examined in the Rapid Assessment Survey, revealing that 63 per cent of the street children surveyed were orphans, and the average age that these children began living on the streets was 10 years. The Rapid Assessment Survey indicated that begging was the source of livelihood for 45 per cent of these children. ***The Committee expresses its serious concern at reports that the number of street children is increasing, and requests the Government to take the necessary measures to ensure that children under 18 years living and working on the streets are protected from the worst forms of child labour. It further requests the Government to provide information on measures taken in this regard, within the framework of phase II of the WFCL Project, and on the results achieved.***

3. *Children engaged in mining activities.* The Committee notes the ZCTU's statement that the worst forms of child labour most common in Zimbabwe is in the mining sector, where children scavenge for minerals to survive. The Committee also notes the information available in the WFCL Report that children engage in the mining of diamonds, gold, chrome and tin, in addition to illegal gold panning with their families. The Committee further notes the indication in the Rapid Assessment Survey that it is mostly boys between the ages of 15 and 17 (though most had started below the age of 14), who are engaged in mining, and that these children are generally self-employed (11.6 per cent of the children surveyed in the Rapid Assessment Survey were engaged in mining work). The Rapid Assessment Survey further indicates that 67 per cent of children working in this sector use chemicals (including mercury, cyanide and explosives), and approximately 24 per cent of these children work for more than nine hours a day. ***The Committee expresses its serious concern at the situation of children working in hazardous conditions in mines, and requests the Government to take***

*immediate measures, within the framework of the WFCL Project, to remove and provide rehabilitative services to children engaged in these hazardous mining activities. It requests the Government to provide information on effective and time-bound measures taken in this regard and the results achieved.*

*Article 5 and Part V of the report form. Monitoring mechanisms and the application of the Convention in practice.* Following its previous comments, the Committee notes the ZCTU's contention that land invasions have caused the displacement of farm workers and their families, causing children to engage in illicit activities, including prostitution. The ZCTU further indicates that the relevant enforcement mechanisms need to be enhanced, and that there is a strong need to address the underlying causes of the worst forms of child labour, particularly poverty and to provide a comprehensive social system.

The Committee notes that the Government refers to the Rapid Assessment Survey, which indicates that, of the children interviewed, 18 per cent were engaged in prostitution and 23 per cent were engaged in illicit activities. The Rapid Assessment Survey also indicates that, while many factors contribute to the worsening of children's situations, poverty is the major push factor for the worst forms of child labour. The Survey further indicates that children were engaged in these forms of work because there were no immediately viable alternatives through which to support themselves and, in some cases, their households. Households mainly used the children's income for basic needs that included rent and clothing. The Survey concludes that, while many of the legal provisions on the worst forms of child labour are sufficiently up to date, this legislation lacked enforcement. The Survey emphasized that law enforcement agencies/officers dealing with children's issues must be adequately resourced to be able to protect the needs of children and that relevant Government ministries and departments who oversee the implementation of and compliance with the relevant legal provisions should receive the necessary fiscal support.

The Committee expresses its *deep concern* at reports of the weak enforcement of provisions giving effect to the Convention. *The Committee requests the Government to redouble its efforts, within the implementation of phase II of the WFCL Project, to combat the worst forms of child labour, including through strengthened enforcement of the relevant legislative provisions and measures to address the roots causes of this phenomenon. The Committee requests the Government to provide information on the measures taken, and the results achieved. In addition, the Committee requests the Government to provide information on the nature, extent and trends of the worst forms of child labour, the number of children covered by the measures giving effect to the Convention, the number and nature of infringements reported, investigations, prosecutions, convictions and penalties imposed, as soon as this information becomes available. To the extent possible, all information provided should be disaggregated by sex and age.*

The Committee is raising other points in a request addressed directly to the Government.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 59** (United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar); **Convention Nos 77, 78, 79** (Kyrgyzstan); **Convention No. 90** (Guinea); **Convention No. 123** (Uganda); **Convention No. 124** (Plurinational State of Bolivia, Kyrgyzstan); **Convention No. 138** (Angola, Armenia, Bahamas, Barbados, Belarus, Belize, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cambodia, Chad, Chile, China, Comoros, Congo, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Equatorial Guinea, Estonia, Fiji, Gambia, Georgia, Germany, Grenada, Guinea, Guyana, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Jamaica, Kazakhstan, Kyrgyzstan, Nigeria, Pakistan, Papua New Guinea, Paraguay, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Senegal, Seychelles, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Uganda); **Convention No. 182** (Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, China: Macau Special Administrative Region, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Grenada, Guinea, Guyana, Haiti, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Mexico, Morocco, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Rwanda, Saint Kitts and Nevis, San Marino, Sao Tome and Principe, Senegal, Seychelles, Slovakia, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Turkey, Uganda, Uzbekistan, Bolivarian Republic of Venezuela, Zimbabwe).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 138** (China: Hong Kong Special Administrative Region, Japan); **Convention No. 182** (Malta).

## Equality of opportunity and treatment

### Afghanistan

#### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

*Equal remuneration for work of equal value. Legislation.* In its previous comments, the Committee noted that while some of the provisions of the Labour Code (namely sections 8, 9(1), 59(4) and 93) read together provided some protection against discrimination based on sex with respect to remuneration, they did not reflect fully the principle of the Convention. The Committee wishes to point out that the concept of “work of equal value” in the Convention is essential to address discrimination between men and women with respect to remuneration, as it permits a broad scope of comparison between jobs performed by men and women that may be different but nonetheless of equal value. ***The Committee asks the Government to provide information on any steps taken to amend the Labour Code, so as to include a provision that would explicitly provide for the right of men and women to receive equal remuneration for work of equal value.***

*Article 1(a) of the Convention. Remuneration.* The Committee notes from the Government’s report that the prohibition of discrimination between men and women with respect to the payment of wages and allowances covers “salary supplements” mentioned in the Labour Code.

With regard to the determination of remuneration in the public service, the Committee notes that the Government indicates that the new Civil Servants Law adopted in 2008, regulates remuneration and recruitment of public service employees on the basis of the principle of the Convention. ***The Committee would appreciate if the Government would provide more details on the method used to establish the salary scales in the public service, as well as a copy of the Civil Servants Law.***

*Raising awareness of the principle of the Convention.* Referring to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), regarding awareness-raising activities, the Committee notes that advertising material, such as posters, on equal remuneration for women has been developed and disseminated in the capital and the provinces and that training seminars were organized for government officials, workers, employers, judges and non-governmental organizations on the rights of women, including their right to equal remuneration. It further notes that, in its concluding observations, the United Nations Committee on Economic, Social and Cultural Rights urges the Government to ensure equal remuneration for work of equal value and reduce the gender wage gap, and recommends that a mechanism be established to monitor, inter alia, the implementation of the rights of workers to equal pay for work of equal value (E/C.12/AFG/CO/2-4, 21 May 2010, paragraph 24). ***The Committee encourages the Government to pursue and intensify its efforts to promote the application of the principle of equal remuneration for men and women for work of equal value both in the public and the private sectors, and invites the Government to collaborate with workers’ and employers’ organizations in this respect.***

#### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

*Articles 1 and 2 of the Convention. Legislation.* The Committee notes from the National Action Plan for the Women of Afghanistan (NAPWA) adopted for 2007–17, that the amendment or repeal of all discriminatory laws that impair women’s potential to fulfil their social and economic rights and duties will be undertaken, including the revision of the Labour Code. Referring to its previous comments, the Committee notes the Government’s indication that it is envisaged that a definition of discrimination be included in the legislation in the near future. The Committee recalls that the prohibition of discrimination should cover all the grounds listed in *Article 1(1)(a)* of the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin, as well as any other grounds that the Government may determine after consultation with employers’ and workers’ organizations, in accordance with *Article 1(1)(b)*. ***The Committee requests the Government to take the necessary measures to amend the Labour Code so as to include a definition of both direct and indirect discrimination, covering at least all the grounds listed in Article 1(1)(a) of the Convention, as well as any other grounds determined in accordance with Article 1(1)(b). The Committee hopes that the Government will be in a position to report progress in this respect in the near future.***

The Committee further notes from the Government’s report that a new Civil Servants Law was adopted in July 2008, which prohibits discrimination based on “gender, tribe, religion and physical disability” with respect to recruitment of government employees and contracted workers (section 10(2)). In addition, section 16(8) provides for the right to bring a complaint against a superior or a colleague in case of discrimination at work on the basis of “sex, tribe, social status, religion, political and marital status”. ***The Committee requests the Government to take the necessary measures to ensure that civil servants are protected against discrimination on at least all the grounds enumerated in Article 1(1)(a) of the Convention with respect to access to employment, vocational training, promotions as well as terms and conditions of employment. The Government is requested to provide information on the measures taken in this regard and a copy of the 2008 Civil Servants Law.***

***Noting that the new legislation on persons with disabilities was passed by the National Assembly, but has not yet been approved by the President, the Committee requests the Government to provide information on the***



*anti-discrimination provisions in such legislation and any measures taken to implement them. Please also provide a copy of the law as soon as it is approved.*

*Special measures of protection. Work prohibited for women.* The Committee notes that the list of physically arduous or harmful work prohibited for women as envisaged under section 120 of the Labour Code has still not been established and that the Government requests the assistance of the ILO in developing such a list. ***The Committee requests the Government to ensure that, in the list to be established under section 120 of the Labour Code, prohibitions are limited to protecting maternity and not aimed at protecting women because of their sex or gender on the basis of stereotyped assumptions. Noting the Government's intention to seek ILO assistance concerning this matter, the Committee asks the Government to consider sending a copy of the list to the Office for its comments prior to its adoption.***

*Equal access to vocational training and education.* The Committee notes that one of the goals of the NAPWA and the Decent Work Country Programme (DWCP) adopted for 2010–15 is to increase training opportunities for women and men. Welcoming this information, the Committee wishes to emphasize that access to a wide range of vocational training courses is of paramount importance for achieving equality in the labour market in that it is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. ***The Committee encourages the Government to pursue and intensify its efforts to increase vocational training opportunities for women and men, including through the implementation of the National Action Plan for the Women of Afghanistan and the Decent Work Country Programme. The Committee requests the Government to take the necessary steps to enhance the participation of women in such programmes, including measures to inform girls and women of the range of training courses and occupations open to them. The Government is requested to provide information on the progress made in this respect.***

The Committee notes from the NAPWA that the status of girls and women in education remains a matter of concern. The gross enrolment rate for girls at the primary-school level was 54 per cent in 2004, while the total gross enrolment rate was 94 per cent. The NAPWA further states that boys are twice as likely as girls to complete primary school, and this difference widens at secondary-school level, and widens further in higher education. The Committee considers that limited access to education impairs women's future employment opportunities and makes them more susceptible to unemployment and poverty. ***The Committee requests the Government to provide information on measures taken to promote girls' and women's access to education at all levels, including in the design and implementation of the affirmative action policy in education envisaged in the NAPWA.***

*Articles 2 and 3. Equality of opportunity and treatment of men and women.* The Committee notes from the Government's report that gender units have been established in all the ministries and that the Civil Service Commission, in all its vacancy announcements, invites women to apply and gives priority to women. The Government also indicates in very broad terms that in all the ministries women hold high-ranking positions.

With respect to the private sector, the Committee observes that very little information is available on the participation of men and women in the labour market. It also notes from the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), that women continue to face discrimination in many domains due to the persistence of stereotypes and customary practices that marginalize them and that there is a discrepancy between the legal framework and the inequality in practice in various sectors including employment (E/C.12/AFG/CO/2-4, 21 May 2010, paragraph 18).

The Committee notes however that promoting the access of women to employment, including self-employment, is one of the main objectives set in the NAPWA and the DWCP and it hopes that, in cooperation with the social partners, the ILO and other relevant UN agencies, the programmes and measures to this end will be implemented in the near future. ***The Committee requests the Government to provide information on the measures taken to promote equal opportunities for men and women in employment and occupation both in the private and public sectors, and on their impact on the employment of women. Please also provide further information with respect to the "priority given to women in recruitment" by the Civil Service Commission, including in management positions.***

*Awareness raising.* The Committee notes from the Government's report that a project on awareness raising of the Labour Code and international labour standards is being implemented among government officials, workers, employers, judges and non-governmental organizations and that, within this framework, training programmes are being organized on the rights of women workers and non-discrimination. ***The Committee strongly encourages the Government to intensify its awareness-raising activities on gender equality and non-discrimination in employment and occupation to effectively address assumptions and stereotypes on the capacity of women and their role in society. Please continue to provide information on awareness-raising activities undertaken, specifying the role of employers' and workers' organizations in this respect.***

*Statistics.* ***Noting that one of the outcomes of the Decent Work Country Programme is the establishment of labour market information systems providing detailed and disaggregated information on key labour market indicators, the Committee would appreciate it if the Government could provide any recent data available on the employment of men and women both in the private and public sectors.***

## Algeria

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)**

*Statistical data on levels of remuneration for men and women.* In its previous observation, the Committee expressed the hope of receiving the results of the survey which had commenced in March 2007 concerning levels of remuneration disaggregated by sex and asked the Government to supply any additional information on this subject. The Committee notes that the Government's report does not contain any information in this regard. It reiterates once again the importance of having data concerning the remuneration of men and women, according to the posts occupied, in all categories of employment, both within the same branch of activity and between different branches, in order to be in a position to deal effectively with gender remuneration gaps. These data are essential for enabling an adequate evaluation of the nature, extent and causes of remuneration gaps between men and women and also an evaluation of the application of the Convention. The Committee notes that the United Nations Committee on Economic, Social and Cultural Rights expressed concern at the fact that women's wages are approximately one third of those of men's and recommended the adoption of measures to reduce the gender wage gap (E/C.12/DZA/CO/4, 7 June 2010, paragraph 8). ***The Committee urges the Government to compile and communicate statistical data in its next report on the distribution of men and women in the various sectors of economic activity, various occupational categories and different posts, and to supply all available statistics on their respective levels of remuneration in the public and private sectors.***

*Objective job evaluation. Collective agreements.* The Committee notes that the collective agreement concluded on 30 September 2006 between the General Union of Algerian Workers (UGTA) and five employers' organizations contains provisions relating to the classification of jobs which must be established by enterprise agreements on the basis of job descriptions and analysis, evaluation and rating of their content and their classification according to the results of the evaluation (sections 95 and 100). This collective agreement also states that job evaluation is based in particular on qualifications, responsibility, physical or intellectual effort, working conditions, and any particular constraints or requirements (section 101). However, the Committee notes that this collective agreement does not contain any provision which explicitly requires the application of the principle of equal remuneration for men and women workers for work of equal value. ***The Committee requests the Government to supply information on the practical application of section 101 of the collective agreement of 30 September 2006, particularly clarifying whether this section is used for comparing different jobs, with a view to implementing equal remuneration for men and women workers for work of equal value. The Committee also requests the Government to supply information on the manner in which collective agreements are used to promote objective job evaluation so that levels of remuneration for women and men are established without gender bias. Finally, the Committee requests the Government once again to send a copy of any collective agreements reflecting the principle of equal remuneration for men and women.***

The Committee is raising other points in a request addressed directly to the Government.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which raised the following matters:

*Legislative developments.* The Committee notes that section 27 of the general conditions of service of the public service, enacted in 2006, prohibits any discrimination among public employees on the grounds of their opinions, sex, origin and any other personal or social condition. The Committee also notes that section 17 of Act No. 90-11 on labour relations prohibits any provision in an agreement, collective agreement or employment contract which gives rise to discrimination in employment, remuneration or working conditions on grounds of age, sex, social or marital situation, family relations, political convictions and membership or not of a trade union. The Committee is aware that the labour legislation is under revision. ***The Committee urges the Government to seize the opportunity of the formulation of the new Labour Code to ensure that the new provisions of the Code prohibit discrimination at all stages of employment and occupation on all the grounds set out in the Convention, including those not covered by the 1990 labour legislation, namely race, colour, religion and national extraction. The Committee requests the Government to provide information on the progress achieved in the revision of the labour legislation. The Committee invites the Government to provide a copy of the draft Labour Code to the International Labour Office before the adoption of the final text so that it can assist the Government in its efforts to guarantee the application of the principles of the Convention in the new legislation.***

*Article 1 of the Convention. Sexual harassment.* In its previous comments, the Committee noted that section 341bis of the Penal Code only appears to cover quid pro quo sexual harassment. The Committee recalls that there are two types of sexual harassment that need to be addressed by legislation, quid pro quo sexual harassment and sexual harassment due to a hostile working environment, which takes the form of an intimidating, hostile or humiliating work environment. For further guidance, the Committee draws the Government's attention to its 2002 general observation on this subject. The Committee reminds the Government that sexual harassment at work undermines the dignity and well-being of workers, as well as enterprise productivity and the basis of the working relationship. ***In view of the serious consequences of these practices, the Committee hopes the new Labour Code will ensure complete protection against sexual harassment by prohibiting quid pro quo sexual harassment and harassment due to a hostile work environment, and it requests the Government to provide information in this respect. The Committee also requests the Government to provide information on the measures adopted with a view to preventing sexual harassment and protecting workers against it in employment and occupation, including information on any education and awareness raising campaigns and the organization of activities in collaboration with employers' and workers' organizations.***

*Articles 2 and 3. National policy. Discrimination based on sex.* In its previous comments, the Committee expressed concern at the low participation of women in employment and the persistence of strongly stereotyped attitudes with respect to the

roles and responsibilities of women and men in society and in the family. The Committee also emphasized the negative impact of these attitudes on the access of women to employment and training. The Committee notes the Government's indication that the applicable training and qualification programmes are not restrictive or discriminatory on the ground of sex and that the choice of subjects for training is an individual matter. The Committee draws the Government's attention to the fact that in practice there are two forms of discrimination in access to training. Discrimination may be a result of laws or regulations which give rise to direct discrimination or, more frequently, practices based on stereotypes mainly related to the role of women in society. As a consequence, and in order to give full effect to the provisions of the Convention, it is necessary, firstly, to adopt legislation that is in conformity with the principle of equality and, secondly, to accompany this legislation with proactive measures through which de facto inequalities affecting women can be corrected. ***The Committee once again requests the Government to take urgent and proactive measures to further its national policy to promote equality of opportunity and treatment for women in respect of employment and occupation, including efforts to address stereotyped attitudes, and to provide information any progress in this respect. The Committee once again requests the Government to provide information on the measures adopted or envisaged to facilitate and encourage the access of women and girls to more diversified vocational training opportunities, including those leading to traditionally male occupations, so as to afford them greater opportunities to enter the labour market.***

*Article 5. Special protection measures.* For a number of years, the Committee has been urging the Government to give its attention to the importance of reviewing the provisions prohibiting night work for women, as well as the assignment of women to work that is dangerous, insalubrious or harmful to their health. The Committee considers that, when reviewing these provisions, a distinction should be made between special measures to protect maternity and measures based on stereotyped perceptions of the capacity and role of women in society. The Committee draws the Government's attention to the fact that all other measures intended to protect women on the sole grounds of their sex may seriously undermine the principle of equality of treatment and opportunity. ***The Committee requests the Government to provide information on the revision of the labour legislation with regard to night work by women and their assignment to hazardous, insalubrious or harmful types of work. The Committee requests the Government to ensure that, in the context of the new Labour Code, the restrictions relating to the access of women to certain types of work are limited to maternity protection and it requests the Government to keep it informed on this point.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Argentina

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1968)***

The Committee notes the comments of the Confederation of Argentinean Workers (CTA) of 31 August 2009 referring to matters examined below.

*Equality between men and women.* The Committee notes the Government's indication that, in February 2009, in the context of the Tripartite Committee on Equality of Opportunity and Treatment (CTIO), a framework agreement was drawn up on "Social dialogue for equality of treatment and opportunities for women and men in the working environment", which establishes the priorities, among others, of eliminating gender inequality and promoting good practices. The Government adds that the CTIO has been established at the provincial level and that in 2007 the Coordination Unit for Gender Equality and Equality of Opportunity at Work (CEGIOT) was established within the Ministry of Labour and Social Security, with the mission of mainstreaming the gender perspective throughout the work of the Ministry, developing tools to monitor policies and organizing interaction with other government fields and institutions. The Government indicates that priority is given to evaluating policies and establishing monitoring indicators to raise the alert concerning possible situations of discrimination, for which purpose the Secretariat of Employment is proposing policies in light of their potential impact, taking into account the needs of individuals and social contexts. The Government also refers to 11 collective agreements which include equality of opportunity and non-discrimination clauses. The Committee notes the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) of 30 July 2010 in which the CEDAW urges the Government to take measures to address pay gaps; encourage women to take up employment in non-traditional fields; enact legislation on sexual harassment in the public and private workplaces; and provide comprehensive protection to domestic workers. The CEDAW also encourages the Government to take measures in order to provide affordable and accessible childcare services to enable women to balance their work and family responsibilities (CEDAW/C/ARG/CO/6). ***The Committee hopes that in its next report the Government will provide information on the impact of the measures implemented and will report on the progress achieved in reducing existing gaps between men and women in relation to wages and career opportunities, as well as progress in terms of improving job opportunities for women, including in non-traditional fields.***

*Domestic workers.* The Committee recalls that in its previous comments it requested the Government to provide information on the measures adopted to ensure that domestic workers are not discriminated against in employment and occupation, the legal provisions applicable to domestic workers and the number of domestic workers regularized under the *Plan Patria Grande*. The Committee also recalls that in previous comments it noted the CTA's indications that 92.7 per cent of domestic workers are undocumented and that the legal regime applicable to them involves discriminatory treatment in the areas of working hours, the termination of the employment relationship, holidays and occupational risks. The Committee notes that in its present comment the CTA adds that the wages of these workers are below the minimum living wage, which places this group of workers in a situation of vulnerability. In this respect, the Committee notes the

Government's indication that, according to the Domestic Work Tribunal, 370,000 domestic workers have been registered, which implies that the percentage of undocumented domestic workers has now been reduced to 67.8 per cent. Furthermore, the Domestic Work Tribunal has taken on new functions, providing advice to domestic workers and employers and undertaking awareness-raising campaigns to promote a cultural change with a view to paid domestic work being considered within the framework of the employment relationship. ***The Committee requests the Government to provide information on the legislation applicable to domestic workers and on any measures adopted for the protection of such workers against acts of discrimination in employment, including through the documentation process, and the number of workers benefiting from such measures.***

*Undocumented workers.* The Committee notes the CTA's comments that, in the first quarter 2009, 36.4 per cent of employed persons were not registered, and do not therefore benefit from the protection of the social security system in such areas as retirement benefits and family allowances. The Committee notes in this respect the Government's indication that the principal objective of the National Plan for Labour Regularization is the inclusion of all workers in the social security system through inspection and action to combat undeclared work, as well as dissemination and awareness-raising campaigns. According to the Government, since the beginning of the National Plan for Labour Regularization in 2003, it has been possible to reduce the rate of undocumented workers by 12.7 percentage points and, in January 2009, undocumented workers accounted for 25.32 per cent of the workforce. The Government also refers to new Act No. 26476 of December 2008 establishing procedures for the regularization of employment relations and the promotion and protection of registered employment. The Act offers incentives to employers, through reductions in social security contributions, for the regularization of workers. ***The Committee requests the Government to provide information on the impact in practice of this Act, the National Plan for Labour Regularization and the other measures adopted by the Government to encourage the regularization of undocumented workers with a view to reducing their vulnerability and improving their conditions of work.***

The Committee is raising other points in a request addressed directly to the Government.

## Australia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)***

*Article 1 of the Convention. Legislative developments.* The Committee recalls its previous comments raising a range of concerns regarding the impact of legislative reforms on equal remuneration for men and women for work of equal value, including the adoption of the Workplace Relations Amendment (Work Choices) Act, 2005, and the move away from award regulation to workplace-based regulation (Australian Workplace Agreements – AWAs) in the setting of wages. The Committee notes with ***interest*** the adoption of the Fair Work Act, 2009, which became fully operational in January 2010, substantially repealing the Workplace Relations Act, 1996. The Committee notes in particular that as a result of the adoption of the Fair Work Act, AWAs can no longer be made and, in determining “modern awards” (legal instruments setting minimum terms and conditions for national system employees in particular industries or occupations), a key objective is “the principle of equal remuneration for work of equal or comparable value” (section 134(1)(e)). Modern awards are to be reviewed every four years and can be varied for “work value reasons” at that time (section 156(3) and (4)) or outside the four-year period if one of the objectives of the modern award is not met (sections 157 and 158). The Committee further notes that in determining minimum wages, Fair Work Australia, which replaces the Australian Industrial Relations Commission, must take into account “the principle of equal remuneration for work of equal or comparable value” (section 284(1)(d)). Fair Work Australia is also empowered to make orders to ensure that there will be equal remuneration for work of equal or comparable value (an equal remuneration order) (Part 2-7 of the Act), and the term of any modern award, enterprise agreement or Fair Work Australia order has no effect to the extent that it is less beneficial to the employee than a term of the equal remuneration order (section 306). The Committee also notes the communication of the Australian Council of Trade Unions (ACTU) highlighting the improved equal remuneration provisions in the Fair Work Act. ***Welcoming the focus given to equal remuneration for men and women for work of equal value in the wage-setting process through the Fair Work Act, the Committee asks the Government to provide information on the implementation of the Act in practice with respect to applying the principle of the Convention, in particular through awards, enterprise agreements, low-paid authorizations, minimum wages and equal remuneration orders. Please also provide information on the progress of the acceptance by states of the jurisdiction of the Fair Work Act.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)***

*Legislative developments.* The Committee notes with ***interest*** the adoption of the Fair Work Act, 2009, which became fully operational in January 2010, substantially repealing the Workplace Relations Act, 1996. The Committee also notes the communication of the Australian Council of Trade Unions (ACTU), stating that the Fair Work Act contains significant improvements in protection from discrimination at work, and also noting the adoption of the Paid Parental Leave Act, 2010, which will provide Australia's first statutory paid parental leave scheme as of 1 January 2011. The

Committee notes in particular that one of the objectives of the Fair Work Act set out in section 3 is “assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and ... protecting against unfair treatment and discrimination ...”. Pursuant to section 134, an objective of the “modern awards” (legal instruments setting minimum terms and conditions for national system employees in particular industries or occupations) includes “the need to promote social inclusion through increased workforce participation ...”, and modern awards and enterprise agreements must not include terms that discriminate against an employee “because of, or for reasons including, the employee’s race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin” (sections 153(1), 194(a) and 195(1)). The Act further provides a general prohibition of an employer taking any “adverse action” against an employee or prospective employee on these same grounds (section 351). The Committee notes in this regard that all the prohibited grounds enumerated in *Article 1(1)(a) of the Convention* have been included, as well as a range of additional grounds, as foreseen in *Article 1(1)(b)*, and provides improved protection for prospective employees from discrimination in access to employment, as well as covering aspects of employment and occupation beyond dismissal. ***The Committee asks the Government to provide information on the following points:***

- (i) ***the implementation of the Fair Work Act and the Paid Parental Leave Act in practice, including any measurable impact with respect to promoting equality of opportunity and treatment in employment and occupation, with a view to eliminating any discrimination in respect thereof;***
- (ii) ***any legal or administrative decisions regarding the non-discrimination provisions of the Fair Work Act, including any determinations of what is not considered discrimination pursuant to sections 153(2), 195(2) and 351(2);***
- (iii) ***the progress of the States’ acceptance of the jurisdiction of the Fair Work Act.***

*Indigenous peoples.* The Committee had raised concerns in its previous observation in relation to the education and employment opportunities of indigenous peoples, including the lack of sufficiently targeted measures to address inequality and discrimination, and the lack of appropriate mechanisms. The Committee notes with *interest* the Government’s expression of support in April 2009 for the United Nations Declaration on the Rights of Indigenous Peoples, as well as the national apology for past negative government policies issued on 13 February 2008 to indigenous peoples, and in particular to the Stolen Generations – the generations of indigenous peoples taken away from their families and communities. The Committee also notes with *interest* the wide range of initiatives at the federal and state levels that have been undertaken to address inequality and discrimination that have been experienced by indigenous peoples. The Committee notes in particular the National Indigenous Reform Agreement between the federal, state and territory governments of Australia (the Council of Australian Governments) of November 2008, committing all jurisdictions to achieve the “Closing the Gap” targets, to address disadvantage-facing indigenous peoples, one of the aims of which is to halve the gap in employment outcomes between indigenous and non-indigenous peoples within a decade. The Agreement refers specifically to the reformed Indigenous Employment Programme (IEP) which is to make employment and training services more responsive to the specific needs of indigenous jobseekers, indigenous businesses and employers. It also refers to the development of a Commonwealth Indigenous Economic Development Strategy (IEDS), with the aim of contributing to the achievement of long-term economic independence for indigenous Australians by promoting economic participation and wealth creation by indigenous communities and individuals, and through the strengthening of partnerships with the corporate sector. The Committee also notes that the Government refers to a new Community Support Programme. The Committee notes, however, the Government’s indication that, in 2008–09, Job Network members placed 23 per cent fewer indigenous jobseekers into jobs than in the previous year.

At the state level, the Committee notes in particular the following initiatives: in Victoria, the New Workforce Partnerships, the Indigenous Youth Employment Programme, the Wur-cum barra to increase indigenous employment across the public sector, and the Koori Business Network; and in Queensland – the Skilling Queenslanders for Work initiative, the Indigenous Economic Participation National Partnership with the aim of reforming government procurement, service delivery arrangements and increase public sector employment to improve indigenous participation in the labour market, the Department of Education and Training’s Aboriginal and Torres Strait Islander Employment Framework for Action 2007–10, and the Positive Dreaming Solid Futures – Indigenous Employment and Training Strategy 2008–11. Initiatives in South Australia include an updated Strategic Plan, which establishes targets to increase aboriginal workforce participation, and the South Australian Works initiative, delivering specific programmes aimed at improving employment and vocational training outcomes for aboriginal peoples; and in New South Wales (NSW), the strategy entitled “Making it our Business Improving Aboriginal Employment in NSW public sector” was being reviewed with a view to strengthening support in the recruitment, employment and development of aboriginal and Torres Strait islanders in the NSW public sector.

***Welcoming the range of statements and initiatives at the federal and state levels that indicate a commitment to promoting and protecting the rights of indigenous peoples, including in education, employment and occupation, the Committee encourages the Government to continue its efforts in this regard. It also asks the Government to continue monitoring the impact of these measures, and to provide information on the role of indigenous peoples in developing and implementing these initiatives, and the actual outcomes achieved.***

The Committee is raising other points in a request addressed directly to the Government.

## Azerbaijan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1992)**

*Article 1 of the Convention. Equal remuneration for work of equal value and gender remuneration gap.* For many years, the Committee has been stressing that the principle of equal remuneration for men and women for work of equal value is not fully reflected in the legislation or in collective agreements. In its observation of 2008, the Committee had pointed out that the Act on Ensuring Gender Equality, adopted in 2006, limited the application of the principle of equal wage for men and women to performance of work under equal conditions, in the same enterprise and with the same skills. The Committee had emphasized that this did not allow any comparison between different jobs or between work performed in different enterprises that could, nonetheless, be of equal value. The Committee notes that the Government's report does not reply to its request to indicate the measures taken or envisaged to bring the legislation into full conformity with the Convention.

The Committee notes that the statistics of 2006, published by the State Statistical Committee and communicated in the report, show the existence of significant horizontal gender occupational segregation within the labour market. Women work predominantly in medical and social services and education, where they represent more than 70 per cent of the workers: men predominantly work in manufacturing, agriculture, fishing, mining, construction, transport, energy production and distribution, where they represent more than 70 per cent of the workers; men represent more than 60 per cent of the workers in finance, services to hotels and restaurants and wholesale and retail trade. With respect to their average wages, according to the statistics for October 2006 provided by the Government, women were earning significantly less than men in many sectors of the economy: 60 per cent less than men in construction; 50 per cent less in oil and gas production; 35 per cent less in chemical industries and aviation; 30 per cent less in finance. Furthermore, the Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the persistence of such gender segregation within the labour market – both vertical and horizontal – the concentration of women in lower-paying sectors, and the persistence of the wage gap, which remains very wide in certain industries (CEDAW/C/AZE/CO/4, 7 August 2009, paragraph 31).

The Committee recalls that, particularly in a context where men and women perform different work, in different sectors of the economy and, as a consequence, in different enterprises, the concept of “work of equal value” is essential to give full effect to the principle of equal remuneration between men and women in practice and to address effectively the gender remuneration gap. *The Committee therefore asks the Government to take the necessary measures to incorporate in its legislation the principle of equal remuneration between men and women for work of equal value and to ensure that measures are taken to implement this principle in practice, including through collective agreements, and address effectively the wide gender remuneration gap.*

The Committee is raising other points in a request addressed directly to the Government.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)**

*Gender equality in employment and occupation.* The Committee notes the adoption of the “Gender programme on transforming into reality the Employment Strategy for 2007–10” setting out the strategy to address issues regarding the employment of women and provide gender equality in employment. The Government's report contains general information that indicates that measures are being implemented under this programme in order to: monitor the employment quotas for citizens in need of protection established pursuant to Decree No. 213 of 22 November 2005; improve the competitiveness of women in the labour market through vocational training; and investigate the reasons for women's unemployment. The Committee notes, however, that the Government does not provide any indication with respect to the type and the coverage of the measures implemented during the reporting period and their impact on gender equality. The Committee further notes that the “Integrated programme of Azerbaijan on combating day-to-day violence in a democratic society” was approved in 2007. According to the Government's report, this programme provides for the development of strategic plans aiming at prohibiting discrimination based on gender and other characteristics. Furthermore, the Government indicates that, within the framework of the Decent Work Country Programme, measures are being taken to develop women's entrepreneurship and pilot projects are being conducted on women's self employment. *The Committee welcomes the adoption of various programmes to promote gender equality and address sex discrimination and requests the Government to provide specific information on progress made regarding the following:*

- (i) *the implementation of measures taken to promote gender equality under the Gender Programme to implement the Employment Strategy;*
- (ii) *any strategic plan adopted with a view to prohibiting discrimination; and*
- (iii) *measures implemented within the framework of the Decent Work Country Programme.*

*Please include indications of the time frame for such measures and action and their impact on achieving equality between men and women in employment and occupation. The Committee further requests the Government to communicate the results of the study concerning the reasons for women's unemployment.*

The Committee welcomes the statistical data provided by the Government on the situation of women in the labour market. This data for 2008 shows that women were basically concentrated in education – they represented 72.5 per cent of the workers employed in this sector – health and social services (71.3 per cent) and manufacturing (60 per cent), thereby demonstrating significant horizontal gender segregation in the labour market. There also appears to be vertical gender segregation as according to the report submitted by Azerbaijan to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), only 2 per cent of the women employed in state bodies are in decision-making positions (CEDAW/C/AZE/Q/4/Add.1, paragraph 16). The Committee further notes that the CEDAW in its concluding observations expressed regret at the lack of correlation between women’s education levels and economic opportunities and noted with concern that women continue to be concentrated in traditional female education subjects (CEDAW/C/AZE/CO/4, 7 August 2009, paragraphs 29 and 32). ***The Committee requests the Government to take concrete action to address the horizontal and vertical gender segregation in the labour market and to adopt concrete measures to improve the participation rates of women in those economic sectors and occupations in which they are under-represented, including through their participation in a wider range of vocational training courses leading to employment with opportunities for advancement and promotion. It further requests the Government to provide information on the measures taken or envisaged to address the stereotypes and assumptions regarding women’s aspirations and capabilities, as well as regarding their suitability for certain jobs, and to promote equal sharing of family responsibilities.***

The Committee further notes that the Government affirms once again its intention to develop and submit to the relevant bodies for review a proposal to improve the labour legislation with a view to prohibiting discrimination in employment on the basis of gender and other characteristics and notes with *interest* that it has recently ratified the Workers With Family Responsibilities Convention, 1981 (No. 156). The Committee also notes that the Government is considering ratifying the Maternity Protection Convention, 2000 (No. 183), and is taking measures to improve the enforcement of labour legislation by the State Labour Inspection. ***The Committee requests the Government to indicate the progress made in the examination of the national legislation with a view to ensuring compliance with international labour standards on gender equality and the examination of the possibility of ratifying the Maternity Protection Convention, 2000 (No. 183).***

*Equal opportunity and treatment of ethnic minorities.* For a number of years, the Committee has raised concerns regarding discrimination faced by members of ethnic minorities in the fields of employment and education. The Government has provided very little information in reply to the Committee’s specific requests, especially as regards the implementation of the Convention’s principles in practice through concrete measures. The Government indicates that the “Integrated programme of Azerbaijan on combating day-to-day violence in a democratic society” provides for the development of strategic plans aiming at prohibiting discrimination based on gender and other characteristics and it reiterates that the national legislation prohibits discrimination against ethnic minorities. The Committee recalls that it is not sufficient to prohibit all kinds of discrimination, either by national legislation or by any other means in order to apply the Convention. Specific action must also be taken at the national level to help promote the essential conditions for all workers to benefit in practice from equality in employment and occupation, and special measures may be needed to compensate for imbalances resulting from discrimination (Special survey on equality in employment and occupation, 1996, paragraphs 135–137, 279). The Committee notes further that in its concluding observations the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern about significant disparities in the enjoyment of economic, social and cultural rights that persist in Azerbaijan and particularly affect ethnic groups in rural and mountainous and remote areas (CERD/C/AZE/CO/6, 7 September 2009, paragraph 6). ***The Committee requests the Government to provide detailed information on any concrete measures taken and action undertaken to promote equality of opportunity and treatment of members of different ethnic minorities in education, training and employment, within the framework of any strategic plan aimed at prohibiting discrimination based on gender and other characteristics or under the Employment Strategy (2006–15). It requests the Government to provide information on the progress achieved in this respect, including the implementation of the employment quota system with respect to members of ethnic minorities, as well as statistical information, disaggregated by sex, on the economic activities of the different ethnic groups, based on the data from the census which was to be conducted in April 2009.***

The Committee is raising other points in a request addressed directly to the Government.

## Bangladesh

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1998)***

*Assessment of the gender pay gap.* The Committee recalls its previous observation noting the findings of the 2007 wage survey carried out by the Bangladesh Bureau of Statistics among non-farm production workers that the average daily income of women amounted to 69.7 per cent of that of men. It had also noted that according to a World Bank report of 2008 women in rural areas earned 59.7 per cent of men’s wages (nominal), that the ratio for urban areas was 56 per cent (data for 2002–03), and that gender pay differentials were often explained by the lower levels of skills and qualifications of women workers. The report also found a tendency to set lower wages in sectors predominantly employing women, in part as a result of wage discrimination. The Committee notes the Government’s statement that there is no visible pay gap

between men and women in the formal economy, the public sector or in non-governmental bodies, without however, providing further information, including statistics on the earnings of men and women in the public and private sectors. The Government also states that it has been raising awareness through a public-private partnership approach to address the wide gender pay gap, if any, in the informal economy. The Committee notes from the Bangladesh Decent Work Country Programme (2006–09) that nearly 80 per cent of the country's employment is in the informal economy, and that unlike for men, informal employment, which is low paying, low skill-intensive and less secure, has increased sharply for women over time. ***The Committee asks the Government to take appropriate steps to assess the nature and extent of the gender pay gap, and to provide detailed and up-to-date information on the earnings of men and women in both the formal and informal economy. The Committee also asks the Government to provide information demonstrating that the necessary measures are being taken to address and reduce the gender pay gap in the formal and informal economy.***

*Articles 1 and 2 of the Convention.* With respect to its previous observation requesting detailed information on the measures taken to ensure the effective application of section 345 of the Labour Act (concerning the principle of equal wages for male and female workers for work of equal nature or value) the Committee notes the Government's statement that no cases or complaints have been received from workers regarding equal pay. The Government also states that training and awareness-raising programmes have been conducted throughout the country by the Industrial Relations Institute and Labour Welfare Centre on industrial relations, labour law, equal remuneration and ILO Conventions for workers' and employers' representatives and government officials. The Committee must point out that the very general information provided does not indicate whether appropriate measures are being taken to ensure the effective implementation of section 345 of the Labour Act of 2006. ***The Committee, therefore, asks the Government to provide full details on the results achieved by the training and awareness raising for workers' and employers' representatives, and government officials on the issues of equal remuneration. Please also indicate the specific measures taken to enhance the capacity of the responsible authorities, including judges, labour inspectors and other public officials, to identify and address cases concerning section 345 of the Labour Act of 2006, as the Committee had previously requested.***

*Article 1(a). Definition of remuneration.* The Committee recalls that section 345 of the Labour Act only applies to "wages" which, under the terms of section 2(xlv), do not include the following aspects of remuneration: (1) the value of any house accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the Government; (2) contributions by the employer to any pension fund or provident fund; (3) travelling allowances; (4) reimbursements of special expenses incurred by the worker. The Committee notes the Government's statement that in law and in practice both male and female workers receive equal wages and other allowances as per eligibility and entitlement, and that no complaints regarding discrimination were received. The Committee recalls that the absence of complaints regarding differences in payment of allowances to men and women does not necessarily mean that no discrimination exists. ***In the absence of further practical information on this matter, the Committee asks the Government to examine the extent to which the principle of equal remuneration for men and women for work of equal value is applied in relation to those aspects of remuneration which are excluded from the definition of "wages" contained in section 2(xlv) of the Labour Act, and to report on the progress made.***

*Article 2(2)(b). Minimum wages.* The Committee notes that according to the Government, minimum wages are determined on the basis of the nature of the work, the workers' skills, and the standard of living. The Government further reiterates that the Minimum Wages Board applies the principle of equal remuneration for men and women for work of equal value. The Committee notes from the Bangladesh Decent Work Country Programme (2006–09) that the wages are very low in the readymade garments industry (RMG) which employs some 2.1 million persons, approximately 90 per cent of whom are women. ***Noting the tendency to set lower wages for sectors predominantly employing women, the Committee once again asks the Government to indicate how, in practical terms, it is ensured that minimum wage rates fixed for female-dominated occupations or sectors are not set below the rates applying to male-dominated occupations or sectors involving work of equal value. Noting further the recent increase in minimum wages for the ready-made garments industry, the Committee asks the Government to provide the texts of the RMG minimum wage order, as well as of other minimum wages orders in force.***

*Article 4. Cooperation with workers' and employers' organizations.* The Committee notes that the Government's report continues to include very general indications regarding cooperation with workers' and employers' organizations with respect to labour-related decisions and training programmes. ***The Committee asks the Government to indicate the specific measures taken to seek actively the cooperation of workers' and employers' organizations for the purpose of giving effect to the provisions of the Convention, in accordance with Article 4 of the Convention, and in particular with regard to training and awareness-raising measures on the Convention's principle and the related provisions of the Labour Act of 2006.***

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1972)**

The Committee recalls that in its previous observations it has been raising issues relating to the importance of including a prohibition of discrimination in the Labour Act in conformity with the Convention; the need for full information on the specific action taken to eliminate discrimination against women and promote equality with respect to



their access to employment, and to education and vocational training; and the urgent need to take active measures to address the issue of sexual harassment at work through appropriate laws, policies and mechanisms. The Committee recalls that these issues had also been discussed by the Conference Committee on the Application of Standards on the application of the Convention by Bangladesh in June 2007.

*Articles 1 and 2 of the Convention. Prohibition of discrimination.* The Committee recalls that the Labour Act of 2006 does not contain a prohibition of discrimination in employment and occupation based on all the grounds listed in *Article 1(1)(a)* of the Convention and with respect to all aspects of employment and occupation as defined in *Article 1(3)*, that is access to vocational training, access to employment and to particular occupations, and terms and conditions of employment, including advancement and promotion. Also, the Labour Act does not apply to a number of categories of workers, including domestic workers. The Committee notes that a tripartite committee was to review the Labour Act of 2006 during 2009 and 2010 with a view to ensuring better compliance with international labour standards. ***The Committee asks the Government to provide information on the outcome of the review of the Labour Act. It also requests the Government to take the necessary measures to ensure that the amendments to the Labour Act will include a prohibition of direct and indirect discrimination, on at least all the grounds enumerated in Article 1(1)(a) of the Convention, with respect to all aspects of employment, and cover all categories of workers, including domestic workers, and it requests the Government to report on the progress made in this regard. The Committee reiterates its request to the Government to indicate how the protection of men and women against discrimination in employment and occupation is ensured in practice, including for those categories of workers excluded from the scope of the Labour Act.***

*Gender equality in employment and occupation.* The Committee recalls the serious gender-based inequalities in the labour market. It also recalls the need to ensure that women have a real choice of a wider range of jobs and occupations, including through broadening their educational and employment opportunities and addressing the root causes of gender inequality in the labour market. These root causes would include gender-based discrimination in hiring and stereotypical views and behaviour that confine women to training and work which are considered “suitable” for them. The Committee notes with *regret* that once again the Government’s report only includes very broad statements about action taken to enhance women’s participation in employment and vocational training, and that, since the discussion by the Conference Committee in 2007, no information has been provided demonstrating that the Government is actively addressing the seriously disadvantaged position of women in employment and occupation. ***The Committee urges the Government to take immediate steps to:***

- (i) address the root causes of gender inequality in the labour market, including gender-based discrimination in hiring and stereotypical views, and behaviour that confines women to employment and training which are considered “suitable”;***
- (ii) take effective measures to ensure that women have access, on an equal footing with men, to jobs in the public sector;***
- (iii) take specific action to eliminate discrimination against women and to promote equality in respect of their access to education, including vocational training, as well as their equal access to employment and the widest range of occupations; and***
- (iv) provide full statistical information on the situation of men and women in the labour market, including on women’s employment at all levels of the public service, and in education and training, and full information on the results secured by any action taken referred to in points (i)–(iii).***

*Sexual harassment.* The Committee recalls the legal uncertainty as to what constitutes prohibited conduct under section 332 of the Labour Act of 2006, which prohibits behaviour in establishments that employ female workers “which may seem to be indecent or repugnant to the modesty and honour of the female worker”. The Committee notes the Government’s statement that the review and amendment of the Labour Act will consider including an appropriate definition of sexual harassment at work.

The Committee notes with *interest* the landmark judgment of the Bangladesh High Court of 14 May 2009 in *Bangladesh National Women Lawyers Association v Government of Bangladesh and Others*, issuing guidelines on sexual harassment. The High Court considered that equality in employment can be seriously impaired when women are subjected to sexual harassment at the workplace and in educational institutions, and that protection from sexual harassment and the right to education and work with dignity are universally recognized human rights, and the common minimum requirement of these rights has received global acceptance. It considered that the international Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve its purpose. The Court’s guidelines on sexual harassment, which shall be observed in all workplaces and educational institutions in the public and private sectors (paragraph 1), provide a detailed definition of sexual harassment covering both quid pro quo and hostile environment harassment (paragraph 4). The guidelines identify the steps required of employers and educational institutions to prevent sexual harassment, including awareness raising about and widely publicizing of the guidelines and the legislative provisions regarding gender equality and sexual offences (paragraphs 3, 5 and 6). They also cover disciplinary action (paragraphs 7 and 11), a complaints mechanism, including the establishment of a complaints committee in all workplaces and educational institutions (paragraphs 8–10), and criminal proceedings (paragraph 11). In view of the inadequacy of safeguards against sexual abuse and harassment of women at workplaces and educational institutions, the High Court felt

compelled to issue guidelines on sexual harassment, which will have the force of law until adequate and effective legislation is in place. ***The Committee asks the Government to provide information on the measures taken or envisaged to ensure the implementation of the High Court's guidelines on sexual harassment in the private and public sectors. Understanding that a draft law on sexual harassment based on the High Court Judgement of 2009 is being discussed, the Committee requests the Government to provide information on the progress made in enacting specific legislation on sexual harassment and in amending section 332 of the Labour Act of 2006.***

The Committee is raising other points in a request addressed directly to the Government.

## **Burkina Faso**

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)***

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation.* In its previous comments the Committee emphasized that the Labour Code, 2004, did not clearly reflect the principle of the Convention even though it explicitly established the principle of equal remuneration for men and women for work of equal value, since it also provided for equal wages for workers regardless of their sex “given equal conditions of work, vocational qualifications and output” (section 175). This led the Committee to recall the importance of ensuring that the principle of equal remuneration for work of equal value also applies to situations in which men and women work under different conditions or, have different qualifications, and nevertheless perform work of equal value. In its previous observation the Committee had noted that the Labour Code was being revised. The Committee notes the adoption of Act No. 028-2008/AN of 13 May 2008 issuing the Labour Code, section 182 of which retains the same provisions as the former Labour Code with regard to equal remuneration for men and women. It therefore notes with *regret* that the Government has not taken the opportunity afforded by the elaboration of a new the Labour Code to bring these provisions fully into conformity with the principle of the Convention.

The Committee wishes to draw the Government's attention to the fact that experience has shown that the requirement of “equal conditions of work, skill and output” can provide a pretext for paying women lower wages than men (General Survey of 1986 on equal remuneration, paragraph 54) and that the emphasis should rather be placed on the nature and value of work, which necessitates a comparison of tasks on the basis of objective and non-discriminatory criteria. Referring to its general observation of 2006, in which it spells out the meaning of the concept of “work of equal value”, the Committee emphasizes that it is essential to compare the value of the work done in different occupations, which may involve different qualifications and skills, responsibilities or working conditions but which are nevertheless of equal value. The Committee considers that the coexistence in the Labour Code of 2008, of provisions on the one hand establishing equal remuneration for all workers irrespective of their sex “given equal conditions of work, vocational qualifications and output” and provisions on the other hand stating that “the determination of wages and the fixing of rates of pay must respect the principle of equal remuneration for men and women workers for work of equal value” may lead to confusion or conflict in the application of the principle of the Convention in practice, in view of the different criteria adopted. ***The Committee therefore requests the Government to take the necessary steps to bring section 182 of the Labour Code of 2008, into full conformity with the principle of equal remuneration for men and women for work of equal value established by the Convention and to supply information on any measures taken in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

## **Burundi**

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. Equal remuneration for work of equal value.* The Committee recalls that both article 57 of the Constitution and section 73 of the Labour Code provide for equal remuneration for equal work, which falls short of fully reflecting the principle of equal remuneration for work of equal value as set out in *Article 1* of the Convention. In its report, the Government states that there is no obstacle to reflecting the principle of the Convention in the national legislation. ***Noting the Government's willingness to bring article 57 of the Constitution and section 73 of the Labour Code into conformity with the Convention, the Committee hopes that the Government will take the necessary measures as soon as possible and to indicate in its next report the progress made in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the comments on the application of the Convention made by the Trade Union Confederation of Burundi (COSYBU) dated 30 August 2008, to which the Government has not as yet replied. ***It requests the Government to provide its comments regarding the issues raised by COSYBU.***

***Discrimination based on race, colour or national extraction.*** In its previous comments the Committee requested the Government to provide information on the measures taken to address discrimination in employment between different ethnic groups. In reply, the Government once again refers to the 2005 Constitution, and to the Arusha Agreement. As previously noted by the Committee, article 122 of the Constitution prohibits discrimination based, inter alia, on an individual's origin, race, ethnicity, sex, colour and language. The Committee also notes that, pursuant to article 129(1) of the Constitution, 60 per cent and 40 per cent of the seats in Parliament are reserved for Hutus and Tutsis, respectively. Similar provisions also exist for government positions. In its report, the Government also asserts that ethnic discrimination in employment and occupation no longer exists. As the elimination of discrimination and the promotion of equality is a continual process, and cannot be achieved solely through legislation, the Committee finds it difficult to accept statements to the effect that discrimination is inexistent in a given country. It stresses the need for the Government to take continuing action with a view to promoting and ensuring non-discrimination and equality in employment and occupation. ***The Committee therefore reiterates its request for information on any specific measures taken to promote and ensure equality of opportunity and treatment, irrespective of ethnic origin, in respect of employment in the private and public sectors, including awareness-raising activities and measures to promote respect and tolerance between the different groups. It also reiterates its request for information on the activities of the newly established public service recruitment commission with a view to promoting equal access to public service employment of different ethnic groups.***

The Committee notes that, despite the provisions of article 7 of Protocol I to the Arusha Agreement which provides for the promotion of disadvantaged groups, notably the Batwa, the Working Group of Expats on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (Report of the Research and Information Visit to the Republic of Burundi, March–April 2005, page 31) reports that this particular group continues to suffer from strong negative stereotypes and racial harassment by other segments of the population. While taking note of the Government's very general statement that measures have been taken in the field of education, the Committee observes that, according to the African Commission's Working Group, the Batwa's access to education is well below the national average. The illiteracy rate among the Batwa is estimated to be over 78 per cent. ***The Committee urges the Government to take all measures necessary to ensure equal access of the Batwa to education, vocational training and employment, including reviewing and strengthening relevant national laws and policies and ensuring their full implementation. The Committee also requests the Government to take measures to combat stereotypes and prejudice against this group. The Government is requested to provide detailed information with regard to these matters in its next report.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Canada

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1972)***

***Legislative developments. Federal.*** The Committee notes that the Public Sector Equitable Compensation Act (PSECA) was adopted in March 2009, and is expected to enter into force in 2011, following the development of regulations. The Committee notes the Government's indication that the Act sets out a proactive approach to ensure compensation is equitable at the time compensation decisions are made. The Committee also notes the communication of the Canadian Labour Congress (CLC) stating that the PSECA represents a very significant setback for pay equity.

The Committee notes that the PSECA provides for an equitable compensation assessment of female predominant job groups or classes (defined as composed of at least 70 per cent female employees) to assess the value of the work performed, without gender bias, which is to lead to a plan to address any equitable compensation matters. The Committee notes that concerns have been raised by the Parliamentary Standing Committee on the Status of Women in its June 2009 report, and a recommendation was made to repeal the Act and replace it with a proactive federal pay equity law, as recommended by the Pay Equity Task Force. The CLC makes a similar recommendation. Though acknowledging that problems existed with the complaints-based approach to pay equity under the Canadian Human Rights Act, the Standing Committee raised concerns regarding the PSECA due to the high threshold of defining a "female predominant group", the difficulty for individual women to bring a complaint, and the move from a rights-based approach to pay equity as set out in the Canadian Human Rights Act, to an issue of negotiation. The Committee also notes that, while the criteria to assess the value of the work performed are linked to skill, effort, responsibility and conditions, this assessment can then be limited by factors such as market forces. The Committee recalls in this regard that pursuant to the Convention, the Government is required to ensure the application of the principle of equal remuneration for men and women for work of equal value, which refers to rates of remuneration established without discrimination based on sex. The Committee is concerned that the assessment under the Act may not adequately ensure a non-discriminatory assessment, since factors such as market forces may themselves be inherently gender-biased. ***Given the concerns noted above, including by the CLC and the Parliamentary Standing Committee, the Committee asks the Government to take steps to assess further the potential impact of the Public Sector Equitable Compensation Act in ensuring equal remuneration for men and women for work of equal value, before it enters into force, and to take any necessary steps to address any deficiencies in this regard. It also asks the Government to provide specific information on the ability of individuals to bring a claim for non-compliance with the principle of equal remuneration for work of equal value, and the possible role of their union in that process. Noting the Government's indication that the Act ensures equitable compensation at the time compensation decisions are made, the Committee asks the Government to clarify whether there is the possibility of***

*periodically reviewing compensation based on the principle of equal remuneration for work of equal value, after compensation has been determined.*

*Legislative developments. Provincial.* The Committee notes that new legislation on pay equity has been adopted in *New Brunswick* (Pay Equity Act 2009), and that the *Quebec* Pay Equity Act was amended in 2009. The Committee notes with *interest* that, pursuant to the recent amendments of the *Quebec* Pay Equity Act, pay equity audits need to be undertaken every five years and a joint advisory committee with an equal number of employers' and employees' representatives is established to advise the Equal Pay Commission, regarding making regulations, developing tools to facilitate the achievement or maintenance of pay equity, and addressing any problems in carrying out the Act. ***The Committee asks the Government to provide information on the practical application of the New Brunswick Pay Equity Act and the revised Quebec Pay Equity Act.***

*Work of equal value.* The Committee recalls its previous observation regarding the fact that in a number of Canadian jurisdictions, full legislative expression had not been given to the principle of equal remuneration for work of equal value, as the legislation limited comparisons to the same work, similar work or substantially similar work. The Committee notes the Government's indication that there has been no change in this regard with respect to *Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, the Northwest Territories* and the *Yukon*. In the jurisdictions with pay equity legislation applicable in the public sector, notably, *Manitoba, New Brunswick, Nova Scotia* and *Prince Edward Island*, there does not appear to be any progress in adopting similar legislation for the private sector. Regarding *Nunavut*, the Government indicates that a number of aspects of the labour and human rights legislation and practices are currently under review. ***Noting from the information provided in the Government's report that very little progress has been made in closing the gender wage gap, the Committee urges the Government to take steps to ensure that the legislation in all the jurisdictions gives full expression to the concept of "work of equal value", so that the principle of the Convention is applied in both the public and private sectors. The Committee asks the Government to provide detailed information of steps taken in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

*Discrimination on the grounds of political opinion and social origin.* Recalling the importance of prohibiting discrimination on all the grounds enumerated in the Convention, the Committee had previously urged the Government to take the necessary measures to amend the Canadian Human Rights Act and the relevant legislation of the provinces and the territories, to include the grounds of political opinion and social origin. The Committee notes the communication of the Canadian Labour Congress (CLC) expressing concern at the visible rise in social inequalities in Canada, and supporting the inclusion of social origin and political opinion as prohibited grounds of discrimination in Canadian and provincial law. The Committee notes the Government's indication that the Canadian Human Rights Commission (CHRC) in 2009 released a research paper on the issue of adding "social condition" to the Canadian Human Rights Act. This paper concludes that "social condition" should be added as a ground of discrimination for a number of reasons, including because it would extend protection to one of the most marginalized and vulnerable groups in society, and provide them a more accessible avenue for legal recourse. The Government indicates that no research or consultations have been undertaken regarding the addition of "political opinion".

The Committee notes that there has been no change at the provincial and territorial levels in terms of adding social origin or political opinion as grounds of discrimination. In relation to the legislation of *Ontario*, the Government refers to the grounds of race, ancestry, citizenship, ethnic origin and place of origin as sufficient to encompass "social origin". The Committee recalls that discrimination based on "social origin" occurs when an individual's membership in a class or socio-occupational category determines his or her occupational future, either because he or she is denied certain jobs or activities, or assigned certain jobs; it is thus distinct from discrimination based on the grounds of race, ancestry, citizenship, ethnic origin and place of origin. The Committee had noted previously the concerns of the CHRC, which are reiterated by the CLC, regarding the visible rise in social inequalities in Canada, which in the view of the Committee, highlights the importance of addressing discrimination based on class and socio-occupational categories. The Committee notes from the 2009 CHRC research paper, that "social condition" is used in Canadian legislation and jurisprudence in a manner consistent with the term "social origin" under the Convention.

***Noting that the ground of "social condition" or "social origin" is only covered as a ground of discrimination in the legislation of Quebec, Northwest Territories, New Brunswick and Newfoundland, and that "political opinion" is absent in the federal legislation, as well as in the legislation of Alberta, Ontario, Saskatchewan and Nunavut, the Committee urges the Government to take the necessary measures, without further delay, with a view to the amendment of the Canadian Human Rights Act and the legislation of the relevant provinces and territories, to include social origin or condition and political opinion as prohibited grounds of discrimination in employment and occupation. The Committee firmly hopes that the Government will be able to report progress in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

## Chile

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1971)**

*Legislative developments. Work of equal value.* The Committee invited the Government on several occasions to give expression in its legislation to the principle set out in the Convention of equal remuneration for men and women for work of equal value. It also noted draft legislation proposing to amend the Labour Code with a view to ensuring the right to equal remuneration by introducing in section 2 the principle of equal remuneration for men and women for work of equal value.

The Committee notes the adoption of Act No. 20348 of 2 June 2009 protecting the right to equal remuneration and adding section 62bis to the Labour Code, which requires employers to comply with the principle of equal remuneration for men and women who perform the same work, with objective wage differences based, among other grounds, on capacity, competence, qualities, responsibility and productivity, not being considered arbitrary. The Committee also notes that the Government has not provided any further information concerning the draft amendment to section 2 of the Labour Code.

With reference to its general observation of 2006, the Committee emphasizes that the concept of equal remuneration for “work of equal value” includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value. ***The Committee requests the Government to indicate the measures adopted or envisaged to reflect fully in the legislation the principle of the Convention and to guarantee equal remuneration for men and women not only in situations in which men and women perform equal or similar work, but also where they perform work that is different but nevertheless of equal value.***

The Committee is raising other points in a request addressed directly to the Government.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1971)**

*Application in practice of the procedure for the protection of fundamental rights.* The Committee notes the Government’s indication that, as yet, no court decisions have been handed down pursuant to Act No. 20087 of 3 January 2006, which establishes a special procedure for the protection of the fundamental workers’ rights set out in article 19 of the Political Constitution of the Republic and section 2 of the Labour Code, but that it will provide relevant information concerning any court decisions handed down on this matter in future reports. The Government adds that Decision No. 2210/03, issued in June 2009, is designed to increase the effectiveness of the above Act and support public officials when examining administrative complaints relating to the violation of fundamental rights by standardizing procedures. ***The Committee requests the Government to provide information on any court decisions handed down pursuant to the special procedure to guarantee the right to equality in employment.***

*Discrimination based on sex.* The Committee recalls that in its previous comments it requested the Government, with a view to granting spouses equal rights, to take steps to amend section 349 of the Code of Commerce, which provides that, unless at the time of the marriage, the couple made an agreement choosing the separate property regime, a married woman may not enter into a commercial partnership agreement without special permission from her husband. The Government indicates that the Bill amending the marriage regime (*Bulletin No. 1707-18*) is undergoing its second constitutional reading in the Constitution, Legislation, Justice and Regulations Commission of the Congress and that in view of the difficulties encountered in approving the Bill, a technical committee has been set up comprising representatives of the opposition, the National Service for Women and the Ministry of Justice and is currently working to achieve consensus on this matter. The Government indicates that it is hoped that the Committee will submit a proposal during the second half of 2010. ***The Committee requests the Government to continue providing information on the progress made in adopting the Bill amending the marriage regime to ensure that women who did not marry under the separate property regime may enter into a commercial partnership agreement without special permission from their husbands.***

*Discrimination on the ground of political opinion.* The Committee recalls that it has been asking the Government for many years to explicitly repeal Legislative Decrees Nos 112 and 139 of 1973, 473 and 762 of 1974, 1321 and 1412 of 1976, as well as the provisions of certain rules in the statutes of various universities which allow the rectors of Chilean universities broad discretion to abolish academic and administrative posts. The Government once again points out that these Decrees have been tacitly repealed and superseded by certain legal texts which were enacted and published more recently, namely the Political Constitution of the Republic, Act No. 18875 establishing the general basis of the administration of the State and Act No. 18834 on the Administrative Statute. The Committee notes with *interest* that, for the first time, Legislative Decree No. 3 of 10 March 2006 of the Ministry of Education, published in the *Official Journal* of 2 October 2007, which establishes the by-laws of the University of Chile, does not include the possibility of expelling or refusing admission to teachers, students or administrative staff on grounds of their political activities. The Committee also notes that the statutes of the University of Santiago de Chile are currently being revised. ***The Committee once again requests the Government to take the necessary measures to expressly repeal Legislative Decrees Nos 112 and 139 of 1973, 473 and 762 of 1974, 1321 and 1412 of 1976 to ensure greater legislative coherence and requests the Government to include texts of the statutes of the country’s universities in its next report.***

*Indigenous peoples.* The Committee notes that, on 15 September 2008, the Government of Chile ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Committee will, therefore, continue to examine the matters relating to indigenous peoples in the context of its regular examination of the application of Convention No. 169.

The Committee is raising other points in a request addressed directly to the Government.

## China

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1990)**

*Articles 1 and 2 of the Convention. Laws and regulations.* The Committee recalls that section 46 of the Labour Law 1994 provides that the “distribution of wages shall follow the principle of distribution according to work and equal pay for equal work”. The Labour Contract Law, 2007, also provides that, where no collective contract providing specifications regarding remuneration exists, the principle regarding equal pay for equal work should be followed. The Committee takes note of the Government’s reply that the Labour Contract Law, 2007, represents significant progress with respect to the effective protection of the right of workers, including dispatched workers, to equal remuneration for equal work, and as such provides a powerful means to eliminate gender-based discrimination. The Committee recalls its 2006 general observation which emphasizes the crucial importance of the concept of “work of equal value” when applying the Convention. **Recalling that the Committee in its 2006 general observation urged governments of countries which have not done so to adopt legislation giving full expression to the principle of equal remuneration for men and women for work of equal value, the Committee asks the Government to examine ways and means of reflecting fully the Convention’s principle in the legislation and to provide information on any measures taken or envisaged in this regard.**

The Committee is raising other points in a request addressed directly to the Government.

## Comoros

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2(2)(a) of the Convention. Principle of equal remuneration for work of equal value. Legislation.* The Committee notes that, according to the Government’s report, in the context of the draft revision of the Labour Code, particularly section 97, the draft section on equal remuneration states that all employers must ensure equal remuneration for the same work or for work of equal value. The Committee also notes the communication from the Comoros Employers’ Organization (OPACO) dated 1 September 2009, which states that the revision of section 97 of the Labour Code has not yet been carried out. It notes the Government’s reply referring the OPACO to its report. **The Committee asks the Government to indicate the progress of the legislative work relating to the revision of the Labour Code and hopes that the new Labour Code, giving full expression to the principle of equal remuneration for men and women for work of equal value, will be adopted in the near future. The Committee asks the Government to supply information on the role of the social partners in the process of the revision of the Labour Code and to send a copy of the new Code once it has been adopted.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Côte d'Ivoire

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

*Access to the public service. Legislation.* For a number of years the Committee has been asking the Government to take the necessary steps to revise section 14(2) of Act No 92-570 of 11 September 1992 issuing the General Public Service Regulations in order to bring it into conformity with the Convention. This section states that specific arrangements may be made, on account of physical fitness or constraints inherent in certain functions, to reserve access to the public service for candidates of either sex. While noting that it was not the Government’s intention at the outset to create gender discrimination, the Committee considers that this provision, which constitutes an exemption from section 14(1) of the Regulations prohibiting any distinction between the sexes, enables access to certain posts to be reserved for either men or women. It also considers that the criterion of “physical fitness” expressed in general terms runs the risk of limiting access to the public service for women, who account for only 27 per cent of staff numbers, according to the data supplied by the Government. The Committee recalls that, in order to be non-discriminatory within the meaning of *Article 1(2) of the Convention*, exceptions must be strictly limited to certain particular jobs and based on the inherent requirements thereof. **Noting the Government’s indication that the removal of section 14(2) of the General Public Service Regulations might form part of a possible overall revision of those Regulations, the Committee again requests the Government to take the necessary steps to amend this provision in order to bring it into conformity with the Convention. Pending such a revision, it requests the Government to provide information on the application of section 14(2) in practice, stating the posts and duties concerned and also its impact on the employment of women in the public service.**

The Committee is raising other points in a request addressed directly to the Government.

## Croatia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1991)***

*Article 1(1)(a) and (b) of the Convention. Anti-discrimination legislation.* The Committee notes with *interest* the adoption of the Anti-Discrimination Act on 9 July 2008 (*Official Gazette* 85/08), which defines and prohibits direct and indirect discrimination “in all its manifestations” (sections 2 and 9(1)), both in the private and in the public sectors. The Act provides protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation (section 1), thus covering all the grounds enumerated in *Article 1(1)(a)* of the Convention as well as a number of additional grounds pursuant to *Article 1(1)(b)*. With regard to the grounds of pregnancy and maternity, the Committee notes that the new Labour Act, adopted in December 2009, prohibits an employer from refusing to employ and from dismissing a pregnant woman (section 67(1)) and the Gender Equality Act of 15 July 2008 (*Official Gazette* 82/08) provides that “less favourable treatment of women for reasons of pregnancy and maternity shall be deemed to be discrimination”. The Gender Equality Act also prohibits discrimination in relation to “balance between professional and private life” (section 13(1)(6)).

The Committee notes that the Anti-Discrimination Act creates a category of “more serious forms of discrimination” which includes multiple discrimination and repeated and continued discrimination, and provides that such elements should be taken into account by the courts when determining the compensation for the victim and the fine for the perpetrator. The Committee notes further that this Act covers, inter alia, work and working conditions; access to self-employment and occupation, including selection criteria, recruitment and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining; education; and social security, including social welfare, pension and health insurance and unemployment insurance (section 8). The Labour Act also prohibits explicitly direct and indirect discrimination “in the field of labour and labour conditions, which includes selection criteria, employment and promotion requirements, vocational guidance and training, additional training and retraining” (section 5(4)).

***The Committee requests the Government to provide information on the legal and practical measures taken or envisaged to implement the relevant anti-discrimination provisions of the Labour Act, the Anti-Discrimination Act and the Gender Equality Act with regard to equal opportunities and treatment in employment and occupation. It further asks the Government to indicate the manner in which the provisions regarding the most serious forms of discrimination are being applied in practice.***

*Articles 2 and 3. Gender equality in employment and occupation.* The Committee notes with *interest* the adoption of the new Gender Equality Act on 15 July 2008. The Act provides for sanctions – fines from 1,000 to 1 million Croatian kuna (HRK) – in case of violation of its substantive anti-discrimination provisions (sections 31–38). It also provides for the adoption of action plans for promoting and ensuring gender equality on the basis of an analysis of the status of men and women every four years (section 11(2)) and specifies that all employers, whether public or private, shall “incorporate anti-discrimination provisions and measures with a view to achieving gender equality in their acts” (section 11(5)). Furthermore, according to this Act, social partners shall, in the course of collective bargaining and in collective agreements, comply with the provisions of the Act and measures aimed at ensuring gender equality (section 11(6)). ***The Committee asks the Government to provide information on the implementation of section 11 of the Gender Equality Act, including on any action plans adopted and implemented and on measures taken by public and private employers to ensure gender equality and their impact on the employment of men and women.***

The Committee notes the information provided by the Government on the measures taken with a view to strengthening women’s entrepreneurship within the framework of the National Policy for the Promotion of Gender Equality 2006–10. It further notes that statistics published by the Central Bureau of Statistics in 2010 show that the Croatian labour market is highly gender segregated. In 2008, men represented more than 70 per cent of the workers in agriculture, forestry and fishing, mining and quarrying, manufacturing, energy and supply, construction, transportation, and more than 55 per cent in public administration, whereas women represented more of 70 per cent of the workers in education, health and social services, and financial and insurance activities. In this respect the Committee welcomes the repeal of the Ordinance on jobs not permitted for women (*Official Gazette* 44/96) further to the entry into force of the new Labour Act on 1 January 2010 and the absence in this new Act of a general provision on jobs which women must not perform, unlike in the former Labour Act in its section 63(1). As regards the nature of jobs performed by women, the Committee notes that, according to the Government’s report, despite the lack of official statistics, unofficial data show that there are only 6 per cent of women in managerial positions in the private sector. ***While encouraging the Government to pursue and strengthen its efforts to support women’s entrepreneurship, the Committee asks the Government to take measures to address effectively the horizontal and vertical occupational segregation between men and women in the labour market, including measures aimed at promoting women’s access to a wider range of jobs and providing them with a wider choice of educational and vocational opportunities. The Committee requests the Government to provide detailed information on the measures taken to that end, including measures taken to improve the access of women to posts of responsibility and management positions, both in the private and the public sectors, and their impact. As***

*regards the public sector, the Committee requests the Government to provide more specific information on the number and proportion of female civil servants and civil service employees in posts of responsibility.*

*Equality of opportunity and treatment in employment and occupation of the Roma.* The Committee notes the measures taken in 2007 and 2008, pursuant to the National Programme for the Roma/Action Plan for the Decade of Roma Inclusion, relating to the employment and training of persons belonging to the Roma national minority. The Committee welcomes in particular the production and dissemination of a leaflet, both in Croatian and in Roma language, explaining the rights and obligations of unemployed persons and providing guidelines on job search. The Committee notes that the Croatian Employment Service implemented special programmes, which included an education component, in which 436 persons participated (2007–08). The Committee further notes that according to the data provided in the Government's report at the end of 2008, 4,390 members of the Roma community were registered with the Employment Service. The Committee estimates that this number does not reflect the total number of unemployed persons of the Roma minority – the total Roma population being estimated by the authorities to be between 30,000 and 40,000 persons. The Committee notes the Government's indication that the main obstacle for the members of the Roma minority to access employment is their low level of education. In this respect, in its report following his visit to Croatia in April 2010 (CommDH(2010)20, 17 June 2010), the Commissioner for Human Rights of the Council of Europe called upon the authorities to eliminate any tendency of segregation of Roma pupils and to reinforce their pre-school education in order to increase the currently extremely low percentage of Roma pupils who have completed elementary school education. He also encouraged the adoption of targeted professional training measures. ***The Committee can only but emphasize the importance of education and vocational training to improve future access to the labour market and asks the Government to take all the necessary measures to ensure equal access to education, including pre-school education, for Roma children, without discrimination. The Committee further asks the Government to strengthen its efforts to promote employment opportunities and to ensure equal treatment of the Roma in employment and occupation, including by adopting specific measures concerning the employment of Roma women. Please also provide specific information on the work of the Commission for the Monitoring of the Implementation of the National Programme for Roma with respect to non-discrimination in employment and occupation, as well as any available recent statistics on the number of men and women from the Roma community in the labour market, in particular the estimated levels of employment, unemployment and self-employment.***

*Article 3(d). Access of minorities to employment under the control of a national authority. In the absence of a reply by the Government on this matter, the Committee reiterates its requests for information on the following:*

- (i) the efforts made by the Government to promote and ensure access by members of national minorities to public employment in the framework of the Civil Service Employment Plan;*
- (ii) the progress made in achieving recruitment targets concerning minorities; and*
- (iii) the current ethnic and gender composition of the civil service.*

The Committee is raising other points in a request addressed directly to the Government.

## Cyprus

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1987)**

*Legislative developments.* The Committee notes with *interest* the adoption of Act No. 38(I) of 2009 (Amendment) regarding equal remuneration between men and women for the same work and for work of equal value, amending Act No. 177(I) of 2002 and Act No. 193(I) of 2004 (Basic Acts) concerning equal remuneration between men and women. These laws were adopted with a view to harmonizing the national legislation with the Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). The Committee notes that Act No. 38(I) of 2009 strengthens the definitions of direct and indirect discrimination based on sex, and of remuneration, and inserts provisions regarding the promotion of equal remuneration through social dialogue and dialogue with concerned non-governmental organizations. The Act also provides for out-of-court protection of victims of discrimination (complaints can be submitted to the Ombudsman's Office), enhances the accessibility of legal proceedings and the provision of legal aid by the Gender Equality Committee in Employment and Vocational Training, and clarifies the shifting of the burden of proof to the respondent. ***The Committee asks the Government to provide information on the practical application of the Acts of 2002 to 2009 concerning equal remuneration between men and women for the same work and for work of equal value, including relevant judicial and administrative decisions, as well as complaints handled by the labour inspection services.***

The Committee is raising other points in a request addressed directly to the Government.



## Democratic Republic of the Congo

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value.* The Committee recalls its previous comments concerning section 86 of the Labour Code which provides that with equal conditions of work, vocational qualifications and output, the salary is equal for all workers, irrespective of origin, sex or age. The Committee noted that this provision is not in conformity with the Convention which requires measures to promote and ensure equal remuneration for men and women for work of equal value. In accordance with the Convention, women and men should have the right to equal remuneration not only where they have the same working conditions, vocational qualifications and output, but also where they have different vocational qualifications and when they work in different working conditions, so long as the work performed is of equal value. The Committee draws the Government's attention to its 2006 general observation which further elaborates on this matter and calls on States which have not yet done so to ensure that their legislation fully reflects the principle of the Convention.

*Application of the principle to all aspects of remuneration.* The Committee notes that section 86 provides for equality with respect to the "salary", which is one of the elements of "remuneration" as defined in section 7(h) of the Labour Code. In addition, the term "remuneration" as defined in section 7(h) includes additional payments, such as commissions, payments in kind, bonuses, etc., whereas it is provided that transport allowances, family allowances, accommodation and accommodation allowances and health care are not considered part of the remuneration. Section 138 of the Labour Code specifies that the right to accommodation and accommodation allowance also applies to women workers, and according to the Government this applies irrespective of marital status. Recalling that under the Convention it must be ensured that the principle of equal remuneration for men and women for work of equal value is applied to all aspects of remuneration, as broadly defined in *Article 1(a)*, the Committee is concerned that the Labour Code currently provides for equality only in respect of the salary (section 86) and accommodation and accommodation allowances (section 138).

*Based on the above, the Committee asks the Government to take the necessary steps to bring the legislation into line with the Convention with a view to ensuring that the principle of equal remuneration for men and women is fully reflected in the legislation and that it applies to all the elements of remuneration, as defined in Article 1(a) of the Convention. The Committee asks the Government to provide information on the steps taken in this regard.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention. Prohibition of discrimination in employment and occupation.* The Committee previously noted that the Labour Code contains no provisions prohibiting and defining discrimination in employment and occupation, although section 1 provides that the Labour Code applies to all employers and all workers, with the exception of state public services, regardless of race, sex, civil status, religion, political opinion, national extraction and social origin. Act No. 81/003 of 17 July 1981, which promulgates the conditions of service of career members of the state public service, also lacks anti-discrimination provisions. Recalling its previous comments concerning the need to include in legislation provisions prohibiting and defining indirect and direct discrimination in employment and occupation, including in respect of recruitment, the Committee welcomes the Government's statement that it will examine the matter and take the Committee's comments into account. *The Government is requested to indicate the steps taken with a view to including such provisions in the Labour Code and Act No. 81/003 and any progress made in this regard.*

*Discrimination based on sex.* The Committee previously noted that a reading of sections 448 and 497 of Act No. 87/010 of 1 August 1987, issuing the Family Code, appears to indicate that, in certain cases, a woman has to obtain the authorization of her husband to take up salaried employment, whereas no such obligation is imposed upon the husband. Furthermore, in relation to jobs in the public service, the Committee notes that section 8 of Act No. 81/003 of 17 July 1981, issuing the conditions of service of career members of the state public services, and section 1(7) of Legislative Ordinance No. 88-056 of 29 September 1988, respecting the activities of magistrates, provide that a married woman must have obtained the permission of her spouse to be recruited as a career member of the public service or appointed as a magistrate. The Committee considers that the above provisions constitute discrimination on grounds of sex which are contrary to the principle of equality of opportunity and treatment for men and women workers in employment and occupation, as set out in the Convention. In this regard, the Committee welcomes the Government's statement that these provisions, being contrary to the Constitution, are null and void and that the modification of these texts was under way. *The Committee requests the Government to provide information on the steps taken to bring the abovementioned provisions into conformity with the Convention and to provide the amended texts, as soon as possible.*

*Discrimination based on race or ethnic origin.* In response to the Committee's comments regarding the socio-economic situation of the Batwa, a minority indigenous group, and discrimination faced by the Batwa in employment and occupation, the Government refers to article 51 of the Constitution under which the State has the obligation to ensure and promote the peaceful and harmonious coexistence of all ethnic groups of the country. In addition, article 51 requires the State to ensure the protection and promotion of vulnerable groups and minorities. The Committee also notes that the United Nations Committee on the Elimination of Racial Discrimination, in its concluding observations of 17 August 2007, expressed concern that pygmies (Bambuti, Batwa and Bacwa) are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market, and also that the rights of pygmies to own, exploit, control and use their lands, their resources and communal territories – which are the basis for the exercise of their traditional occupations and livelihood activities – are not guaranteed (CERD/C/COD/CO/15, 17 August 2007, paragraphs 18 and 19). *The Committee urges the Government to take measures with a view to ensuring equality of opportunity and treatment of the Bambuti, Batwa and Bacwa in employment and occupation, and to indicate the steps taken in this regard. In this*

context, the Government is also requested to indicate the measures taken to ensure that these indigenous groups enjoy their right to engage in their traditional occupations and livelihoods without discrimination.

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Djibouti

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention. Legislative developments. ... The Committee asks the Government to provide information on the implementation and enforcement of section 137 of the new Labour Code, including information on the measures taken or envisaged to raise awareness of these provisions among workers and employers and their representatives and public officials responsible for the enforcement of the labour legislation. In this regard, the Committee also asks the Government to provide information on whether any cases concerning section 137 have been dealt with by the responsible authorities and the manner in which they have been resolved, including any remedies provided or sanctions imposed.*

*Article 2(c). Collective bargaining.* The Committee notes from the Government's report that salaries in the private sector are determined by way of collective agreements. Section 258 of the new Labour Code provides that collective agreements may determine the salary applicable to each occupational category. Section 259(4) provides that collective agreements cannot change the modalities of the application of the principle of "equal salary for equal work", irrespective of the origin, sex or age of the worker. The Committee notes that section 259 is not in conformity with the Convention as it refers to equal salary for equal work rather than to equal salary for *work of equal value*, and is also at variance with section 137 of the Labour Code. *The Committee asks the Government to take the steps necessary to amend section 259(4) to bring it into alignment with the provisions of section 137 and to bring it into conformity with the Convention. The Committee also asks the Government to provide examples of collective agreements, as well as indications as to how the agreements implement the principle of equal remuneration for men and women for work of equal value.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Dominican Republic

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)**

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value.* In its previous comments, the Committee noted that the tripartite committee appointed by the Labour Advisory Council in July 2007 had drafted an amendment to section 194 of the Labour Code with a view to including in the legislation the concept of equal remuneration for men and women for "work of equal value". The Committee notes that the Government's report does not provide any information on the progress made with this draft text. It recalls that it has been commenting on this subject for many years and that section 194 in its current wording does not give full effect to the Convention as it does not include the concept of "work of equal value".

The Committee also notes that, in the same way as section 194, section 3(4) of Act No. 41-08 of 16 January 2008 on the public service provides for: "equal wages for equal work, in terms of capacity, performance and seniority, irrespective of the person performing the work". Similarly, article 62(9) in fine, of the new Constitution, adopted on 26 January 2010, lays down that "the payment of equal wages for work of equal value is guaranteed, without discrimination based on sex or other grounds and under identical conditions of capacity, effectiveness and seniority". The Committee notes that by defining the concept of "work of equal value" in terms of "identical conditions of capacity, effectiveness and seniority", the constitutional definition of the concept appears to be narrower than the term used in the Convention, as it should be possible to compare jobs carried out under different conditions, but which are nevertheless of the same value. The Committee notes with *regret* that the Government did not take the opportunity of these legislative and constitutional reforms to reflect the principle of the Convention fully.

The Committee wishes to refer in this respect to its 2006 general observation in which it emphasizes that the concept of equal remuneration for "work of equal value" includes but goes beyond equal remuneration for "equal", the "same" or "similar" work, and urges governments to take the necessary steps to amend their legislation to provide not only for equal remuneration for equal, the same or similar work, but also to prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value. *The Committee therefore urges the Government to take the necessary measures to ensure that the amendment of section 194 fully reflects the principle of the Convention and is adopted by the National Congress in the very near future, and to provide a copy once it has been adopted. The Committee also requests the Government to provide fuller information on wage inequalities in the public sector and on the measures taken to bring section 3(4) of Act No. 41-08, the wording of which is identical to that of section 194 of the Labour Code, into full conformity with the Convention.*

The Committee is raising other points in a request addressed directly to the Government.

## ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

With reference to its previous comments, the Committee recalls the discussion of the Conference Committee on the Application of Standards which took place in June 2008. The Committee notes with *regret* that the report of the Government contains no information on the specific points raised by the Conference Committee. The Committee is, therefore, obliged to repeat these points below.

The Committee also notes that a new Constitution was adopted on 26 January 2010, article 39 of which establishes the right to equality without discrimination based on gender, colour, age, disability, nationality, family ties, language, religion, political and philosophical opinion, social and personal situation. ***The Committee asks the Government to provide information regarding the implementation of the new Constitution as it relates to non-discrimination in employment and occupation.***

*Discrimination on the grounds of colour, race and national extraction.* The Committee recalls that it has been raising concerns for a number of years regarding discrimination against Haitians and dark-skinned Dominicans. The Committee notes that the Conference Committee called on the Government to address the intersection between migration and discrimination, and in particular to ensure that migration laws and policies and their implementation did not result in discrimination based on race, colour or national extraction. It noted in this respect that all migrant workers, including those in an irregular situation, must be protected from discrimination in employment and occupation. The Conference Committee also noted the Government's intention to establish a tripartite committee to follow up the recommendations made jointly by the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Independent Expert on minority issues. The Committee notes the wide range of recommendations of the Special Rapporteur and the Independent Expert, including in particular with respect to developing a national action plan against racism, racial discrimination and xenophobia; establishing an independent institution with authority to combat all forms of discrimination; adopting comprehensive legislation to combat racial discrimination; collecting relevant socio-economic data; ensuring that migration laws and their implementation protect the right to non-discrimination; monitoring sectors such as agriculture and construction, where many Haitians and Dominicans of Haitian descent are employed; targeting multiple discrimination facing minority women, particularly those who are black or of Haitian heritage (A/HRC/7/19/Add.5; A/HRC/7/23/Add.3, 18 March 2008, paragraphs 118–121, 126–128 and 131–132). ***The Committee urges the Government to take concrete measures without further delay to ensure the effective application of the Convention, in law and in practice, with respect to the grounds of race, colour and national extraction, and in this context to ensure that all migrant workers, including those in an irregular situation, are protected from discrimination in employment and occupation. The Committee requests the Government to indicate whether the tripartite committee to follow up the recommendations of the Special Rapporteur and the Independent Expert has been established, and the progress achieved in implementing the recommendations, in particular those noted above.***

*Discrimination based on sex.* The Committee has been raising concerns regarding the persistence of cases of discrimination based on sex, including pregnancy testing and sexual harassment, and the lack of effective application of the legislation in force, and has raised the issue of pregnancy testing as a requirement to obtain or keep a job in export processing zones. It notes in this regard the Government's indication to the Conference Committee that the Secretary of State for Labour had created an office responsible for monitoring gender policies in the field of employment, and the Gender Office had submitted a draft amendment to the Labour Code to the Advisory Labour Council with a view to improving labour legislation regarding medical examinations prior to or during employment. Regarding sexual harassment, the Government indicated that the Labour Code was being amended to make sexual harassment a criminal offence carrying a severe penalty. The Conference Committee, while noting this information, questioned the adequacy of the legislation and the complaints mechanisms to address such discrimination, and called on the Government, in collaboration with the workers' and employers' organizations, to take additional steps to strengthen protection against discrimination in law and in practice, and in particular to ensure that complaints mechanisms were effective and accessible for men and women working in enterprises where no unions existed. ***The Committee urges the Government to ensure that the existing anti-discrimination legislation is effectively applied, and in this context to take proactive measures, in collaboration with employers' and workers' organizations, to prevent and investigate both sexual harassment, and the requirement of pregnancy testing as a condition for obtaining or maintaining employment. The Committee also asks the Government to take the necessary measures to reinforce the sanctions for sexual harassment and mandatory pregnancy testing as well as the dispute resolution machinery related to discrimination in employment and occupation, to ensure that it is effective and accessible in practice to all workers, including those in export processing zones. The Committee also asks the Government to provide information on the following:***

- (i) *the status of the adoption of the proposed amendments to the Labour Code regarding sexual harassment and pregnancy testing;*
- (ii) *measures taken to support and protect victims of sexual harassment and pregnancy testing, including facilitating access to complaints procedures;*

- (iii) *awareness raising regarding discrimination, including sexual harassment and pregnancy testing, and building the capacity of labour inspectors, relevant government authorities, and the judiciary to detect and address violations in this regard;*
- (iv) *any specific measures taken to improve the detection of sexual harassment and pregnancy testing in export processing zones; and*
- (v) *any cases of sexual harassment or pregnancy testing reported to or detected by the labour inspectorate and any relevant administrative or judicial decisions, including the remedies provided and the sanctions imposed.*

*HIV testing.* Regarding its previous comments relating to HIV testing as a condition to be hired or keep a job, and the lack of enforcement of the prohibition of such testing, the Committee notes the Government's indication to the Conference Committee that involuntary HIV testing is prohibited in all enterprises, there is an HIV/AIDS technical unit within the labour inspectorate, and regular inspections are carried out but no cases concerning discrimination have been reported. ***The Committee requests the Government to reinforce its efforts to address HIV testing as a condition to be hired or to keep a job in practice, including taking measures to protect workers who lodge complaints, stepping up enforcement by labour inspectors, and building their capacity to detect and address such violations. Please provide detailed information of measures taken in this regard, as well as with respect to any cases of involuntary HIV testing reported to or detected by the labour inspectorate, and any relevant court or administrative decisions.***

The Committee is raising other points in a request addressed directly to the Government.

## Egypt

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)**

*Article 1 of the Convention. Work of equal value.* For a number of years, the Committee has been pursuing a dialogue with the Government regarding the concept of "work of equal value". In its previous comments, the Committee noted that sections 35 and 88 of the Labour Law, 2003, prohibited sex discrimination in wages but only referred to "analogous working conditions". The Committee pointed out that the Labour Law did not fully reflect the principle of equal remuneration for work of equal value and had therefore urged the Government to take the necessary measures to give full legislative expression to this principle. The Committee notes that the Government's report contains no information with respect to any envisaged legislative change. It recalls that the equal remuneration provisions of the Labour Law are narrower than the principle as laid down by the Convention, and thus may hinder progress in eradicating gender-based pay discrimination. The Committee, however, notes the Government's indication that training sessions on the concept of "work of equal value" for the persons concerned, such as the members of the National Wages Council, are envisaged in collaboration with the ILO. ***The Committee once again urges the Government to take the necessary steps to amend the relevant provisions of the Labour Law, 2003, so as to provide not only for equal remuneration for men and women for equal, the same or similar work but also to prohibit remuneration discrimination that occurs in situations where men and women perform different work, using different skills and involving different working conditions, that is nevertheless of equal value. The Committee also asks the Government to provide information on any training sessions organized on the principle of the Convention for the persons in charge of determining wages as well as any action taken following such training to ensure the full application of equal remuneration for men and women for work of equal value.***

The Committee is raising other points in a request addressed directly to the Government.

## El Salvador

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1995)**

*Article 1(1)(a) of the Convention. Application in practice of the Convention in the Maquila (export processing zones).* With regard to cases of violations of section 627 of the Labour Code respecting penalties for pregnancy testing and the dismissal of disabled women, as noted by the Special Unit for Gender Issues and the Prevention of Discrimination in Employment, the Committee notes the Government's indication that the majority of the cases consisted of women in the textile industry sector (*Maquila*), although there were also cases in the industrial, services and trade sectors. The Government indicates that during 2008 another ten cases were identified of dismissals of pregnant women, of whom nine were reinstated. During the first six months of 2009, the Special Unit identified 16 such cases, of which 15 resulted in reinstatement. With regard to the inspections carried out by the Special Unit in export processing zones and their results, during the course of 2008 a total of 276 scheduled inspections were carried out, during the course of which cases were initiated in 51 establishments for various violations of the labour legislation. During the first six months of 2009, fines were imposed on 23 establishments for violations of the labour legislation and for not having remedied infringements identified during the inspection. According to the Government, training activities in enterprises in the textile sector have been reinforced to ensure compliance with the labour legislation. The Committee notes that various legislative texts are being publicized in the textile industry, including Ministerial Circular No. 001/05 on the prohibition of employers to

require HIV and pregnancy tests. *The Committee requests the Government to continue providing information on the inspections carried out by the Special Unit for Gender Issues and the Prevention of Discrimination in Employment and their results, and particularly any other measures adopted or envisaged with a view to reinforcing the protection of women workers and preventing discrimination in the Maquila sector.*

*Article 1(1)(b). Discrimination against workers on grounds of HIV/AIDS status.* The Committee notes that the Government will undertake a review of the legislation with a view to ensuring protection against any discrimination related to HIV/AIDS status in the public sector. *The Committee requests the Government to provide information on any developments relating to the adoption of the relevant legislation and on the application in practice of the provisions that are in force in the private sector.*

*Article 2. Equality of opportunity and treatment for men and women.* According to the Government, since June 2009 a new policy of gender equity has been implemented through which the active participation of women is being promoted in education, employment, the economy and political, social and cultural life, particularly for women in rural areas. The Government indicates that a change of attitude is also being promoted in State institutions with a view to institutionalizing an approach that guarantees decent treatment for women. The Government indicates that support will be provided for the 262 municipal authorities in the country for the application of their gender equality policies, with a view to promoting the active participation and representation of women in decision-making processes in the political, economic and social spheres. According to the Economic Commission for Latin America and the Caribbean (ECLAC), the participation rate of men in economic activity is 81.4 per cent, while that of women is 44.2 per cent. *The Committee invites the Government to provide information in its next report on the new policy of equality between men and women that is being implemented in both the public and private sectors. The Committee also requests the Government to provide information on the measures adopted with a view to promoting the participation of women in the labour market and their access to managerial positions.*

*Indigenous peoples.* With reference to the participation of indigenous communities in the land allocation programmes undertaken by the Salvadorian Institute for Agrarian Reform (ISTA), the Government indicates that the programmes do not envisage the specific allocation of lands to indigenous communities, but are intended for the rural sector in general, with some programmes benefiting the indigenous population, including the Salvadorian National Indigenous Association (ANIS), the United Association of Salvadorian Indigenous Workers (AUTIS) and the Coordinated Association of Indigenous Communities of El Salvador (ACCIES). According to the Government, the indigenous communities which have gained access to ISTA programmes have seen improvements in their living standards through the allocation of lands in accordance with the applications made. Through the ISTA a land title programme has been implemented, with 4,455 ownership titles being granted. Technical assistance has also been provided to producers so that they can benefit from the allocation of ownership in the agricultural and stock-raising sectors. According to the Government, the country does not have updated census data or data on the geographical location of the indigenous population. *The Committee invites the Government to provide information on the measures adopted to achieve progress in the effective equality of indigenous peoples in employment and occupation.*

The Committee is raising other matters in a request addressed directly to the Government.

## Ethiopia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee urges the Government to provide full information on the matters raised in the comments below.

*Legislation.* The Committee recalls that section 14(1)(f) of Labour Proclamation No. 377/2003 provides that it shall be unlawful for an employer to discriminate between workers on the basis of nationality, sex, religion, political outlook or any other conditions. The Committee requested the Government to clarify whether section 14(1)(f) protects workers from discrimination in the selection and recruitment process and whether the employment service is bound by the principle of non-discrimination. In its report, the Government states that article 41 of the Constitution provides that every Ethiopian has the right to engage freely in economic activities and to pursue a livelihood of his or her choice. According to the Government this provision requires all public bodies, including the employment service, as well as employers to abstain from discrimination. *The Committee nevertheless considers it important that the non-discrimination provisions contained in the Labour Proclamation are amended with a view to explicitly providing that workers and candidates for employment, including non-citizens, are protected from discrimination and to include all the prohibited grounds listed in Article 1(1)(a) of the Convention, including social origin and national extraction. In the meantime, the Committee urges the Government to provide information on any cases concerning discrimination in employment and occupation identified and addressed by the competent authorities, including the labour inspectors and the courts.*

Recalling that the non-discrimination clause of the Federal Civil Service Proclamation No. 262/2002 does not include the grounds of social origin and national extraction (section 13(1)), the Government previously indicated that the question of amending section 13(1) to include these grounds had been placed on the agenda of the task force responsible for amending the Proclamation. *The Committee requests the Government to provide information on the progress made in this regard.*

*Equality of opportunity and treatment in the public sector, irrespective of sex and ethnicity.* The Committee recalls that section 13(3) of the Federal Civil Service Proclamation No. 262/2002 authorizes preferential recruitment of women and members of ethnic groups underrepresented in the civil service. However, the Committee regrets that no information has been provided in response to the Committee's comments regarding the promotion of gender equality and ethnic diversity in the public sector. **Consequently, the Committee urges the Government to:**

- (i) **provide information on the measures taken to promote equality of opportunity and treatment of men and women in the civil service, including in respect to recruitment, training and promotion;**
- (ii) **provide information on any measures taken to promote access to the civil service of all ethnic groups;**
- (iii) **provide statistical information on civil service employment by type of service and grade, disaggregated by sex, and to provide information on the ethnic composition of the civil service; and**
- (iv) **provide an indication as to how the Convention is applied with respect to state-owned enterprises.**

*Education and training.* The Committee notes from the Government's report that in 2006–07 the gross enrolment rate of girls increased to 85 per cent in secondary education, 51 per cent in technical and vocational education and training and to 25 per cent in higher education. **The Committee requests the Government to continue to provide information on the progress made in ensuring equal access of men and women to education and training at all levels. The Committee also asks the Government to provide information on the measures taken or envisaged to ensure equal access of women to employment and income-generating activities.**

*Indigenous communities.* The Committee notes from the 2003 report of the African Commission's Working Group of Experts on Indigenous Populations/Communities that a number of pastoralist communities live in Ethiopia who depended on their ancestral lands to engage in their traditional occupations and livelihood activities. The report indicates that the adoption of a new strategy on pastoral development by the federal Government constituted a positive step in addressing the problems faced by pastoralist communities, particularly evictions from their land. **The Committee requests the Government to provide a copy of the strategy on pastoral development and information on its implementation.**

*Follow-up to the recommendations made by the Tripartite Committee (representation made under article 24 of the ILO Constitution)* The Committee notes that the Government's report contains no new information concerning this matter. **The Committee requests the Government to provide information in its next report on any further decisions reached by the Ethiopia–Eritrea Claims Commission and on measures taken, in line with such decisions, to indemnify as fully as possible the workers displaced following the outbreak of the 1998 border conflict, and to grant appropriate relief in accordance with Conventions Nos 111 and 158.**

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**

## **Fiji**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)**

*Legislation.* In its previous observation, the Committee noted that the application of section 78 of the Employment Relations Promulgation, 2007, on unlawful discrimination in rates of remuneration would restrict the comparison of remuneration to men and women holding the "same or substantially similar qualifications" employed in the "same or substantially similar circumstances". It pointed out that this may unduly limit the scope of comparison of remuneration received by men and women, since jobs might involve different "circumstances", but may nevertheless be of equal value. The Committee notes the Government's reply that this issue will be referred to the tripartite Employment Relations Advisory Board for consideration. **The Committee therefore asks the Government once again to take the necessary measures to amend section 78 of the Employment Relations Promulgation, 2007, to give full effect to the principle of equal remuneration for men and women for work of equal value, in accordance with the Convention, and to provide information on the progress made in this respect.**

The Committee is raising other points in a request addressed directly to the Government.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)**

*National policy to promote equality of opportunity and treatment.* The Committee notes with *interest* the adoption on 15 December 2008 by the National Council for Building a Better Fiji (NCBBF) of the Peoples Charter for Change, Peace and Progress, which aims to build a society based on equality of opportunity for all Fiji citizens and on peace. The Charter, which was drafted on the basis of the findings and recommendations contained in the Report on the State of the Nation and the Economy (SNE Report) and after consultations held throughout the country, proclaims that equality and dignity of all citizens, respect for the diverse cultural, religious and philosophical beliefs, social and economic justice, equitable access to the benefits of development, and merit-based equality of opportunities for all shall be leading principles and aspirations. The Charter also sets out key measures and actions to be taken, such as the promulgation of an Anti-Discrimination Act, the development of education, vocational training and job placement, the promotion of multicultural education and the gradual phasing out of institutional names that denote racial affiliations, and the elimination of racial and inappropriate categorization and profiling in government records and registers. Other measures also include the increase of the participation of women at all levels of decision-making, the enactment of a code of conduct for public servants and persons who hold statutory appointments, the reform of the public sector, including the removal of any political interference and the compulsory training of civil servants, the development of cooperation between the Government and the private sector, and the introduction of a national minimum wage. The Charter also

contains specific measures concerning indigenous peoples and their institutions. In this respect, the Committee notes that the NCBBF made a number of recommendations in the SNE Report, such as the need to promulgate legislation prohibiting discrimination based on race, religion and sexual orientation, as well as legislation protecting the rights of minority ethnic groups (Indians, Pacific Islanders, Chinese, European and landless Fijians), especially with the view to improving access to land. ***The Committee requests the Government to provide information on the implementation of the measures envisaged in the Peoples Charter for Change, Peace and Progress to prohibit and eliminate discrimination, in particular racial discrimination, and to promote equal opportunities for all in relation to access to education, vocational training and employment in both the private and the public sectors.***

***Sexual harassment.*** The Committee notes with *interest* the adoption by the Government of the 2008 National Policy on Sexual Harassment in the Workplace, which was developed in consultation with the tripartite social partners. It notes in particular that the Policy provides for a definition of sexual harassment and a list of acts that constitute sexual harassment, and establishes the employer's responsibilities: every employer must have an internal written policy and a grievance procedure on sexual harassment at the workplace, which are to be developed by both staff and managers (paragraph 5.1). The Committee further notes that the Policy highlights the consequences of sexual harassment not only for the victim but also for the entire staff and the enterprise itself and describes the complaint mechanisms available under the Human Rights Commission Act 1999, section 154 of the Penal Code and Part 13 of the Employment Relations Promulgation 2007. ***The Committee requests the Government to provide information on the manner in which the 2008 National Policy on Sexual Harassment is implemented at the workplace level, indicating in particular any internal written policies adopted and grievance procedures put in place and any preventive measures taken by employers. The Committee further requests the Government to provide information on cases of sexual harassment identified by or referred to the labour inspectorate or any disputes concerning sexual harassment brought before the competent bodies, either under the Human Rights Commission Act 1999, section 154 of the Penal Code or Part 13 of the Employment Relations Promulgation 2007.***

***Equal access to education and training.*** The Committee notes that the Peoples Charter for Change, Peace and Progress contains numerous proposed measures to ensure access to education for all, including the establishment of a statutory body for community and non-formal learning, the strengthening of early childhood education – especially in rural areas – the enhancement of skills and vocational training and the promotion of entrepreneurship training, the facilitation of job placement in partnership with the private sector and the introduction of a grant system. The Committee further notes that the SNE Report emphasizes the need for the education system to include the teaching and understanding of various cultural groups in order to foster unity and to develop an inclusive based education system.

The Committee understands from the information in the SNE Report and the provisions of the Peoples Charter that the education system will undergo an extensive reform. ***As a consequence, the Committee requests the Government to clarify whether the system established under the Education (Establishment and Registration of Schools) Regulations, 1966, providing that in the admission process preference may be given to pupils of a particular race or creed, will still be in force. If so, the Committee reiterates its previous request for information on the application of these provisions in practice and for statistical information on the number of schools applying race or creed as an admission requirement as well as the number of pupils enrolled in these schools. Please also provide information on the implementation of the reform of the educational system, in particular on the measures taken to ensure the equal access of boys and girls, men and women from all ethnic groups to education and vocational training and their results.***

The Committee is raising other points in a request addressed directly to the Government.

## Finland

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)***

The Committee notes the Government's report and the comments of the Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), the Confederation of Finnish Industries (EK) and the Commission for Local Authority Employers (KT) included therein. It also notes the report on the Final Evaluation on the Framework of Actions on Gender Equality in Finland (2009), sent by the Government.

***Gender pay gap.*** The Committee recalls that the tripartite equal pay programme has the objective of narrowing the gender pay gap to 15 per cent by the year 2015. The Committee notes from the Government's report that over the past five years the gender pay gap has been reduced by one percentage point and that the difference in pay between men and women was at 18.83 per cent in 2008. With respect to average gross hourly earnings, Eurostat figures for 2008 indicate that the unadjusted gender pay gap remains unchanged at 20 per cent. The Committee further notes the Government's statement that due to the economic recession, action to reduce the gender pay gap will encounter additional challenges. The report of the Final Evaluation on the Framework of Actions on Gender Equality in Finland (2009) indicates disappointment by some of the social partners at the concrete achievements of the programme and the fact that some of the structural problems of the labour market, such as occupational segregation, have not been sufficiently addressed. Nonetheless, the Committee notes the overall strong support by all parties to continue the equal pay programme. ***The Committee asks the Government to take appropriate measures to address the challenges encountered in the***

*implementation of the equal pay programme with a view to enhancing its impact at national, sectoral and workplace level, and to provide detailed information on its implementation and the results achieved. Please also indicate the measures taken to address more effectively some of the structural causes of the gender pay gap, such as occupational gender segregation, and provide the fullest possible statistical data on differences in men's and women's earnings with a view to assessing progress made since 2008.*

*Article 2 of the Convention. Application in practice. Equality plans and equal pay surveys.* The Committee notes from the Government's report that surveys conducted in 2008 and 2009 for the purpose of assessing the functionality of the Equality Act (Act on Equality between Men and Women (609/1986)) indicate that a total of 62 per cent of the workplaces obliged to prepare an equality plan had done so, with the majority of the plans made in the government and municipal sectors. While 60 per cent of the workplaces undertook an equal pay review, employee representatives in the public sector had expressed criticism at the manner in which equality plans had promoted equal pay. Despite the requirement in the Equality Act, in only one third of the workplaces employee representatives had participated in equal pay reviews. The EK states that 75 per cent of its member companies prepared equality plans together with employee representatives. The Committee notes that SAK raises concerns about the manner in which equal pay reviews are able to address unexplained pay inequalities. According to SAK, the surveys on equal pay reviews indicated that reviews did not result in any action in 45 per cent of the workplaces. A survey conducted by SAK indicated that corrective measures had been undertaken in only 14 per cent of the cases in which pay discrimination was found. According to AKAVA, clarity of the legislation on pay reviews, the preparation of pay reviews and access to pay information remain problematic, especially in the private sector. The EK states, in this regard, that making gender equality plans more accessible at the workplace level and the drafting process more transparent have been identified by all social partners as priorities in making gender equality planning more efficient. The Committee notes that, according to the Ministry of Social Affairs and Health, a procedure in the workplace granting employee representatives direct access to information on pay could clarify the situation and reduce the administrative burden on businesses. The Committee welcomes the continued efforts made by the Government and the social partners to promote equal remuneration for men and women for work of equal value through equal pay reviews under the Equality Act. ***The Committee asks the Government to take measures, in cooperation with the social partners, to address the implementation gaps of equal pay reviews, including considering granting employee representatives direct access to pay information at the workplace level, taking measures aimed at identifying unexplained and discriminatory gender pay differentials and at improving participation of employees and their organizations in the development of equality plans and implementation of pay reviews. The Committee also asks the Government to provide further information on the actual impact of the pay reviews on reducing gender pay differentials in the private and public sectors, including relevant statistical data, and information on the number of equal pay reviews that have resulted in specific follow-up action, including corrective action where pay discrimination was found. Noting that the report on the functionality of the Equality Act was to be submitted to Parliament in 2009, the Committee asks the Government to provide a copy of the report, including a summary of its findings.***

*Indirect discrimination with respect to remuneration.* The Committee notes the concerns expressed by AKAVA that young educated women are more often than men employed on fixed-term contracts, particularly in the state sector. As employees on fixed-term contracts often receive lower pay and career progress for highly educated women is as much as ten years behind than that of men with corresponding levels of education, AKAVA considers that the fixed-term employment contracts of young women may constitute an attempt by employers to avoid employment security and the costs incurred due to parental leave. According to AKAVA, the current legislation is unable to address such indirect discrimination against women with respect to remuneration. ***The Committee asks the Government to provide statistical data, disaggregated by sex and age, on the employment of men and women on fixed-term contracts in the state sector, and their corresponding levels of remuneration. The Committee also asks the Government to examine the following:***

- (i) the extent to which the more frequent employment of young educated women on fixed-term employment contracts results in indirect discrimination with respect to remuneration; and***
- (ii) any gaps in the legislation on equal remuneration with a view to addressing such indirect discrimination.***

The Committee is raising other points in a request addressed directly to the Government.

## France

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)***

*Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the Constitution).* The Committee notes with ***interest*** the repeal by Act No. 2008-596 of 25 June 2008 of the "contract of new employment" (CNE) scheme, which was the subject of a representation made under article 24 of the ILO Constitution alleging non-observance by France of the Convention and of the Termination of Employment Convention, 1982 (No. 158). It also notes, according to the information provided by the Government, that all current CNEs have been re-categorized as contracts for an indefinite period.



*Non-discrimination and equality of opportunity and treatment. Legislative developments.* The Committee notes with **interest** the amendment of article 1 of the Constitution by an Act of 23 July 2008 and the adoption of Act No. 2008-496 of 27 May 2008 issuing various provisions adapting the national legislation to community law in the field of combating discrimination, which implements and completes the transposition of five European Directives and amends the Labour Code, among other texts. Article 1 of the Constitution now explicitly provides that “the law shall promote the equal access of women and men to electoral mandates and elected functions, as well as to professional and social responsibilities”. Furthermore, following the adoption of Act No. 2008-496 of 27 May 2008, the Labour Code refers to the definition of direct and indirect discrimination in employment given in that Act (see below L.1132-1 and L.1134-1) and includes provisions specifying the conditions in which differences of treatment are possible without infringing the principle of the prohibition on discrimination (sections L.1133-2 and L.1142-2). The Act, which applies to all public or private persons, including those engaged in a self-employed activity, also provides that the instruction to discriminate constitutes discrimination and contains provisions on the protection of victims and the witnesses of discriminatory acts against any retaliatory measures, the burden of proof and moral or sexual harassment. **Noting this information, the Committee requests the Government to provide information on the application of article 1 of the Constitution and the provisions of Act No. 2008-496 of 27 May 2008 in practice.**

*Discrimination on the basis of race and national extraction.* The Committee notes that in 2009, “origin” was the ground of discrimination referred to most often in complaints concerning employment received by the High Authority to Combat Discrimination and Promote Equality (HALDE) and that a high percentage of the deliberations of this body also concern this ground. It also notes that, according to a report published in November 2010 by the National Institute of Statistics and Economic Studies entitled “France – Social portrait 2010”, during the period between 2005 and 2008, on average 86 per cent of French men aged between 16 and 65 years and 74 per cent of women had a job when both of their parents were of French birth, whereas the employment rate was 65 per cent among men and 56 per cent among women where at least one of their parents was an immigrant originally from a Maghreb country. The study emphasizes that these disparities are not entirely due to discrimination, but recalls that recent surveys have shown the existence of discrimination on the basis of “origin” during recruitment.

The Committee notes the information provided by the Government concerning awareness raising and the training of public and private actors on the prevention of discrimination, particularly in the public employment service, temporary employment agencies, consular chambers managing training, enterprises which have signed partnerships and trade union organizations. In its report, the Government also mentions preventive activities carried out by the commissions for the promotion of equal opportunities and citizenship at the departmental level and mentions the existence of town contracts which include measures to combat racial discrimination. The Committee notes the Government’s indication that ownership by local actors of measures to combat discrimination still needs to be broadly established. With regard to measures to combat discrimination in recruitment faced by young persons with immigrant parents, the Government indicates that activities have been carried out focusing on three areas: measures to support young persons in their search for employment, particularly through sponsorship, support for the creation of enterprises or skills development; raising the awareness of enterprises of the need to diversify their recruitment; and combating professional down-grading by seeking a better match between qualifications and employment levels for higher education graduates.

Emphasizing the particularly important role of workers’ and employers’ organizations in promoting equality in employment and occupation, the Committee notes that the Inter-Occupational Agreement on Diversity in Enterprises, which was signed in 2006 by the social partners and made obligatory in 2008, provides for the implementation of action focusing on the commitment of managers of enterprises, awareness raising and combating stereotypes. The Committee also notes that in May 2009, an action programme and recommendations on diversity and equal opportunities were drawn up by the Commissioner for Diversity and Equal Opportunities and that it contains a list of measures to be taken to promote equal opportunities in education and employment. Finally, it notes from the concluding observations of the United Nations Committee on the Elimination of Racial Discrimination (CERD) that France is drawing up a national plan to combat racism (CERD/C/FRA/CO/17-19, 27 August 2010, paragraph 9). **The Committee hopes that the national plan to combat racism will include a section on employment and occupation, including education and vocational training, developed in collaboration with employers’ and workers’ organizations, and asks the Government to provide information in this regard.**

The Committee also notes the report of the United Nations independent expert on minority issues following her visit to France in September 2007. Noting that members of minority communities are confronted with serious racial discrimination, she issued a number of recommendations, such as the need to establish more severe penalties so that they are sufficiently dissuasive in cases of discriminatory practices and the importance of putting in place robust affirmative action policies to counter the effects of long-term discrimination (A/HRC/7/23/Add.2, 4 March 2008, paragraphs 78 and 79). Furthermore, the CERD noted with regret in its concluding observations that “notwithstanding recent policies to combat racial discrimination in housing and employment, persons of immigrant origin or from ethnic groups ... continue to be the target of stereotyping and discrimination of all kinds, which impede the integration and advancement at all levels of French society” (CERD/C/FRA/CO/17-19, 27 August 2010, paragraph 13).

**Noting this information and the numerous measures and schemes established at both the national and local levels to combat discrimination on the basis of race, national extraction or ethnic origin, the Committee expresses**

*concern at the fact that these measures do not appear to be producing sufficient results and requests the Government to strengthen its action to combat effectively discrimination on the basis of race or national extraction and to actively promote equality in employment and occupation. The Committee requests the Government to provide statistics allowing the Committee to assess the impact of the measures to promote equal opportunities and treatment in employment, including in education and vocational training, irrespective of race or national extraction. The Government is also requested to provide information on the following points:*

- (i) any measures taken to promote tolerance and respect among all members of the population and to combat the persistent stereotypes and prejudices suffered by persons from an immigrant background or members of ethnic groups, including in the overseas departments and regions;*
- (ii) the follow-up to the action programme and recommendations of the Commissioner for Diversity and Equal Opportunities in Employment and Occupation;*
- (iii) the measures taken to combat discrimination on the basis of race, national extraction and ethnic origin in employment in the context of the future national plan to combat racism; and*
- (iv) the action taken by the social partners to implement the Inter-Occupational Agreement on Diversity in Enterprises made obligatory in 2008 and to promote collective bargaining on this issue.*

*Promotion of equality of opportunity and treatment in the public service.* The Committee notes that a Charter for the promotion of equality in the three branches of the public service was signed in December 2008 by the Minister responsible for the public service and the President of HALDE. The aim of the Charter is to establish recruitment conditions that are tailored to needs without discrimination, make career paths more dynamic, raise the awareness of and train employees of the administration and disseminate good practices. The Committee notes that the first assessment of the implementation of the Charter, given in the annual report on the state of the public service (Policies and practices 2009–10), shows progress in the mobilization of Ministries and the start of social dialogue, the opening up of the public service following the establishment of various integrated preparatory classes (CPI) and the development of mentoring mechanisms, and several good practices to encourage professional development. The assessment also shows a poorer mobilization with regard to human resources management and access to training, as well as weaknesses relating to the establishment of diagnostic assessments on existing inequalities and alert mechanisms. The Committee notes that, according to the recommendations made by HALDE on this matter, there is a need to continue and intensify the efforts made, particularly with regard to training and informing staff to help them to identify potentially discriminatory situations and for the identification of sources of discrimination, the necessary procedures to verify the objectiveness of decisions, support for the victims of discrimination and overall follow-up of the measures taken. The Government also indicates that it has implemented a system of allowances for diversity aimed at persons preparing for a competitive entrance examination (categories A and B) and a scheme (“the Pact”) providing poorly qualified young persons with alternative training with a view to obtaining employment in category C. The Committee also notes that, in its report, the United Nations independent expert on minority issues considers that the public sector must lead by example in promoting and ensuring equality and that the Government should undertake more aggressive strategies to increase the number of people with immigrant background in the public service, particularly the police, civil service and the judiciary, and that these efforts should be evaluated on the basis of results or outcomes (A/HRC/7/23/Add.2, 4 March 2008, paragraph 86). *Noting the efforts made not only to combat discrimination in the public service, but also to promote equal opportunities and treatment, the Committee requests the Government to provide information on the implementation of these measures and schemes, including the Charter of 2008, as well as of any action plan adopted to promote equality in employment and occupation, the obstacles encountered and the evaluation of the overall results of these measures, including appropriate statistics, on access by all to the public service without discrimination on the basis of any of the grounds prohibited by the national legislation and the Convention.*

Furthermore, the Committee notes the comments communicated in May 2010 by the National Union of Scientific Researchers and the National Autonomous Union of Sciences concerning the career reorientation programme following a restructuring established under Act No. 2009-972 of 3 August 2009 on mobility and career paths in the public service. The trade union organizations emphasize the potentially discriminatory nature of the programme which would allow changes of jobs and even of employer within the public service without competitive entrance examinations. *Noting the Government’s reply received in November 2010, according to which the career reorientation programme is based on ongoing dialogue between the administration and the employee concerned, the Committee requests it to ensure that the implementation of this programme in the event of a restructuring of the public service does not give rise to discriminatory practices prohibited by the legislation and the Convention.*

*Discrimination on the basis of religion.* In its previous comments, the Committee urged the Government to provide information on the application of Act No. 65 of 17 March 2004 and its implementing circular of 18 May 2004 concerning the prohibition of wearing in public schools any conspicuous religious signs or apparel on pain of disciplinary measures including expulsion. *In the absence of a reply from the Government on this point, the Committee is bound to repeat its request to provide information on the following points:*

- (i) any court ruling or administrative decision concerning the application of the above legislation;*
- (ii) the numbers of boys and girls who have been expelled from school on the basis of the Act; and*

(iii) *the measures taken to ensure that the pupils who have been expelled nonetheless have adequate opportunities to acquire education and training.*

*The Committee also requests the Government to ensure that the application of this Act does not have the effect of reducing the opportunities of girls to find employment in the future.*

The Committee is raising other points in a request addressed directly to the Government.

## Gambia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)***

*Article 1(1)(a) of the Convention. Discrimination in employment and occupation. Legislation.* In its previous comments, the Committee pointed out that the provisions of the Constitution regarding discrimination did not include any reference to the prohibition of direct and indirect discrimination in employment and occupation and concerned only discriminatory treatment by public officials (section 33(3)). It also noted that the Labour Act of 1990 did not contain any provisions on discrimination, or reference to grounds of discrimination, but that it was in the process of being amended. The Committee notes that a new Labour Act (No. 5 of 2007) was adopted on 17 October 2007. While noting the Government's statement that the issue of discrimination has been adequately dealt with in the Labour Act 2007, the Committee notes that the new Act neither defines nor prohibits discrimination in employment and occupation on the basis of any of the grounds enumerated in the Convention, except in the case of dismissal and disciplinary action (section 83(2)). The Committee wishes to recall that it considers that, although general constitutional provisions regarding equality are important, they are not generally sufficient to address specific cases of discrimination in employment and occupation. It further considers that comprehensive anti-discrimination legislation is needed to ensure the effective application of the Convention and that, as a minimum, all the prohibited grounds of discrimination listed in *Article 1(1)(a)* should be addressed. ***The Committee therefore asks the Government to consider including in the Labour Act a comprehensive definition and a general prohibition of direct and indirect discrimination at all stages of employment and occupation based on, as a minimum, all of the seven enumerated grounds, namely, race, colour, sex, religion, political opinion, national extraction and social origin, as well as dissuasive sanctions and appropriate remedies. The Government is requested to provide information on the concrete steps taken to that end.***

## Greece

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)***

The Committee takes note of the Government's report received on 18 November 2009 concerning developments which had taken place until 31 May 2009.

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy. The Committee notes that in the view of the GSEE the reforms introduced by the abovementioned measures have a direct impact on the application of Convention No. 100 as they entail a far-reaching reform in the area of wages and the related system of collective bargaining, social security and security of employment, which could result in increasing discrimination in pay. According to the GSEE the national general collective agreements provided a fundamental institutional guarantee of equality between men and women as regards minimum standards of wages and conditions of work, and contributed significantly to restraining the gender pay gap in Greece. The GSEE is particularly concerned that the combined effect of the financial crisis, the growing informal economy and the implementation of austerity measures may have adverse or spillover effects on the negotiating power of women, particularly older and migrant women with respect to their terms of employment and type of work contract, and the over-representation of women and workers with family responsibilities in precarious low-paid jobs. Finally, the GSEE draws attention to the possible deterioration of wages of other categories of workers that are (wholly or partly) excluded from the scope of the labour law protection, such as domestic workers and persons working in agricultural undertakings.

The Committee recalls its observation and direct request of 2008 addressing issues relating to the assessment of the gender pay gap, its underlying reasons relating to occupational segregation and different educational choices of men and women, the promotion of objective job evaluation methods in the public and private sectors, general measures to address the gender pay gap in cooperation with workers' and employers' organizations and the General Secretariat for Gender Equality, the promotion of social dialogue, including collective bargaining, as a means to improve remuneration in occupations and sectors primarily employing women, and enforcement of the legislation applying the Convention.

The Committee will examine the issues raised by the GSEE and the Government's response thereto, together with the Government's next report which is due in 2011.

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1984)***

The Committee takes note of the Government's report received on 18 November 2009 concerning the developments which had taken place until 31 May 2009.

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy.

Further to its comments on the Equal Remuneration Convention, 1951 (No. 100), the Committee notes that in the view of the GSEE, the reforms introduced by the abovementioned measures have a direct impact on the application of Convention No. 111 and are likely to lead to an increase in multiple discrimination on the grounds of gender, ethnic or racial origin, age, family responsibilities or disability.

The Committee recalls its observation and direct request of 2008 addressing issues relating to the position of women in the various sectors and occupations in the public and private sectors, measures to address vertical and horizontal occupational segregation based on sex, women's equal opportunity and treatment in respect of admission to the police service, measures aimed at fostering equality of opportunity and treatment of vulnerable groups, in particular the Roma and Greek Muslims, measures to promote the application of the Convention through tripartite cooperation, and the effective enforcement of the equality legislation.

The Committee will examine the issues raised by the GSEE, and the Government's response thereto, together with the Government's next report which is due in 2011.

### ***Workers with Family Responsibilities Convention, 1981 (No. 156)*** ***(ratification: 1988)***

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy.

Further to the issues raised under the Equal Remuneration Convention, 1951 (No. 100), the Committee notes that GSEE is particularly concerned at the effect of the austerity measures on the situation of workers with family responsibilities, such as the increasing burden of family responsibilities on women due to gender stereotypes and as a result of uneven sharing between men and women of child and family care responsibilities. With respect to Act No. 3863/2010 on the "New Social Security System and relevant provisions", the GSEE raises concerns at the drastic increase in the retirement age of women, and particularly working mothers of minors, which should be assessed against the effect of the other measures taken, as well as against the inadequate and inefficient public social care support for mothers and working parents.

The Committee will examine the issues raised by the GSEE and the Government's response thereto, together with the Government's next report which is due in 2011. The latter should also address the issues raised in its previous observation and direct request of 2007.

## **Guinea**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1960)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. Prohibition of discrimination.* The Committee recalls its previous comments regarding section 20 of the Order of 5 March 1987 on the general principles of the public service, which prohibits discrimination only on the basis of philosophical or religious views and sex. *Recalling that where provisions are adopted to give effect to the principle of non-discrimination contained in the Convention, they should include all of the grounds set forth in Article 1(1)(a) of the Convention, the Committee asks the Government to amend section 20 and to indicate the steps taken in this regard.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Guyana**

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Legislation.* The Committee recalls that section 9 of the Prevention of Discrimination Act No. 26 of 1997 imposes the obligation on every employer to pay equal remuneration to men and women performing work of equal value, while section 2(3) of Equal Rights Act No. 19 of 1990 provides for “equal remuneration for the same work or work of the same nature”, which is a narrower concept than that required by the Convention. Further, the Committee recalls that section 28 of the 1997 Act stipulates that the Act shall not derogate from the provisions of the Equal Rights Act of 1990 but that the Government previously stated that the 1997 Act takes precedence over the 1990 Act. In light of the fact that section 2(3) of the 1990 Act falls short of the requirements of the Convention, the Committee remains concerned about the inconsistency between the above provisions concerning equal remuneration. **Noting that no progress has been made concerning this matter for a number of years, the Committee asks the Government once again to amend the legislation in question with a view to ensuring that it is in accordance with the Convention and to avoid any uncertainties as to the interpretation of the provisions concerned, for instance, through expressly providing that the 1997 Act, in case of conflict, takes precedence over the 1990 Act. The Committee asks the Government to indicate any measures taken or envisaged in this respect.**

*Application in practice.* The Committee recalls its previous comments asking the Government to provide information on the measures taken or envisaged to promote and supervise the application of the equal remuneration provisions of the Prevention of Discrimination Act. The Committee also recalls the communication received from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)), of 30 October 2003 which was forwarded to the Government on 13 January 2004 and again on 1 June 2006, and to which the Government has not yet replied. The ICFTU raises concerns regarding the promotion and effective enforcement of equal pay legislation. In this context, the Committee notes the Government’s statement that there were no cases of male and female workers receiving different pay for the same work and that it was a long established fact that men and women received equal remuneration both in the public and private sectors. The Committee draws to the Government’s attention the fact that the principle of equal remuneration for men and women for work of equal value does not merely require equal pay for the same or equal work but also equal pay for different work that is nevertheless of equal value, as established on the basis of an objective evaluation of the content of the work performed. The absence of differential wage rates for men and women, while necessary in order to apply the Convention, is not sufficient to ensure its full application. **Concerned that the Government’s report indicates misunderstandings as to the scope and meaning of the Convention’s principle, the Committee considers that training concerning the principle of equal remuneration for labour inspectors and judges, as well as workers’ and employers’ representatives is essential to effectively ensure the application of the Convention. It asks the Government to indicate in its next report any measures envisaged or taken to ensure the application of the equal pay legislation and the Convention through training and awareness raising and to indicate any steps taken to seek the cooperation of workers’ and employers’ organizations in this regard. Further, the Committee reiterates its request to the Government to provide information on any judicial or administrative decisions relating to the equal pay provisions of the Equal Rights Act No. 19 of 1990 and the Prevention of Discrimination Act of 1997.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1975)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls its previous observation in which it noted the communication from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)) pointing to the low representation of women in traditionally male-dominated areas of work, the weak labour force participation of Amerindian women, and the lack of effective procedures dealing with complaints of discrimination. The Committee notes the Government’s reply that more and more women are undergoing training and are entering areas of work that had previously been dominated by men. Women are now engaged in technical fields including working as electricians, mechanics and masons, and they make up a large percentage of employees of security firms. Women also represent the largest portion of graduates of the University of Guyana. The Government refers in this regard to statistics showing the number of women in areas of study that were traditionally male. However, these statistics were not attached to the Government’s report. The Government concludes that persons are free to choose whatever field of occupation they desire and that the various branches of education are accessible to all.

The Committee notes the developments on women’s employment and training mentioned by the Government but wishes to point out that without reliable statistics disaggregated by sex or any other information on the participation of women, as compared to men, in a wide range of occupations and vocational training courses, it is difficult for the Committee to assess whether progress has been made in achieving the objectives of the Convention. The Committee recalls that while some women may in theory be free to choose the occupations or training courses they desire, discrimination often flows from social stereotypes that deem certain types of work as suitable for men or for women. As a result, persons may apply for jobs based on work deemed to be suitable for them, rather than on actual ability and interest. Such stereotypes channel women and men into different education and training and subsequently into different jobs and career tracks which may not be in keeping with their ability or interest. Lastly, the Committee recalls the importance of effective complaints procedures to enforce legislation on non-discrimination and equality in employment and occupation. **The Committee, therefore, requests the Government to provide in its next report information on the following points:**

- (a) **statistical data disaggregated by sex on the participation of men and women, including Amerindian women, in the various occupations and sectors of the economy as well as their participation in vocational training courses;**
- (b) **the measures taken or envisaged to ensure that policies and plans under its control are not reinforcing stereotypes on the roles of men and women in employment and occupation;**
- (c) **the measures taken or envisaged, including in the area of vocational training and education, to encourage women to consider a wider choice of trades and occupations; and**
- (d) **the measures taken to ensure that the existing complaints procedures allow for effective implementation of the legislation prohibiting discrimination in employment, including on the measures taken or envisaged to prevent delays in litigating complaints. Please also indicate whether any cases alleging discrimination on the grounds set out in the Convention have been brought to the courts, and the outcome thereof.**

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Indonesia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)**

*Article 2 of the Convention. Implementation of the principle of equal remuneration for work of equal value.* The Committee recalls that it has been asking the Government to improve the application of the Convention, including by reviewing and revising the current legislation, in particular the Manpower Act (No. 13/2003) with a view to giving explicit legal expression to the principle of the Convention. The Committee notes, however, with *regret* that the Government merely makes renewed references in its report to the existing instruments without supplying information on the progress made and problems encountered in the application of legislative and administrative instruments or without replying to the specific requests made in the previous observation. ***The Committee therefore urges the Government to take steps to give explicit legal expression to the principle of equal remuneration for women and men for work of equal value, including an analysis in consultation with the social partners of the effect given to the Convention through the Manpower Act (No. 13/2003).***

The Committee has been drawing attention to specific provisions of the national legislation which are considered discriminatory. Government Decree No. 37 of 1967 and Decree of the Minister of Agriculture No. 418/KPTS/EKKU/5/1981 contain disparate treatment between men and women in relation to payment of employment-related benefits and the Committee has been asking the Government to clarify whether and how these instruments have been revised. In addition, it has been expressing its concern over the possible discriminatory impact on women's employment-related benefits and allowances of section 31(3) of the Marriage Act (No. 1/1974), which provides that the husband is the head of the household. ***The Committee urges the Government to take the necessary measures to:***

- (i) revise or repeal the abovementioned provisions; and***
- (ii) ensure that no direct or indirect discrimination against women exists in practice with respect to family allowances and employment-related benefits.***

***It also asks the Government to provide information on any progress made in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)**

*Discrimination on the grounds of race, colour and national extraction – Transmigration programmes.* In previous observations, the Committee has been requesting the Government to take steps to examine the situation of alleged racial discrimination against indigenous peoples in Papua and Kalimantan, and to indicate the measures taken to ensure that there is no discrimination in employment and occupation on the basis of race, colour or national extraction, particularly in the implementation of transmigration programmes. The Committee notes with *interest* the adoption of Act No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination which defines and aims to eliminate racial and ethnic discriminatory action with respect to civil, political, economic, social and cultural rights, and imposes a number of obligations on national and regional governments regarding the effective protection and elimination of racial and ethnic discrimination. Under the Act, the National Human Rights Commission (Komnas HAM) is responsible for supervising efforts aimed at eliminating all forms of racial and ethnic discrimination. Such supervision may include, among others, the monitoring and assessment of government policies considered a potential cause of racial and ethnic discrimination, the fact-finding and evaluation of alleged racial or ethnic discriminatory actions by individuals, communities or government, and the monitoring and assessment of government and community action in eliminating such discrimination. With regard to the alleged discriminatory impact of transmigration programmes on certain groups of the local population in Papua and Kalimantan, the Committee notes the Government's general statement that the integration of transmigrants into the local population is carried out through equal treatment, services, rights and obligations in the field of arts, religion and social and economic institutions. ***The Committee requests the Government to provide information on the practical application of Act No. 40 of 2008, including any relevant administrative and judicial decisions. In this regard, please also indicate the action taken by the Komnas HAM to monitor the effectiveness of government policies aimed at eliminating racial and ethnic discrimination or to examine any alleged discriminatory impact of government assisted or independent transmigration on indigenous peoples in Papua and Kalimantan. The Committee further requests the Government to indicate any other action taken or envisaged, at national and regional level, to promote equality of opportunity and treatment in employment and occupation of all ethnic groups of the population, including indigenous peoples, irrespective of race, colour and national extraction, and on the results secured by such action, in accordance with Article 3(f) of the Convention.***

*Discrimination based on political opinion.* For a number of years the Committee has sought clarification from the Government regarding section 18(i) of the Recruitment of Civil Servants, Government Regulation No. 98/2000 dated 10 November 2000 which provides that civil servants are to be dismissed upon becoming members and/or leaders of political parties, and section 8 of the Civil Servants who are Members of Political Parties, Government Regulation

No. 5/1999 dated 26 January 1999, which provides for dismissal of civil servants on the same basis. The Committee notes that in its latest report the Government explains that the prohibition for civil servants to become or to be members of a political party is justified due to the need for public servants to remain neutral and fair and independent from politics. The Committee notes that the new Act on Political Parties No. 2 of 2008 provides that citizens of Indonesia who are 17 years of age or over can become a member of a political party, and that membership of a political party is voluntary, open and non-discriminatory to Indonesian citizens (section 14). The Committee recalls that under the Convention, protection against discrimination based on political opinion also extends to membership in political organizations or parties (see paragraph 57 of the 1988 General Survey on equality of opportunity and treatment). While it may be admissible for the responsible authorities to bear in mind the political opinions of individuals in the case of certain limited higher level posts which are concerned directly with implementing government policy, it is not compatible with *Article 1(2) of the Convention* for such conditions to be laid down generally for all civil service employment. ***In this regard, the Committee draws the attention of the Government to paragraph 122 of the Special Survey of 1996 on equality of opportunity and treatment in employment and occupation, and requests the Government to amend Regulation No. 98/2000 and Regulation No. 37/2004 to ensure workers are not discriminated against based on their political opinion.***

The Committee is raising other points in a request addressed directly to the Government.

## Islamic Republic of Iran

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2010 and the resulting conclusions of the Conference Committee. The Committee also notes the observations of Education International (EI) of 31 August 2010, which have been forwarded to the Government, regarding discrimination against regional ethnic groups, religious minorities and women with respect to access to employment and education, and the persecution and prosecution of teachers, students and unionists advocating for social justice and for equal rights. ***The Committee asks the Government to respond to the issues raised in EI's communication.***

The Committee notes that the Conference Committee, while acknowledging that certain advances appeared to have been made, expressed its continued concern that, despite the commitment that had been made by the Government in 2006 to bring all the relevant legislation and practice into line with the Convention by 2010, many outstanding issues raised by the Committee of Experts remained unanswered. The Conference Committee urged the Government to amend the discriminatory laws and regulations, to bring the practice into line with the Convention, and to promote public awareness of the right of women to pursue freely any job or profession, promoting the inclusion of women in the labour market and decent work for women. It also called on the Government to take decisive action to combat discrimination against ethnic and unrecognized religious minorities, in particular the Baha'i. The Committee notes that, although a report was provided by the Government in May 2010, no additional information has been received as specifically requested by the Conference Committee.

#### ***Legislative developments***

The Committee notes the English translation of the Bill on Non-discrimination in Employment and Education, which was provided by the Government. The Government indicates that this Bill has been submitted to the Commission of Social Affairs of the Cabinet of Ministers for further consideration. The Committee notes that, pursuant to section 1 of the Bill, all subjects of the Islamic Republic of Iran are to enjoy equal rights, and "colour, race, language, political or religious belief and the like, do not bestow or deprive them of any rights". The provision goes on to provide more specifically for equal protection of the law in terms of access to jobs, employment and training opportunities, and to equal opportunities and treatment for all subjects, both men and women, given the prevailing circumstances and the national customs. It is then stated that any form of distinction, preference, differences and discrimination shall be forbidden in the following: access to education; access to technical and vocational training; access to jobs and employment opportunities, and similar working conditions for all nationals; and payment of wages, benefits, allowances and determination of working conditions. A definition of "discrimination" is provided in note 1 to the Bill, indicating that it "encompasses any unjustified exercise of distinction, exclusion, limitation, preference or privilege, which shall adversely affect or nullify equality of opportunity or treatment in occupation, employment, training or education".

While recognizing the steps taken to adopt a specific law on non-discrimination in employment and education, the Committee notes with ***concern*** that the Bill in its present form does not provide effective and comprehensive legal protection for all workers against discrimination in employment and occupation on the grounds enumerated in the Convention. The Committee notes that section 1 of the Bill summarizes general principles set out in the Constitution related to equal rights and equal protection of the law, and it is not clear whether the grounds enumerated in that context relate directly to the sentences that follow, which deal specifically with discrimination in occupation and employment. In addition, even if the grounds set out in section 1 of the Bill are intended to relate to non-discrimination in employment and occupation, the grounds of national extraction and social origin set out in *Article 1(1)(a) of the Convention* are not included. It is also not clear whether the law would apply only to nationals. The Committee notes further that the

protection provided is subject to “prevailing circumstances and national customs”, which the Committee considers could allow a very broad scope for exemptions, which is not compatible with ensuring the fundamental right to equality and non-discrimination. The Committee also notes that note 3 of the Bill indicates that it is not to be deemed discrimination to define and categorize special jobs and occupations, to require conditions inherent to the job or special requirements for specified jobs, which appears to go beyond *Article 1(2)* of the Convention regarding inherent requirements of a particular job. The reference to legal and special measures or decisions regarding those in need of special support in note 5, should also be reconsidered in the light of *Article 5* of the Convention, to ensure that special measures of protection and assistance are determined in consultation with representative employers’ and workers’ organizations, and do not reinforce discrimination and stereotypes, for example by limiting jobs women can do for reasons unrelated to maternity protection. The Committee notes that section 2 of the Bill provides for penalties, but does not indicate the avenue for obtaining effective redress for a violation of the right to non-discrimination. The Committee also notes that the Labour Law of 1990 is currently under review, and a specific objective of the review according to the Government is to bring the Law into conformity with international labour standards, including the Convention.

*Noting that the Bill on Non-discrimination in Employment and Education has been submitted to the Commission of Social Affairs of the Cabinet of Ministers for further consideration, and that the Labour Law is also under review, the Committee urges the Government to ensure that effective and comprehensive legal protection for all workers, whether nationals or foreigners, against direct and indirect discrimination on all the grounds enumerated in the Convention is ensured, with respect to all aspects of employment and occupation. The Committee also requests the Government to review the procedures that would be available to bring a claim for a violation of the provisions related to discrimination, to ensure that they provide effective and accessible avenues for redress. Recalling its 2002 general observation, the Committee also asks the Government to consider including a specific provision in the Bill or the revised labour law aimed at preventing and addressing sexual harassment at work, both quid pro quo and hostile environment harassment. Noting that the information provided by the Government on complaints to the police seems to be limited to sexual assault, the Committee asks the Government to provide information on measures taken or envisaged to prevent and prohibit sexual harassment in employment and occupation, which may or may not amount to sexual assault.*

#### **National equality policy**

The Committee notes the Government’s indication that the Minister of Labour and Social Affairs has presented a proposal to the Council of Ministers for the establishment of a national committee in order to guarantee the monitoring of the application of international labour standards, including this Convention. The Committee also notes the detailed information provided by the Government on the measures adopted by the judiciary to implement article 130 of the Fourth Economic, Social and Cultural Development Plan (Development Plan) empowering the judiciary to take measures towards the elimination of discrimination in the legal and judicial field. The Committee notes in particular the preparation of a range of bills, the public awareness raising, the courses for judges and lawyers, the joint project with the United Nations Development Programme (UNDP) on advancing human rights and social justice development, the establishment of a Committee for Women’s Legal Studies in the Judicial Branch, and the establishment of a commission to remove discrimination. The Government also provides information on the role of the judiciary in implementing the Charter of Citizenry Rights, including abolishing six circulars which were in conflict with citizens’ rights and establishing a committee to monitor the observance of citizens’ rights and to take any necessary measures to ensure the maintenance of such rights. With respect to article 101 of the Development Plan, the Government states that the national plan referred to has been developed, and includes taking steps to amend the Labour Law to bring it into conformity with the Convention. *The Committee asks the Government to provide information on the progress in establishing the national committee on monitoring the application of international labour standards, and any reports or recommendations that have been issued by that committee, and any follow-up thereto. The Committee also requests the Government to continue to provide information on the measures taken by the judiciary with a view to the elimination of discrimination in the legal and judicial fields, including specific reference to any impact of these measures on non-discrimination in employment and occupation. The Committee again requests the Government to provide translated summaries of the evaluation reports prepared pursuant to article 157 of the Development Plan, and any other information on the implementation of the Development Plan in practice, and the results achieved with respect to furthering equality in employment and occupation. The Committee also requests the following:*

- (i) information on whether any of the circulars abolished or any of the cases addressed by the Central Monitoring Board on Maintaining Citizens’ Rights related to discrimination in employment and occupation and, if so, the details thereof;*
- (ii) a copy of the Charter of Citizenry Rights;*
- (iii) a copy of the national plan adopted pursuant to article 101 of the Development Plan;*
- (iv) a copy of the sample labour contracts prepared pursuant to the national plan;*
- (v) as the period covered by the Fourth Economic, Social and Cultural Development Plan ends in 2010, information on any new development plan that has been adopted or is envisaged;*



- (vi) *a copy of the Family Support Bill which has replaced the Charter of Women's Rights; and*
- (vii) *copies of relevant judicial decisions.*

#### **Equal opportunity and treatment of men and women**

The Committee notes that measures continue to be taken to improve women's access to university and technical and vocational training and, in particular, welcomes the information provided by the Government on the number of women and men in the different fields of study and training, with women making up the majority of those in a number of training courses in non-traditional fields, such as auto mechanics, electronics, welding, metallurgy, management and industries, and civil engineering. With respect to the quota system in universities in 39 fields of study, the Committee notes the Government's explanation that the quota was introduced to ensure gender balance in those fields. The Committee notes, however, from official statistics provided to the Office, that women's labour market participation in 2008 was 14.9 per cent for those over 15 years, which was a decrease from 2007 (17.3 per cent), and even lower than the level in 2005 (19.2 per cent). The Committee therefore continues to be concerned that progress achieved in women's education and training is not being translated into increased women's economic participation. ***The Committee requests the Government to reinforce its efforts to ensure that increased educational and technical qualifications translate into decent jobs for women, and to provide information on measures taken in this regard. Please also provide specific information on the quota system in universities and how it is applied in practice, including the specific fields targeted. The Committee asks the Government to continue to provide detailed statistics, disaggregated by sex, regarding participation in education, vocational training, and in the various sectors and occupations in employment.***

The Committee notes the establishment in 2009 of the Socio-Cultural Council of Women with a mandate to make policy and to coordinate among various government institutions to promote women in education, law, public culture, social affairs, the economy, employment, international affairs and health. The Government also provides detailed information on women's empowerment projects, the activities of the Women's Entrepreneurship Association, the Association of Women Managers, and of the Centre for Women and Family Affairs. The Committee also notes that the Centre for Women's Affairs of the President's Office submitted a proposal to the Cabinet of Ministers in 2009 to amend the Labour Law with respect to family leave and to reduce the working hours of women. ***The Committee requests the Government to continue to provide information on women's empowerment projects, the activities of the Women's Entrepreneurship Association, the Association of Women Managers, and of the Centre for Women and Family Affairs and also to provide information on the following:***

- (i) *the progress achieved by the Socio-Cultural Council of Women to promote women in education and employment, including specific measures taken in this context;*
- (ii) *details of the contents of the bills on family leave and decreasing women's working hours, as well as the bill on home-based jobs which was referred to by the Government in the Conference Committee;*
- (iii) *any follow-up to the recommendations of the study undertaken for the development of women and family affairs, including for the development of plans for women's empowerment.*

The Committee notes the Government's reply to the concerns raised regarding the increasing number of women working in temporary jobs and contract employment where they are not covered by legal entitlements and conditions, including maternity protection. The Government acknowledges that there is a regulation exempting companies employing less than ten people from certain provisions of the Labour Law, including the section requiring pregnant women to be given light work, but that these companies are not exempted from the section providing for maternity leave. ***The Committee once again urges the Government to take the necessary measures to ensure that women in temporary and contract employment benefit from all the legal entitlements and facilities. The Committee requests the Government to provide a full list of the provisions of the Labour Law from which companies with less than ten employees are exempted, and a copy of the regulation.***

On the issue of reconciling work and family responsibilities, and the measures that had been aimed solely at women, the Committee notes the Government's indication that the law on the payment of stipends for those with large families has been amended to provide such payment to both men and women. ***The Committee requests the Government to provide more information on the amendment to the law on the payment of stipends, and to indicate whether it has been adopted. The Committee also requests information on any further measures taken to assist both men and women workers to balance work and family responsibilities, and to improve awareness of and access to protection and benefits aimed at balancing work and family responsibilities.***

With respect to the concern raised in previous comments regarding the prevalence of discriminatory job advertisements, the Committee notes that the Government has undertaken an examination of job advertisements, which clearly indicates that a large number of advertisements call for only men or only women applicants. The Committee recalls that, unless being a man or a woman is an inherent requirement of the particular job, in the strict sense of the term, such a requirement is indeed discriminatory, and may be based on stereotyped assumptions of which jobs are considered "suitable" for women or men. ***The Committee requests the Government to take measures to prohibit discriminatory job advertisements and to ensure such prohibition is effectively enforced. Please provide detailed information on steps taken in this regard.***

### **Discriminatory laws and regulations**

The Committee, as well as the Conference Committee, has raised over a number of years the need to repeal or amend discriminatory laws and regulations. The Committee notes the Government's indication that a committee was established in April 2010, consisting of representatives of the Ministry of Labour and Social Affairs, the Ministry of Justice and the President's Office, mandated to identify all legal regulations that could be in conflict with the Convention, and to present them to the Council of Ministers within six months. ***The Committee asks the Government to provide information on the findings and recommendations of the committee reviewing the legal regulations that could be in conflict with the Convention and any steps taken by the Council of Ministers as a result.***

With respect to section 1117 of the Civil Code, pursuant to which a husband can prevent his wife from taking up a job or profession, the Government once again states that, due to the existence of section 18 of the Family Protection Law, section 1117 is automatically repealed and courts are not authorized to hear complaints regarding section 1117. The Government clarifies that this is not related to the Family Support Bill. The Government provides information on proposals in 2006 and 2008 to amend the section, which were rejected by the Judicial Commission of Parliament as such amendment was not considered necessary. ***Recalling the concerns raised previously by this Committee and the Conference Committee that in the absence of an express repeal of section 1117, it would continue to have a negative impact on women's employment opportunities, the Committee again urges the Government to take steps to repeal the provision and to promote public awareness of the right of women to pursue freely any job or profession, and indicate the concrete measures taken in this regard.***

Regarding the discriminatory provisions in social security regulations that favour the husband over the wife in terms of pension and child benefits, the Committee notes the Government's general indication that some proposals have been made by the Centre for Women and Family Affairs, and that an agreement has been approved between the Rehabilitation Organization and the Ministry of Welfare and Social Security covering 34,000 female heads of household. With respect to women in the judiciary, the Committee notes that a proposal has been put forward by the Centre for Women and Family Affairs to amend the 1982 law on the selection of judges, so that women could be appointed to positions as judges qualified to hand down judgements. On the obligatory dress code, the Government states that there is no specific regulation, but that observing the dress code is a national norm and, if determinations of administrative violations are made, they can be taken to a review board. The Government also states that no cases of complaints of dismissal for non-observance of the dress code have been received by the judicial or administrative bodies. Regarding the age limit for hiring women, the Government again states that the maximum age for employment is 40 years and a five-year extension is possible exceptionally in the civil service. The Government states that the age limit is due to some capabilities and conditions and is a necessity. ***The Committee again urges the Government to take measures to address any barriers, in law or in practice, to women being hired after the age of 30 or 40. The Committee asks the Government to provide information on the status of the various proposals concerning amendments to the laws and regulations raised previously by the Committee, including regarding social security and the role of women in the judiciary, as well as details on the agreement covering 34,000 female heads of household, and on any cases of dismissal or discipline due to non-observance of the dress code.***

### **Discrimination on the basis of religion and ethnicity**

The Committee notes that this Committee and the Conference Committee have on a number of occasions highlighted the seriousness of the situation of unrecognized religious minorities, in particular the Baha'i, and the urgency of taking decisive action to combat discrimination against them. The Committee notes that the information provided by the Government is again limited to providing examples of companies owned by Baha'i, some cases addressed by the Human Rights Commission, and one specific case regarding the land rights of a Baha'i community. The Committee also notes that EI has expressed concern regarding the religious-based discrimination against the Baha'i in terms of access to education, universities, and to particular occupations in the public sector.

With respect to the practice of *gozinesh*, a selection procedure requiring prospective state officials and employees to demonstrate allegiance to the state religion, the Government states that two positions have been put forward regarding the Selection Law based on Religious and Ethical Standards, 1995: one group proposed that it be abolished, with selection decisions being solely based on qualifications; the second group proposed the amendment of some of the provisions of the Law. Both proposals were rejected, the first by a majority of members of Parliament, and the second by the Guardian Council. The Government states that the Law recognizes not only Islam but also the religions officially recognized in the Constitution. The Committee notes, however, that unrecognized religious minorities remain subject to the practice of *gozinesh*.

***The Committee notes with deep regret that the Government has not taken action along the lines called for by this Committee and the Conference Committee over a number of years to address the very serious situation of discrimination against religious minorities, in particular the Baha'i. The Committee, therefore, urges the Government to take decisive action to combat discrimination and stereotypical attitudes, through actively promoting respect and tolerance for religious minorities, including the Baha'i, to repeal all discriminatory legal provisions, including regarding gozinesh, and withdraw all discriminatory circulars and other government communications. The Government should also ensure that authorities and the public are informed that discrimination against religious***

**minorities, in particular the Baha'i, is unacceptable, including in education, training, employment and occupation, and provide specific information on the concrete measures taken in this respect.**

The Committee notes the information provided by the Government regarding the number of management positions filled by those belonging to ethnic minorities in selected provinces. The Committee also notes the concerns raised by the United Nations Committee on the Elimination of Racial Discrimination (CERD) regarding the double discrimination faced by women of minority origin, and the discrimination faced by, among others, Arab, Azeri, Balochi and Kurdish communities in a number of areas, including employment (CERD/C/IRN/CO/18–19, 27 August 2010, paragraphs 9 and 15). The Committee notes further that EI indicates that regional ethnic groups are poorer, less educated, less represented in decision-making, and have less employment, and that the failure to provide all ethnic groups with access to quality education results in discrimination in accessing decent jobs. EI refers specifically to the Balochs, southern Azerbaijanis, Ahwaz, Turkmen and Kurds. **The Committee asks the Government to provide detailed information on the education and employment situation of ethnic minority groups, disaggregated by sex, in both the public and private sectors, and at the various levels of responsibility. The Committee requests the Government to take concrete measures to ensure equal access and opportunities to education, vocational training, employment and occupation for members of these groups.**

### **Dispute settlement and human rights mechanisms**

The Committee notes that some information has been provided on the number of cases dealt with by the Islamic Human Rights Commission and the general nature of those cases. However, the information on cases addressed by other bodies is too general for the Committee to assess whether the dispute settlement mechanisms to address discrimination in employment and occupation is effective. The Committee also notes the information provided on the measures adopted by the secretariat of the Central Monitoring Board to maintain citizen rights, including awareness raising, inspection processes and educational programmes. The Committee notes further the concerns raised by EI regarding discrimination in access to justice. **The Committee requests the Government to provide more detailed information on the nature and number of complaints lodged with the various dispute settlement and human rights bodies and the courts which relate to discrimination in education, training, employment and occupation, including any sanctions imposed and remedies provided. The Committee also requests the Government to continue to provide information on the measures taken to raise awareness of the existence and mandate of the various dispute settlement and human rights bodies, and to ensure the accessibility of the procedures to all groups. Please also provide information on any progress made in the establishment of specific courts to address religious discrimination and councils of dispute settlement for religious minorities, which are referred to in the Government's report.**

### **Social dialogue**

The Committee previously raised concerns that, in the context of the freedom of association crisis in the country, meaningful national-level social dialogue regarding issues related to the implementation of the Convention would not be possible. The Committee notes that the Conference Committee urged the Government to accept a high-level mission which would address freedom of association principles as well as the implementation of the Convention. **The Committee once again urges the Government to make every effort to establish constructive dialogue with the social partners to address the continuing gaps in law and practice in the implementation of the Convention. The Committee also asks the Government to provide information on any developments regarding the mission referred to by the Conference Committee.**

## **Ireland**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)**

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention. Equality of opportunity and treatment of men and women.* The Committee recalls its previous comments concerning article 41.2 of the Constitution of Ireland which provides that "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved" and that "the State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home". The Committee expressed concern that these provisions might encourage stereotypical treatment of women in the context of employment, contrary to the Convention and requested the Government to consider reviewing them. In this regard, the Committee notes that the All-Party Oireachtas Committee on the Constitution revisited the issue of article 41.2 of the Constitution in its Tenth Progress Report of 2006, concluding that a change of these provisions was desirable and recommending amendments. **The Committee requests the Government to continue to provide information on the progress made with regard to the recommended revision of article 41.2 of the Constitution with a view to eliminating any tension between this provision and the principle of equality of opportunity and treatment of men and women in employment and occupation.**

*Article 1(2). Inherent requirements of the job.* The Committee recalls that section 2 of the Employment Equality Act provides that "persons employed in another person's home for the provision of personal services for persons residing in that home where the services affect the private or family life of such persons" are not considered employees under the Act as far as access to employment is concerned. The term "personal services" includes "but is not limited to services that are in the nature of services in loco parentis or involve caring for those residing in the home" (section 2). The Committee notes that these provisions deprive

certain domestic workers from protection against discrimination in respect of access to employment. Noting from the Government's report that this exception is meant to balance the competing rights to respect of one's private and family life and to equal treatment, the Committee notes that these provisions, in practice, would appear to have the effect of allowing employers of domestic workers to make recruitment decisions on the basis of the grounds listed in section 6(2) of the Act, without such decisions being considered discriminatory.

The Committee recalls that the Convention is intended to promote and protect the fundamental right to equality of opportunity and treatment in employment and occupation and that it only allows for exceptions from the principle of equal treatment as far as they are based on the inherent requirements of the particular job. It therefore considers that the right to respect for one's private and family life should not be construed as protecting conduct that infringes on this fundamental right (including conduct consisting of differential treatment of candidates for employment on the basis of any grounds covered by *Article 1* of the Convention where this is not justified by the inherent requirements of the particular job in question). The Committee also notes that the definition of personal services affecting private or family life contained in section 2 of the Act appears to be broad and non-exhaustive, and open for extensive interpretation. The Committee considers that the exclusion of domestic workers from the protection against discrimination in respect to access to employment, as currently provided for in section 2, may lead to discrimination against these workers contrary to the Convention. *The Committee requests the Government to provide information on the practical application of these provisions, including information on any relevant administrative or judicial decisions. It also requests the Government to indicate whether it is considering amending the relevant parts of section 2 of the Employment Equality Act to ensure that decisions concerning the recruitment of all domestic workers cannot be based on any of the grounds contained in section 6(2) of the Act except where this is justified on the basis of inherent job requirements.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Israel

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)**

*Articles 1 and 2 of the Convention. Equality of opportunity and treatment irrespective of race, national extraction or religion.* The Committee notes from the Government's report that, among the Arab Israeli population, the labour force participation rate for 2007 was 21.7 per cent for women and 64.8 for men. The unemployment rates for Arab Israeli men and women for 2007 were 9.6 per cent and 15.2 per cent, respectively, slightly less than the year before. However, the Committee remains concerned at the considerably higher levels of unemployment rates of the Arab Israeli population as compared to the Jewish population (6.8 per cent in 2007), the very low rate of labour force participation of Arab Israeli women and the concentration of members of the Arab, Druze and Circassian population in a few sectors characterized by low wages, such as agriculture and hotels and restaurants. The Committee notes that, according to the 2008 Annual Report of the Bank of Israel, various studies examining employment and wages of Arab Israelis found that, among other reasons, discrimination in the labour market affects the participation patterns of this group. The Equal Employment Opportunities Commission reported that many Arab citizens consider themselves as victims of direct or indirect discrimination, although only a limited percentage of the 391 complaints received by the Commission since its establishment in September 2008 related to discrimination on the grounds of nationality or ethnic origin.

The Committee notes with *interest* the measures taken by the Government with a view to ensuring that by 2012 at least 10 per cent of all civil servants come from the Arab, Druze and Circassian population groups, including through the establishment of "designated posts", adjustments to the recruitment procedures, public information and support to successful candidates in the form of coaching and rental subsidies. In 2008, Arabs and Druze represented 6.67 per cent of all civil servants, up from 6.17 in 2007. Among newly employed civil servants in 2008, 11.66 per cent belonged to these groups (up from 8.7 per cent in 2007). Among newly recruited women, 9.2 per cent were Arab or Druze, compared to a rate of 15.5 per cent for men. The Committee further notes the information provided regarding the various projects carried out by the Authority for the Economic Development of the Arab, Druze and the Circassian Sector, including training programmes targeting women from these groups and the establishment of employment guidance centres and support for women entrepreneurs.

*The Committee requests the Government to provide the following:*

- (i) *updated information, disaggregated by sex, on labour force participation, unemployment and employment rates of Arab Israelis and the corresponding rates for other Israelis;*
- (ii) *detailed information on the specific measures taken to promote equal access to employment of Arab Israelis, particularly women, and to promote their access to a wider range of occupations and industries, as well as information on the results achieved in this regard, including related statistical information;*
- (iii) *updated and detailed information on the progress made in promoting and ensuring equal access of the Arab, Druze and Circassian population to employment in the civil service, including statistical information, disaggregated by sex, and the outcomes of the employment-related projects under the responsibility of the Authority for the Economic Development of the Arab, Druze and the Circassian Sector; and*
- (iv) *information on the specific measures taken to prevent and address instances of direct and indirect discrimination in employment and occupation against Arab Israelis, including awareness-raising campaigns, handling of*

*complaints, as well as information on any cases of such discrimination addressed by the courts or the labour inspection service.*

The Committee is raising other points in a request addressed directly to the Government.

## Jamaica

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)**

*Article 1(b) of the Convention. Legislation. Equal remuneration for work of equal value.* For several years, the Committee has been asking the Government to take steps to revise section 2 of the Employment (Equal Pay for Equal Work) Act 1975 since this section refers to “similar” or “substantially similar” job requirements and therefore does not give full legislative expression to the concept of “work of equal value” set out in the Convention. “Equal remuneration for work of equal value” includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. *Noting the Government’s statement that a review of the Employment (Equal Pay for Equal Work) Act 1975 is currently under way, the Committee urges the Government to take this opportunity to revise section 2 of the Act, in order to incorporate in the legislation the concept of “work of equal value” and give full expression to the principle of equal remuneration for men and women for work of equal value. The Committee hopes that the Government will be in a position to report progress in this respect in the near future.*

The Committee is raising other points in a request addressed directly to the Government.

## Japan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)**

The Committee notes the Government’s report, and the comments dated 2 October 2009 of the Japanese Trade Union Confederation (JTUC–RENGO), which were annexed thereto. It also notes the following communications, which had been forwarded to the Government: (i) Japan Federation of Prefectural and Municipal Workers’ Unions (JICHIREN) dated 13 October 2008; (ii) the Working Women’s Network, dated 8 June 2009; and (iii) the National Confederation of Trade Unions (ZENROREN), dated 28 September 2009. The Committee also notes the representation alleging non-observance by the Government of Japan of the Convention, made under article 24 of the ILO Constitution by the Zensekiyu Showa-Shell Labour Union. The representation concerns section 4 of the Labour Standards Act, and will be addressed by the tripartite committee established by the Governing Body.

*Assessment of the gender pay gap.* The Committee notes the statistical information provided by the Government concerning the evolution between 1989 and 2008 of the disparity in hourly scheduled cash earnings between male and female workers, and concerning the same disparity by industry and by occupational group based on the results of the Basic Survey on Wage Structure of 2006 and 2008. It indicates that the overall pay gap, while having decreased in that period, remains high. The survey shows that the average scheduled cash earnings of female workers as of 2008 was 69 per cent of that of male workers (a pay gap of 31 per cent), and that there are considerable differences between industries and occupational groups. ZENROREN asserts that the actual gender pay gap is in fact higher, since if part-time workers are included in the statistics, the gap increases to approximately 47 per cent, and has stagnated at that level since 1985. The Committee notes the Government’s indication that one of the factors contributing to the gender pay gap is the difference in average length of service which is normally shorter for women due to their resignation upon childbirth. The Committee also notes various measures indicated by the Government with a view to addressing issues leading to the gender pay gap, such as promoting the implementation of positive action measures, including through the Positive Action Promotion Council. The Government also refers to measures being taken to support work–life balance, including the amendment in 2009 of the Child and Family Care Leave Law promoting paternity leave and a shorter working-hour system. The Committee also notes the publication of the “Guidelines for Reducing the Gender Pay Gap: Measures to be taken by Labour and Management”, by the Ministry of Health, Labour and Welfare in August 2010.

*The Committee hopes that targeted and concrete action will be taken in the near future to address the gender pay gap, and asks the Government to provide specific information in this regard. Noting the Government’s indication that research and statistical analysis is being undertaken by the Japan Institute for Labour Policy and Training (JILPT) of the factors underlying the gender wage gap, the results of which are to be examined by the Study Group on the Issues of Wage Disparity between Men and Women, the Committee asks the Government to provide the results of this analysis, including any recommendations made, and any measures taken as a result thereof. The Committee would also appreciate receiving the following:*

- (i) *statistical information on the earnings of male and female workers, in the public sector, including local government, and the private sector;*
- (ii) *a summary of the main provisions of the “Guidelines for Reducing the Gender Pay Gap”, and information on their application in practice, as well as a sample copy of a report on wage disparity between men and women; and*

- (iii) *a copy of the outcome report of the Study Group on Fixed-Term Employment Contracts, organized by the Ministry of Health, Labour and Welfare in February 2009 to discuss, among other issues, equal pay for work of equal value or equal treatment among fixed-term workers and regular workers.*

*Part-time work.* The Committee notes the information provided by the Government concerning activities to promote the implementation of the revised Part-Time Workers Law, 2007, including making available experts on personnel matters and providing subsidies to enterprises. The Equal Employment Office in each prefecture provided guidance in 2008 with respect to 8,900 breaches of conduct. It also notes that these offices received numerous inquiries (12,052 in 2007 and 13,647 in 2008) concerning the interpretation of the revised Law and possible measures to be taken in accordance with its provisions. The Committee notes that JICHIREN indicates that the wage gap between regular and non-regular workers is one of the major causes of wage disparities between men and women. Referring to section 8 of the revised Part-Time Workers Law, which prohibits discriminatory treatment as regards the determination of wages, the implementation of education and training, the use of welfare facilities and other treatments for part-time workers if certain criteria are met, JICHIREN states that, as the requirements are so strict, the law excludes almost all non-regular workers from its protection. ZENROREN provides a similar analysis, and indicates further that employers infringing the law are not sanctioned. JTUC-RENGO calls for further amendments to the Part-Time Workers Law to extend the prohibition of discrimination to all part-time workers. *The Committee asks the Government to continue to provide information on the implementation of the revised Part-Time Workers Law as well as the Basic Policy on Measures for Part-Time Workers (Notification of the Ministry of Health, Labour and Welfare No. 280 of 14 April 2008). Please provide, in particular, information on the activities of, and results achieved through, the equal treatment promotion consultants assigned to equal employment offices and part-time work assistance centres (section 2(3)(1) of the Basic Policy), as well as the results achieved in promoting transfers to full-time jobs (section 2(3)(3) of the Basic Policy). While noting the difficulty indicated by the Government in identifying the effect of the revised Law in narrowing the gender pay gap, the Committee would appreciate receiving information showing the evolution since the adoption of the revised Part-Time Workers Law of the proportion of non-regular workers covered by the revised Law, disaggregated by sex, as well as an indication of whether consideration is being given to revising the Law to extend the coverage. The Government is also requested to provide a copy of the guidelines on the employment management of contract workers, and any information on their implementation.*

With respect to part-time and temporary workers in local governments, the Committee notes that the statistics provided by the Government indicate a high proportion of women part-time and temporary workers, with the highest proportion in medical and caretaking staff (medical technicians, nurses, child care, meal service), with women constituting approximately 90 to 98 per cent of those categories. The Committee also notes the information provided by JICHIREN regarding the exclusion of public sector workers from the protection provided to part-time workers. *The Committee asks the Government to provide any information on measures taken or envisaged in order to address the gap in the treatment between regular and non-regular workers in local governments, including the following:*

- (i) *whether consideration is being given to the extension of protection provided to private sector part-time workers to part-time workers in local governments;*
- (ii) *steps taken towards the implementation of the notification of the Secretary General of the National Personnel Authority concerning wages of part-time staff regulated under section 22(2) of the Act on wages of the general service staff (Kyu-Jitsu-Ko No. 1064 of 26 August 2008);*
- (iii) *a copy of a report of 23 January 2009 of the Committee on Study Council on Short-Time Service of Local Public Servants; and*
- (iv) *the implementation of the instruction of 24 April 2009 by the central Government issued to local governments concerning the treatment of temporary and part-time employees.*

*Indirect discrimination.* The Committee notes the information provided by the Government concerning the number of queries and complaints made in relation to section 7 of the Equal Employment Opportunity Law (EEOL) and relevant court decisions. It also notes that the Enforcement Ordinance under the EEOL will be reviewed before the next review of the EEOL, which is to take place in 2012. *The Committee hopes that the Enforcement Ordinance under the EEOL will be reviewed at the earliest opportunity, in consultation with the workers' and employers' organizations, with a view to ensuring that there is effective protection against all forms of indirect discrimination regarding remuneration, and requests information on progress made in this regard. Please also continue to provide information on the application of section 7 of the EEOL and section 2 of its Enforcement Ordinance, including any complaints received and relevant court decisions, including those addressing measures beyond the three provided for in the Ordinance.*

*Career tracking systems.* The Committee has been raising concerns for a number of years regarding the impact of the career-tracking system on the wage disparity between women and men, due to the low representation of women in the main track. ZENROREN asserts that the system effectively excludes women from promotion to managerial posts. The Committee notes that the Government has provided a copy of the "Guidelines on ways for employers to take appropriate measures with regard to matters provided for under the provisions concerning the prohibition, etc. of discrimination against workers on the basis of sex" (Public Notice No. 614 of MHLW of 2006) (EEO guidelines). Chapter II of the EEO guidelines prohibits direct discrimination based on sex "for each employment category", with respect to the following:

recruitment and employment (section 2), assignment (section 3), promotion (section 4), demotion (section 5), training (section 6), fringe benefits (section 7), change in job type (section 8), change in employment status (section 9), encouragement of retirement (section 10), mandatory retirement age (section 11), dismissal (section 12), and renewal of a labour contract (section 13). It also provides for positive action measures (section 14). Section 1 of chapter II of the EEO guidelines defines “employment management category” to include various categories of workers, based on “job type, qualification, employment status, working pattern, etc.”. The Committee notes the Government’s confirmation that comparisons are made between men and women within the same employment management category to determine if there has been discrimination based on sex, and that it considers that the career-tracking system is not in itself discriminatory, as long as it is applied in a gender-neutral manner. In this regard, the Government also indicates that the Labour Bureau in each prefecture provides guidance to those companies which employ the career-tracking system to ensure that it does not become an apparatus of sex segregation by assigning only men or women to a particular career course. ***The Committee asks the Government to provide information on measures taken to increase the proportion of women in the main track, and ensure that the career-tracking system is not applied in a discriminatory manner. In this context, the Committee requests information on the general content of the guidance provided to enterprises utilizing the career-tracking systems and on whether such guidance has resulted in an increase in women in the main track. Please also provide any information on complaints or cases in this regard, and the outcome thereof, as well as updated statistical information on the distribution of men and women on the different tracks.***

***Objective job evaluation.*** The Committee notes the Government’s indication that a competency-based performance appraisal system has traditionally been the measure to determine wages, though research by the JILPT found that more emphasis was being placed on individual achievement, results-oriented or job-oriented components in the determination of wages, and less weight on age- or tenure-based components. Against this background, the Ministry of Health, Labour and Welfare is currently collecting information on wage systems of various companies, and plans to make available the findings for use by those companies attempting to adopt objective job evaluation methods for gender-neutral wage determination. ***The Committee asks the Government to provide information on the progress made in the survey of wage systems and the findings thereof, and to provide details of how the survey results are being used to promote objective job evaluation methods. Please provide information on any other measures taken to promote objective job evaluation methods.***

***Enforcement.*** The Committee notes the information provided by the Government that the labour standards inspection authority conducted 126,499 regular inspections, nine of which were identified as cases of violation of section 4 of the Labour Standard Law, and for which guidance was provided. Further to its previous comments on this point, the Committee notes the information provided by the Government that the Ministry of Health, Labour and Welfare holds workshops to train labour standards inspectors to interpret the relevant legislation, and that senior inspectors provide on-the-job training to other inspectors. ***The Committee asks the Government to provide particulars on the nine cases of violation of section 4 of the Labour Standards Act, including the nature of the violations and the content of guidance provided. The Committee would also appreciate if the Government would continue to provide information on the conduct of labour inspection, especially the concrete methodologies and the guidance provided to labour standards inspectors to identify instances of wage discrimination where men and women are engaged in work of a different nature, which is nonetheless of equal value. The Committee also asks the Government to continue to provide information on court decisions pursuant to section 4 of the Labour Standards Law that are relevant to the principle of the Convention.***

## Jordan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1966)**

***Article 1(b) of the Convention. Work of equal value.*** The Committee recalls that article 23(ii)(a) of the Constitution provides that all workers shall receive wages appropriate to the quantity and quality of the work, which is more restrictive than the principle contained in *Article 1(b)* of the Convention. It also recalls that the Labour Code, while defining the terms “wages” and “worker”, does not include a provision expressly providing for equal remuneration for men and women for work of equal value. The Committee notes that the Labour Code was amended in 2008 (Act No. 48/2008) but that no provisions were included concerning equal remuneration for men and women for work of equal value. For a number of years, the Committee has been drawing the attention of the Government to the fact that the provisions in the Constitution and the Labour Code are inadequate to ensure the full application of the principle of equal remuneration for men and women for work of equal value, and may hinder progress in eradicating gender-based pay discrimination. Moreover, while criteria such as quality and quantity may be used to determine the level of earnings, the use of only these criteria may have the effect of impeding an objective evaluation of the work performed by men and women on the basis of a wider range of criteria, free from gender bias. This is crucial in order to eliminate effectively the discriminatory undervaluation of jobs traditionally performed by women. ***The Committee once again refers to its general observation of 2006 and urges the Government to take immediate steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. Such provisions should cover situations where men and women are performing the same or similar work as well as situations where they carry out work that is of an entirely different nature but is nevertheless of equal value.***

The Committee is raising other points in a request addressed directly to the Government.

***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)***

*Access of women to the civil service.* For a number of years, the Committee has been pointing to the persistent occupational segregation of women in the lower categories of the civil service and the slow progress in achieving an equitable balance between men and women, particularly in higher level posts. It has questioned the effectiveness of some of the measures indicated by the Government to address this phenomenon, and has pointed out that where seniority is a determining factor for purposes of promotion into higher level posts, the equitable application of this criterion should not lead to indirect discrimination against female civil servants. Consequently, the Government had been requested to review whether the weight given to the criterion of accumulated knowledge and years of experience to access higher level posts in the civil service has had a discriminatory impact on women's possibilities to access such posts, and to take more proactive measures to address the occupational gender segregation within the civil service. The Committee notes with *regret* that the Government continues to affirm that the Civil Service Statute provides women and men with equal opportunities to access all posts without restrictions, without providing further details on any measures taken to review whether the application of the criterion of accumulated years of experience and knowledge is not leading, in practice, to indirect discrimination against women. The Committee wishes to point out that, under the Convention, the Government has the obligation to address both direct and indirect discrimination based on sex, with respect to employment and occupation in the public service. ***The Committee, therefore, urges the Government to take effective steps to address the occupational gender segregation within the civil service, including the taking of measures to overcome the problem of women having an insufficient number of accumulated years of experience and knowledge, and to promote women to higher level posts. Please also provide detailed and up-to-date statistics on the distribution of male and female employees in all posts of the civil service.***

*National policy on equality of opportunity and treatment with respect to other grounds.* The Committee notes with *regret* that the Government once again fails to provide information on the measures taken to promote equality of opportunity and treatment in employment and occupation with respect to grounds other than sex, and to address de facto inequalities which may exist based on race, colour, national extraction, religion, political opinion or social origin with respect to training, employment and conditions of work. ***The Committee urges the Government to take concrete measures, in accordance with Article 3(a)–(e) of the Convention, to guarantee the effective application of the Convention, in law and in practice, with respect to the grounds of race, colour, national extraction, religion, political opinion and social origin.***

The Committee is raising other points in a request addressed directly to the Government.

## **Kazakhstan**

***Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention. Equal remuneration for men and women for work of equal value.* In its previous comments, the Committee drew the Government's attention to the fact that the right to equal remuneration set out in section 7(2) of the 1999 Labour Act was narrower than the principle of equal remuneration for work of equal value set out in the Convention. In this regard, the Committee notes that the new Labour Code of 2007 contains the same provision in section 22(15) providing that the employee shall have the right to "equal payment for equal labour without any discrimination". In addition, section 7(1) prohibits sex discrimination in the exercise of labour rights.

The Committee recalls its general observation of 2006 in which it emphasized that the concept of "work of equal value" includes but goes beyond equal remuneration for "equal", the "same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. The Committee urged countries still retaining legal provisions that are narrower than the principle of the Convention to amend their legislation to ensure that it not only provides for equal remuneration for equal, the same or similar work, but also prohibits pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value.

The Committee notes with *regret* that the Government has failed to take these comments into account when adopting the Labour Code of 2007. It also notes that the Committee on the Elimination of Discrimination against Women had similarly called on Kazakhstan to introduce legislative provisions on equal pay for work of equal value (CEDAW/C/KAZ/CO, 2 February 2007, paragraph 24). ***The Committee urges the Government to take the necessary steps to bring the legislation into conformity with the Convention, providing for the right of men and women to equal remuneration for work of equal value. It asks the Government to provide information on the measures taken to this end.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:



*Articles 1 and 2 of the Convention. Legislative developments. Prohibition of discrimination.* The Committee notes that the new Labour Code, which was adopted on 15 May 2007, includes a number of provisions which give effect to the Convention. Section 4 declares the prohibition of discrimination to be the principle of the labour legislation of the Republic of Kazakhstan, while section 7 sets out this prohibition in more detail:

- section 7(1) provides that everyone shall have equal opportunities to exercise their rights and freedoms in the sphere of labour;
- section 7(2) provides that no one may be subjected to any discrimination in exercising their labour rights based on sex, age, physical disabilities, race, nationality, language, material, social or official position, place of residence, attitude to religion, political convictions, tribe or social stratum or membership of public associations; and
- section 7(3) provides that differences, exceptions, preferences and restrictions determined by requirements inherent in the nature of the work or dictated by the state's concern for people in need of increased social and legal protection, do not constitute discrimination.

The Committee notes that these provisions cover all prohibited grounds listed in *Article 1(1)(a)*, of the Convention, except the ground of colour. It also notes that section 7(2) also includes a number of additional grounds, as envisaged in *Article 1(1)(b)* of the Convention (namely age, physical disability, tribe and membership in a public association). The Committee *regrets* that the ground of citizenship, which was included as a prohibited ground in the previous Labour Code has been removed. **The Committee requests the Government to provide information on the implementation of the above provisions, including information on any activities undertaken to make these known and information on the number, nature and outcome of discrimination cases dealt with by the courts or the labour inspectorate. In the absence of such information, the Committee requests the Government to take the measures necessary to collect such data, and to indicate the measures taken to that end. The Committee recommends that the prohibited ground of colour is added to section 7(2).**

*Equality of men and women in employment and occupation.* The Committee notes with *interest* that the new Labour Code grants paid leave to adoptive parents (either the mother or the father) to care for a newly born adopted child (section 194) and unpaid childcare leave until the child reaches the age of three at the parents' choice, either for the father or the mother (section 195). **The Committee welcomes these measures, in particular those that are available to women and men on an equal footing, and requests the Government to provide information on the extent to which this entitlement is being used by men and women.**

However, the Committee notes that under section 187 of the Labour Code the employer is prevented from either engaging in night work or overtime work women with children under the age of 7 years and other persons bringing up children under the age of 7 years without a mother, or sending them on business trips or to perform rotational work, without their written consent. Under sections 188 and 189, fathers have the right to child-feeding breaks and to part-time work only in respect of children without a mother. The Committee notes that, in accordance with the principle of gender equality, measures aimed at facilitating the reconciliation of work and family responsibilities should be available on an equal footing for women and men. Provisions which reflect an assumption that caring for a child is the primary role of women prolong and reinforce gender inequality in society and the labour market. **The Committee therefore requests the Government to amend these provisions accordingly.**

*Special measures of protection.* The Committee notes that, under section 186(1) of the Labour Code, it is prohibited to engage women to perform heavy work or work under harmful and hazardous working conditions. Under section 186(2), it is prohibited for women to lift and move manually weights in excess of the maximum standards established for them. The list of jobs for which it is prohibited to engage women and the maximum weights for women to lift and move manually shall be determined by the state labour authority in agreement with the health authorities. The Committee recalls that special protective measures for women should be limited to safeguarding maternity, and should be proportional to the nature and scope of the protection needed. **The Committee requests the Government to provide a copy of the list referred in section 186 of the Labour Code for examination by the Committee.**

*Practical application.* The Committee notes that the Government has not yet replied to a number of requests for information made by the Committee with regard to the application of the Convention in practice. **The Committee therefore once again requests the Government to provide the following:**

- (i) *detailed information on the specific measures taken to promote and ensure equality of opportunity and treatment of women and men in employment and occupation, including measures to promote women's access to occupations and employment in areas where they are currently under-represented, including within the civil service;*
- (ii) *statistical information on the participation of men and women in the labour market (private and public sectors), branch of economic activity, occupational group and status of employment;*
- (iii) *information indicating how the principle of gender equality has been integrated into the programmes and measures to promote employment, including statistical information on the number of women who have benefited from employment promotion measures;*
- (iv) *statistical information on the position in the labour market of men and women belonging to ethnic or religious minorities, including information on their participation in employment in the civil service; and*
- (v) *information on the measures taken to plan and implement activities to raise awareness of the principles of equality, in cooperation with workers' and employers' organizations as envisaged under Article 3(a) and (b) of the Convention.*

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Kuwait

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)**

*Articles 1, 2 and 3 of the Convention.* The Committee recalls its previous observation noting the discussion that took place in the Conference Committee on the Application of Standards in June 2009, and its resulting conclusions, and which addressed the following issues: the absence of effective measures to ensure, in law and in practice, protection against discrimination in employment and occupation and the absence of measures addressing sexual harassment, protective measures for women unrelated to maternity protection, practical barriers to women's access to particular

occupations, and the need to ensure effective protection of migrant workers, in particular domestic workers, against discrimination on the grounds set out in the Convention. The observation also addressed the need for proactive measures in the context of a national equality policy, a component of which would be the revision of the Labour Code. The Committee notes the ILO technical assistance mission in February 2010, during which a tripartite workshop was held on report writing on international labour standards and issues relating to the application of the Convention were discussed. The Committee notes in this regard the Government's acceptance of further ILO technical assistance with a view to more effectively addressing issues relating to the Convention.

*Legislative development. Prohibition of discrimination.* The Committee recalls the Government's express commitment to address effectively discrimination in the new Labour Law, and notes the entry into force of the New Private Sector Labour Law of Kuwait No. 6 of 2010, which applies to workers in the private sector, including foreign workers. While noting that important progress has been made with regard to terms and conditions of employment of workers, the Committee also notes the continued absence in the new legislation of provisions expressly prohibiting direct and indirect discrimination on the basis of all the grounds listed in *Article 1(1)(a)* of the Convention with respect to all the areas of employment and occupation, and of provisions prohibiting both quid pro quo and hostile environment sexual harassment, along with effective remedies. Law No. 6 of 2010 also continues to include protective measures for women which appear not to be strictly limited to maternity: section 22 prohibits employment of women at night, with some exceptions; section 23 prohibits employment of women in dangerous, hard or harmful to health trades or works, and "such jobs which are violating their morals and based on the utilization of their femininity in a manner which is not in line with the public morals", and in institutions which provide services exclusively to men. The Committee further notes that Law No. 6 of 2010 continues to exclude domestic workers from its scope, and authorizes the competent minister to issue a decision specifying the rules governing the relationship between domestic workers and their employers (section 5). ***While welcoming the progress made with respect to the protection of workers' rights in the private sector generally, the Committee urges the Government to take further steps to prohibit explicitly direct and indirect discrimination based on race, sex, colour, religion, national extraction, political opinion and social origin, with respect to all aspects of employment and occupation, covering all workers, and to adopt specific legislative provisions on both quid pro quo and hostile environment sexual harassment. The Government is also requested to provide information on any measures taken to prevent sexual harassment through practical and promotional means at the workplace. The Committee further requests the Government to ensure that the ministerial decision specifying the occupations and establishments regarding which women's employment is prohibited pursuant to section 23 of Law No. 6 of 2010, will not reinforce discrimination and stereotypes of women's abilities and role and will be limited to protecting maternity. The Government is encouraged to review sections 22 and 23 of Law No. 6 of 2010 with a view to bringing them into conformity with the Convention.***

*Access of women to particular occupations.* The Committee recalls its concerns regarding the practical and legal obstacles to women's access to a number of posts and occupations under the Government's control, including due to stereotyped assumptions regarding what is "suitable to their nature", and the need to take proactive measures to address barriers to their access to education and training opportunities and to certain posts and careers, including in the judiciary. The Committee notes from the Government's report that 50 female students graduated from the Institute for Police Officers, including 15 officers, 15 corporals and 20 sergeants, and that 85 male officers graduated at the second lieutenant grade. With respect to the Public Fire Department, the Government indicates that for the first time 25 women will be joining an inspection monitoring course, while four courses are being designed for men. Applicants are selected on the basis of voting or lot casting, after passing tests and fully meeting the public and private conditions. The Committee further notes the Government's brief statement that no decisions have been taken with respect to women's access to the judiciary and that no discrimination exists with respect to access to education and recruitment to the civil service. ***While noting the action by the Government concerning female officers in the police force, the Committee asks the Government to take even more proactive measures to ensure that women have equal opportunities with men to access all positions under the control of the Government, as well as to promote the equal access of women to positions at all levels in the private sector. Please indicate in this context any measures taken or envisaged to address gender stereotypes and the need to balance work and family responsibilities for both men and women. With respect to women's access to the police department and the Public Fire Department, the Committee requests the Government to indicate the number of women and men who applied to the Institute for Police Officers and the inspection monitoring course, and those that, after having completed their training as police officers and firefighters, obtained positions in these departments as a result, and at what level. Please also indicate in more detail the "public and private conditions" that have to be met by applicants, and the measures taken to ensure that the selection procedures are free from discrimination.***

*Migrant workers.* The Committee recalls the very high number of men and women of foreign nationality and different ethnic and racial backgrounds working in Kuwait and the particular vulnerability to discrimination based on multiple grounds of migrant domestic workers, the majority of whom are women. The Committee also recalls the apparent absence of practical measures to ensure that foreign workers, including foreign domestic workers, are not subjected to discrimination based on the grounds set out in the Convention, and in particular sex, race, colour or national extraction, as well as the Government's expression of commitment to address such discrimination. The Committee had already noted in the past some measures taken by the Government aimed at protecting migrant domestic workers, including Legislative

Decree No. 40 of 1992 on the regulation of employment agencies for domestic workers, and workers in a similar position, Ministerial Decision No. 617/1992 on organizing rules and procedures for obtaining licences for the agencies supplying domestic workers, and the mandatory model contract for recruiting domestic workers. However, explicit protection against discrimination is not addressed in these texts, nor is it clear how these workers are protected against discrimination in practice. The Committee had also welcomed the steps taken by the Government to provide assistance to migrant domestic workers and to review the sponsorship system, which appears to find its basis in the Foreign Residency Law No. 17 of 1959, and a number of accompanying orders and regulations. The Committee notes that the situation of foreign workers, especially domestic workers, and their effective protection against discrimination was discussed during the ILO technical assistance mission in February 2010, and that following the discussion by the United Nations Human Rights Council of the Universal Periodic Review of Kuwait in September 2010, the Government reiterated its acceptance “to revoke the sponsorship system and replace it with regulations in accordance with international standards” (A/HRC/15/15/Add.1, 13 September 2010). The Committee notes that Law No. 6 of 2010 does not abolish the sponsorship system, but that section 9 of the Law provides for the establishment under the Ministry of Social Affairs and Labour of the Public Authority for Labour Force which shall be responsible for recruiting and employing foreign labour following requests of employers. With regard to rules governing migrant domestic workers pursuant to section 5 of Law No. 6 of 2010, the Committee notes the adoption of the Minister of Interior Resolution No. 1182 of 2010, amending some aspects of Ministerial Decision No. 617/1992 (A/HRC/15/15/Add.1, 13 September 2010). The Committee further understands that steps are being taken to draft a domestic workers bill, which, in addition to the mandatory model contract and other measures taken to support migrant domestic workers, could further improve domestic workers’ rights. Finally, the Committee notes that the Government plans to establish a joint-venture company called the “Kuwait Home Helper Operating Company”, which would have among its objectives the recruitment and employment of domestic workers, and in which the Government would be one of the major shareholders (report of the International Organization for Migration (IOM) on “Labour Migration from Indonesia. An overview of Indonesian Migration to Selected Destinations in Asia and the Middle East” (2010)). The Committee underlines the importance of taking effective action to ensure that the system of employment of migrant workers, including migrant domestic workers, does not place the workers concerned in a situation of increased vulnerability to discrimination and abuse, as a result of disproportionate power exercised by the employer over the worker.

*While noting the various steps taken by the Government to improve the system of employment of foreign workers, including domestic workers, the Committee urges the Government to ensure that, in the context of these and other measures taken to protect foreign workers, especially domestic workers, effective measures are taken to prevent discrimination against these workers on the basis of race, sex, colour and national extraction with regard to employment and occupation. In this regard, the Committee hopes that measures will be taken to ensure the observance of the principle of non-discrimination on all the grounds set out in the Convention by the future Public Authority for Labour Force, and the planned “Kuwait Home Helper Operating Company”, and requests the Government to provide information on the measures taken in this regard. The Committee requests the Government to continue to provide information on all measures taken or envisaged to ensure the full application of the Convention in respect of all migrant workers, including information on the following:*

- (i) *the measures taken to eliminate and prevent discriminatory practices and treatment against migrant workers, especially migrant domestic workers, on all the grounds set out in the Convention, including through providing accessible and effective complaints procedures and means of redress and remedies, and providing adequate information, counselling and legal assistance. Please continue to provide information on the number, nature and outcome of complaints received from migrant domestic workers, the sanctions imposed on employers and remedies provided; and*
- (ii) *the measures taken to review the system of employment of foreign workers, including the sponsorship system, with a view to decreasing the level of dependency and vulnerability to discrimination of migrant workers, and in particular migrant domestic workers, in relation to their employers. Please provide copies of Minister of Interior Resolution No. 1182 of 2010, the draft bill on migrant domestic workers, and of the legal texts establishing the Public Authority of Labour Force and the planned “Kuwait Home Helper Operating Company”, including information on their mandate and activities.*

*Stateless persons.* With regard to the situation of stateless persons or residents without nationality in Kuwait, the Committee notes that the Government intends to provide information on the participation of residents without nationality (“Bidoons”) in the labour market as soon as it is available. *The Committee hopes that such information will be included in the Government’s next report, and asks the Government to include information on the sectors or branches of work in which stateless persons (“Bidoons”) are concentrated.*

*National equality policy.* The Committee recalls the importance of adopting proactive measures in the context of a national equality policy, including with respect to the areas set out in *Article 3* of the Convention, and draws the Government’s attention also to Paragraphs 2–4 of the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), in this regard. The Committee notes the information in the Government’s report regarding the human rights education in school curricula offered by the Ministry of Education. While such human rights education is certainly of great value in general, the information provided neither indicates that any awareness-raising activities have been

undertaken relating to the principles of the Convention, nor that any other measures have been taken with a view to declaring and pursuing a national equality policy. *The Committee asks the Government, with ILO assistance, to take more proactive measures to develop and implement a coherent national policy on equal opportunity and treatment in employment and occupation with respect to all the grounds set out in the Convention, and to report on the progress made.*

## Latvia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)**

*Discrimination on the basis of national extraction.* For a number of years the Committee has expressed concern over certain provisions of the State Language Act, 1999, which might have a discriminatory effect on the employment or work of minority groups, including the large Russian-speaking minority in the country. The Committee notes from the Government's report that the two state agencies dealing with language were merged to form the new Latvian Language Agency (LLA) which has as its main objective to promote the strengthening of the status and sustainable development of the Latvian language. The Government indicates that the official language policy defined in the Guidelines for Official Language Policy for the Time Period 2005–14 and the Official Language Policy Programme for the Time Period 2006–10 are implemented by the LLA. The Committee notes the conclusions of the LLA study entitled "Impact of migration on the language environment in Latvia" (2009) indicating the difficulties faced by immigrants, in particular in integrating in the labour market. The Committee furthermore notes from the information provided by the Government concerning the application of the State Language Act that the provision regarding failure to use the official language to the extent required for the performance of duties is the most predominant issue related to that Law before the courts. *While noting the participation of minority groups including Russian-speaking minority groups in language training courses conducted by the State Employment Agency, the Committee asks the Government to provide more detailed information on the situation of minority groups in the labour market, including statistical data on the proportion of those attending such courses that have subsequently obtained employment. The Committee also asks the Government to continue to provide information on activities undertaken by the LLA, and the results achieved to improve access to employment and occupation for all ethnic and linguistic minority groups. Please also continue to provide information on the percentage of men and women belonging to minority groups that have participated in the language training courses, as well as information on relevant administrative and judicial decisions concerning the application of the State Language Act.*

*Discrimination on the basis of political opinion.* The Committee recalls its previous comments regarding the provisions of the State Civil Service Act, 2000, which sets out as mandatory requirements in order to qualify as a candidate for any civil service position that the person concerned "is not or has not been in a permanent staff position in the state security service, intelligence or counter-intelligence service of the USSR, the Latvian Soviet Socialist Republic (SSR) or some foreign State" (section 7(8)), or "who are not or have not been the members of organizations banned by laws or court rulings" (section 7(9)). The Committee notes the Government's indication that the Supreme Court has not dealt with these provisions, but that it has upheld similar provisions, in particular section 5(3) of the Law on Corruption Prevention and Combating Bureau of 2002. The Committee, however, considers that such broad exclusions from being a candidate for any civil service position are not sufficiently well defined and delimited, and could result in discrimination in employment and occupation based on political opinion. *The Committee asks the Government to revise section 7 of the State Civil Service Act to ensure that any requirements for positions in the public service are based on the inherent requirements of the particular job, as strictly defined. The Committee once again asks the Government to provide a list of the prohibited organizations under section 7(9) of the State Civil Service Act.*

The Committee is raising other points in a request addressed directly to the Government.

## Malawi

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1965)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Application of the principle in the civil service.* The Committee recalls its previous observation pointing out that the current occupational segregation of women in the civil service may result in remuneration gaps between men and women, and that the collection of statistical data on the distribution of men and women in the various grades of the public service and on their corresponding salary levels is crucial both in order to evaluate the nature, extent and causes of gender pay differentials and to assess the application of the Convention. The Committee notes the Government's statement that no gender wage gap exists in the civil service since the same "remuneration package" is applied to women and men. The Committee also notes the Government's acknowledgement that few women hold managerial positions as their short-lived employment prevents them from progressing in the job hierarchy. The Committee further notes the Government's indication that efforts are being made to promote women's longer term employment and to enable them to gain access to the educational careers and jobs which have traditionally been predominantly held by men. Moreover, the Committee notes that the statistical information requested will be provided as soon as it becomes available. *Referring to its 2006 general observation on the Convention, the Committee asks the Government to*

*ensure that equal remuneration is recognized not only for women and men performing the same job, but also for men and women performing jobs of a different nature but which are, nonetheless, of equal value. The Committee also asks the Government to provide more complete information on the measures taken or envisaged to retain women in the public service with a view to encouraging their advancement towards decision-making positions. It also requests information on the measures taken to promote women's access to a wider range of educational and job opportunities, including information on the impact of such measures on the application of the principle of the Convention.*

*Wage disparities between men and women in rural areas.* Further to its previous observation, regarding the discrimination faced by women in rural areas, the Committee notes from the Government's report that the minimum wage established in the country following consultations with the social partners applies to all economic sectors, including agriculture. The Committee also notes the Government's indication that awareness-raising campaigns on the principle of the Convention and strengthened inspection are needed and that, in the districts where discrimination cases have been reported, labour inspection has already been intensified. With regard to the promotion of measures aimed at facilitating the reconciliation of work and family responsibilities and the equal sharing of family responsibilities between men and women rural workers, the Committee notes the Government's statement that gender roles are deeply rooted in the cultural texture of society and they can only be changed in the long run with the involvement of all stakeholders. *The Committee encourages the Government to promote, in cooperation with the social partners, the adoption of adequate measures to assist rural women to reconcile their work and family responsibilities and to have a more equitable sharing of family responsibilities between men and women workers. The Committee also asks the Government to provide information on the measures taken or envisaged to strengthen the labour inspection services with respect to the application of the principle of the Convention to the agricultural sector, including the supply of specific training, as well as information on any violations detected and the remedies provided or the sanctions imposed in this regard. Please also provide information on the sensitization and awareness-raising campaigns carried out with regard to men's and women's right to equal remuneration for work of equal value in the rural areas.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

While noting the Government's indication that the President is committed to promoting the participation of women in higher positions, that women have been appointed to some ministerial positions and high-ranking posts in the public service, the Committee notes that the report does not contain replies to the specific issues raised in the Committee's previous observation. The Committee therefore again requests the Government to provide information on the following:

- (i) *the measures taken to address unequal access of women to training and education at all levels, together with statistical information on the participation of women in training and education;*
- (ii) *the measures taken or envisaged, especially with regard to the recruitment policy and further training policy, to achieve an overall increase in the participation of women in higher-level posts in the public service. In this regard, please also provide updated statistical information, disaggregated by sex, showing the progress made in ensuring equal access of women to public service employment at all levels; and*
- (iii) *the measures taken or envisaged to facilitate access to soft loans for rural women as a means of assisting them to run small businesses, thereby reducing unemployment and poverty. The Committee also requests information on the number of rural women who have benefited from credit facilities.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Mexico**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

*Application of the Convention in practice in export processing zones.* In its previous comments, the Committee requested the Government to provide information on the mechanisms to monitor discrimination in practice in export processing zones to allow an assessment to be made of the impact of the measures adopted, as well as on the complaints of discrimination based on sex presented to local and federal conciliation and arbitration boards or to tribunals. The Committee notes the Government's indication that it has no information on systematic discriminatory practices against women in export processing zones (*maquiladoras*) or on complaints of discrimination based on sex in export processing enterprises. The Committee notes that the Government indicates that meetings on equality at work have been held aimed at local authorities, representatives of employers' and workers' organizations, institutions and civil society for the purpose of raising awareness of occupational segregation. The actors involved in these meetings undertake in writing to include a clause prohibiting violence in the workplace in collective agreements or in general conditions of employment and to promote the removal of the requirement for pregnancy tests to obtain or maintain employment. The Committee notes with *regret* that the Government has not sent any relevant information concerning the monitoring of the situation relating to discrimination in export processing zones or the complaints of discrimination based on sex. The Committee recalls that these matters have been pending for many years and were examined by the Conference Committee on the Application of Standards in 2006, particularly the matter of the requirement of pregnancy tests to obtain or maintain employment and the practice of subjecting pregnant women to difficult or hazardous working conditions to force them to resign from their

jobs. *The Committee notes with concern these discriminatory practices and requests the Government to take the necessary measures to investigate the existence of the discriminatory practices mentioned and effectively address the issue of discrimination against women in export processing zones and to provide information on any developments in this regard. The Committee also requests the Government to provide information on the mechanisms available to address complaints of this nature and the penalties applicable.*

*Legislation requiring women to certify that they are not pregnant.* The Committee notes that, on 18 March 2010, the draft decree amending various provisions of the Federal Labour Act and prohibiting employers from requiring female workers to certify that they are not pregnant in order to gain access to and remain in employment or obtain a promotion or from dismissing female workers on the grounds that they are pregnant, have changed their marital status or have children in their care was submitted to Congress for consideration. The reform is being examined by the Labour and Social Insurance Commission of the Chamber of Deputies. *The Committee requests the Government to provide information on the progress made in amending the Federal Labour Act to ensure compliance with the obligations of the Convention.*

*Discrimination on the basis of race and colour.* The Committee recalls that one of the issues addressed during the discussion in the Conference Committee on the Application of Standards in June 2006 was concerning vacancy announcements that discriminate on grounds of race and colour. The Committee notes with *regret* that even though it has been commenting on this matter for many years, the Government indicates that it does not have sufficient information concerning concrete cases. *The Committee requests the Government to take the necessary measures to investigate the existence of this discriminatory practice and to address it effectively with a view to eradicating it. The Committee requests the Government to continue to provide information in this regard.*

*Sexual harassment.* In its previous comments, the Committee requested the Government to: (i) ensure that complaints of sexual harassment made under the Federal Labour Act do not result in the termination of the victim's employment and that appropriate sanctions and remedies are available; (ii) provide information on the number and nature of cases of sexual harassment filed pursuant to the Federal Labour Act; and (iii) provide information on the procedures in place for lodging complaints of sexual harassment and their application in practice, as well as any other procedures that have been established to address cases of sexual harassment in the public sector. In this regard, the Committee notes that the Government indicates that the labour reform initiative submitted to Congress in March 2010 includes provisions prohibiting sexual harassment in the workplace but that it has no information available concerning the application of the current Federal Labour Act in cases relating to sexual harassment. The Government also indicates that the General Act on the right of women to a life free of violence and the Federal Penal Code provide for penalties to punish sexual harassment. Furthermore, the National Institute of Women (INMUJERES) and the Ministry of Labour and Social Insurance (STPS) have adopted measures such as the Protocol on intervention in cases of sexual harassment within the public administration, the Labour Justice Programme and the campaign to prevent, address, sanction and eradicate sexual harassment in schools and the workplace. *The Committee requests the Government to take the necessary measures in the context of the labour reform under way to ensure that complaints of sexual harassment made under the Federal Labour Act do not result in the termination of the victim's employment. The Committee also requests the Government to provide information on the number and nature of complaints of sexual harassment, how long the procedure has taken and the results thereof, as well as on the application of the Protocol on intervention in cases of sexual harassment in practice.*

*Cooperation with employers' and workers' organizations.* The Government indicates that, following the dialogue between the social partners and the Government, the STPS is promoting the insertion of a standard clause on the inclusion of persons with disabilities in the labour market to encourage the creation of high-quality jobs in the formal sector for persons with disabilities. *The Committee requests the Government to continue providing information on these activities and on any other activities being developed by the Government with employers' and workers' organizations to promote equality of opportunity and treatment in employment and occupation and to eliminate any type of discrimination.*

The Committee is raising other points in a request addressed directly to the Government.

## Republic of Moldova

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1996)***

*Discrimination on the basis of colour.* In reply to its previous comments regarding the absence of any reference to the ground of "colour" in the anti-discrimination provisions of the Labour Code, the Committee welcomes the draft law amending the Labour Code which completes the list of grounds of discrimination set out in section 8 of the Labour Code, particularly by adding "skin colour" and "HIV/AIDS infection". The Committee, furthermore, underlines the Government's indication that the elimination of discrimination in employment and occupation represents a "permanent priority" in elaborating and implementing legal standards; and in this regard, recalls the importance of including explicit references to at least all grounds enumerated in *Article 1(1)(a) of the Convention* in national legislation to promote the effective application of the Convention. With regard to the ground of discrimination based on HIV/AIDS infection, the Committee draws the Government's attention to the importance of prohibiting discrimination based on real or perceived HIV/AIDS status, as foreseen in the HIV and AIDS Recommendation, 2010 (No. 200). *Noting that the draft law has*

*been submitted to Parliament for consideration, the Committee asks the Government to take the necessary steps to ensure there is an explicit prohibition of direct and indirect discrimination covering at least all grounds enumerated in the Convention, including colour, and hopes that the final text will include a prohibition of discrimination based on real or perceived HIV/AIDS status, in keeping with the HIV and AIDS Recommendation, 2010 (No. 200). Please also supply a copy of the amendment of the Labour Code once it has been adopted.*

The Committee is raising other points in a request addressed directly to the Government.

## Mozambique

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)**

*Article 1 of the Convention. Legislation.* In its previous comments, the Committee requested the Government to take all necessary steps to amend section 108 of Labour Act No. 23/2007, which establishes only the right to equal pay for the same work, so that it fully reflects the principle of equal remuneration for men and women for work of equal value. The Committee notes that in its report the Government mentions no developments in this area. The Committee recalls that, in its general observation of 2006, it stressed that the concept of “work of equal value” includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work and also encompasses work that is of an entirely different nature which is nevertheless of equal value. *The Committee therefore once again asks the Government to take all necessary steps to amend section 108 of Labour Act No. 23/2007, so that this provision fully reflects the principle of equal remuneration for men and women for work of equal value. The Committee encourages the Government, should it deem appropriate, to seek technical assistance from the ILO on this matter.*

The Committee is raising other points in a request addressed directly to the Government.

## Nigeria

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1, 2 and 3 of the Convention. Discrimination based on sex with regard to employment in the police force.* The Committee previously considered that sections 118–128 of the Nigeria Police Regulations, which provide special recruitment requirements and conditions of service applying to women, are discriminatory on the basis of sex and thus incompatible with the Convention. Accordingly, the Committee urged the Government to bring the legislation into conformity with the Convention. The provisions in question provide the following:

- Section 118 excludes women who are pregnant or married from being eligible for seeking for enlistment in the police force. It also provides for a minimum age for enlistment of 19 years, while men can apply as of 17 years (section 72(2)(b)). The minimum height requirement of 1.67 metres applies to men and women.
- Section 119 provides that a specified form shall be used for the fingerprinting of women candidates and that the medical examination of women candidates shall take place at the Police College immediately prior to enlistment.
- Section 120 provides that women candidates shall be interviewed in the presence of a woman police officer and that interviewing officers shall bring to the attention of the women candidates the provisions of these Police Regulations governing the duties of women police, and the miscellaneous conditions of service attaching to women police (as laid down in section 123–128).
- Section 121 lists the duties that women police officers are permitted to perform, such as investigation of sexual offences against women and children, attendance when women and children are being interviewed by male police officers, searching, escorting and guarding women prisoners; school crossing duties; and crowd control, where women and children are present.
- Section 122 provides that women police officers may, in order to relieve male police officers from these duties, be employed in clerical duties, telephone duties and “office orderly duties”.
- Section 123 provides that women police officers shall not be called upon to drill under arms or take part in any baton or riot exercise.
- Section 124 requires women police officers wishing to marry to make a written request for permission to the police commissioner, providing the name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years.
- Section 125 provides that a married woman police officer shall not be granted any special privileges by reason of the fact that she is married, and shall be subject to posting and transfer as if she were unmarried.
- Section 126 provides that a married woman police officer who is pregnant may be granted maternity leave, while section 127 provides that an unmarried women police officer who becomes pregnant shall be discharged from the force.
- Section 128 regulates the wearing of make-up as well as jewellery and hairstyles.

In its report, the Government expresses the view that sections 118–128 are not discriminatory. The Committee recalls that the Convention defines as discriminatory any distinction, exclusion or preference made on the basis of sex or other prohibited grounds which have the effect of nullifying and impairing equality of opportunity in employment and occupation. The Committee considers that sections 118–128, taken together, reflect an outdated and gender-biased approach as regards the role of women in

general, and as members of the police force, in particular. The criteria and provisions relating to pregnancy and marital status contained in sections 118, 124 and 127 constitute direct discrimination. As regards the limitation of the duties that women police officers are permitted to perform, the Committee recalls that *Article 1(2)* provides that any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination. Whether or not a distinction is based on inherent job requirements and is thus acceptable has to be determined on an objective basis, free from gender bias. The Committee considers that sections 121, 122 and 123 are likely to go beyond what is permitted under *Article 1(2)*. A common height requirement for men and women is also likely to constitute indirect discrimination against women.

***Recalling that each Member for which this Convention is in force, in accordance with Article 3(c), is under the obligation to repeal any statutory provisions which are contrary to equality of opportunity and treatment, the Committee once again urges the Government to bring the legislation into conformity with the Convention, and to indicate the measures taken to this end in its next report.***

***The Committee trusts that the Government, in collaboration with workers' and employers' organizations, will take the necessary measures to ensure equality of opportunity and treatment of women in the police force. It encourages the Government to have regard to the guidance concerning equality issues set out in the Guidelines on social dialogue in public emergency services in a changing environment, adopted by the ILO Joint Meeting on Public Emergency Services: Social Dialogue in a Changing Environment in January 2003.***

***Noting that the Government's report does not reply adequately to most of the Committee's previous comments, the Committee urges the Government to ensure that full information on all the pending issues is provided in its next report.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Pakistan

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)***

The Committee notes the communication from the Pakistan Workers' Federation, received 31 August 2010 stressing the need to amend the relevant legislation with a view to protecting workers against wage discrimination based on sex, and to ensure the effective enforcement of the legislation by the labour inspection services. ***The Committee asks the Government to reply to the communication from the Pakistan Workers' Federation.***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

***Articles 1 and 2 of the Convention. Legislation.*** The Committee recalls that since the Convention's ratification by Pakistan, it has been commenting on the importance of enacting legislation to ensure the effective application of the Convention. In this regard, the Committee notes the Government's indication that a draft "Employment and Service Conditions Act" has been prepared which includes provisions on equal remuneration for men and women. The Committee stresses that provisions intended to give effect to the Convention should give full expression to the principle of equal remuneration for men and women for work of equal value. In particular, the provisions should not be limited to providing equal remuneration for "equal", the "same" or "similar" work, but should also provide for equal remuneration for men and women for work that is of an entirely different nature, but which is nevertheless of equal value. In addition, the legislation should ensure that this equal remuneration principle applies to all aspects of remuneration, as broadly defined in *Article 1(a)* of the Convention. ***The Committee asks the Government to continue its efforts to put in place legislation giving effect to the Convention and to ensure that this legislation is in full conformity with the Convention.***

***Minimum wages.*** In its previous observation, the Committee asked the Government to provide information on the specific and practical measures taken to ensure that minimum wages are set in accordance with the principle of equal remuneration for men and women for work of equal value. In reply, the Government states that in view of the presence of employers, workers and government representatives on the provincial minimum wages boards, care has been taken to ensure that no bias is shown as regards jobs predominately performed by women. The Committee considers that the tripartite nature of the Provincial Minimum Wages Board, while important, does not in itself ensure, that wage rates for categories of work predominately performed by women are not set at lower levels than the rates for male-dominated work where the work performed by men and women is, in fact, of equal value. ***The Committee therefore encourages the Government, in cooperation with employers' and workers' organizations to examine the functioning of the mechanisms for the setting of minimum wages in the light of the need to promote and ensure the principle of equal remuneration for men and women for work of equal value, and to indicate any steps taken in this regard. The Committee also asks the Government to provide copies of the minimum wage notifications currently in force, and to indicate which of the occupational groups covered tend to be female dominated.***

***Awareness raising and training.*** The Committee notes the Government's statement that the Directorate of Workers' Education under the Ministry of Labour, Manpower and Overseas Pakistanis, the National Institute of Labour Administration and Training and the Industrial Relations Institute are undertaking education and training activities for workers through seminars, workshops and training courses, including activities relating to the Convention. ***The Committee asks the Government to provide more detailed information on these training activities, including the number of courses and participants, as well as examples of the training materials used as regards the principles of equal remuneration for men and women for work of equal value. Further, please indicate any activities specifically implemented for employers, and whether any of these activities have addressed the issue of objective job evaluation.***

***Cooperation with employers' and workers' organizations.*** The Committee recalls that the Government has closely cooperated with the employers' and workers' organizations in the preparation of the Labour Protection Policy (2006). It notes the comments received from the Pakistan Workers' Federation on the dialogue held with the Government and the Employers' Federation of Pakistan on strengthening the labour inspection machinery. The Committee also notes that, as a follow-up to the labour protection policy, the Government has started studies on a number of important issues, including the links between working and living conditions and productivity, labour protection in the informal economy, and the effectiveness of the labour administration. ***Trusting that these studies will provide an opportunity to examine issues relating to the principle of equal remuneration for men and women for work of equal value, and identify measures to strengthen its application, the Committee***



*asks the Government to provide information on the measures taken with a view to examining the issue of equal remuneration in the context of the abovementioned studies, and the results of these studies, once available.*

*Statistical information.* The Committee notes that the Government has not yet provided statistical information on the earnings of men and women. **Recalling that statistical information on the levels of remuneration of men and women working in the different sectors of the economy is an important means to monitor progress with regard to promoting and ensuring respect for the principle of equal remuneration, the Committee asks the Government to indicate to what extent such data are being collected and published.**

*Enforcement.* The Committee notes the Government's indication that under the Payment of Wages Act, 1936, provincial governments have appointed inspectors who can examine documents relating to the calculation of wages and payment of wages. Further, the provincial payment of wages authorities can hear and decide any matter relating to the payment of wages. The Committee concludes from the indications given in the Government's report, that the labour inspectorate and the labour courts have apparently not yet addressed any cases concerning violations of the principle of equal remuneration for men and women for work of equal value. **The Committee asks the Government to indicate whether the provincial wages inspectors and payment of wages authorities have dealt with any cases involving equal remuneration for work of equal value, and to continue to provide information on any such cases that might have been dealt with by other competent bodies, including the labour courts. The Committee encourages the Government, in addition to including equal remuneration provisions in the legislation, to take appropriate measures with a view to strengthening the mechanisms to enforce the principle of equal remuneration for men and women for work of equal value, and to indicate the measures taken in this regard.**

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

The Committee notes the adoption on 11 March 2010 of the Protection against Harassment of Women at the Workplace Act and that the definition of sexual harassment under the Act includes both quid pro quo and hostile environment harassment. The Committee notes however that in its comments dated 30 July 2010, the Pakistan Workers Federation refers to some shortcomings in the implementation of this law. **The Committee therefore requests the Government to provide information on the effective implementation of the Protection against Harassment of Women at the Workplace Act.**

The Committee further notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Legislation. Prohibition of discrimination.* The Committee notes the Government's statement that under the Constitution of Pakistan, all citizens have equal opportunities in private and public employment and that the labour legislation was being applied equally to all workers, without discrimination. The Government adds that no complaints of discrimination in any industrial or commercial undertaking had been recorded. The Committee notes that the Convention aims at the protection against discrimination in employment and occupation of all workers, both citizens and non-citizens. The Committee also recalls that constitutional protection alone, while being important, may not be sufficient in terms of granting effective protection from discrimination in employment and occupation, and that the mere absence of discriminatory provisions in the legislation does not amount to a prohibition of discrimination, nor does it generally provide an appropriate legal basis for discrimination complaints to be brought.

The Committee recalls that the Convention aims at the elimination of discrimination as defined in *Article 1 of the Convention* through the adoption and implementation of a national policy to promote equality of opportunity and treatment (*Article 2*). Under *Article 3(b)*, Pakistan has undertaken to enact such legislation as may be calculated to secure the acceptance and observance of such national policy. The Committee also recalls that, in its 2008 General Report, it stressed the importance of adopting non-discrimination and equality legislation in order to give effect to the Convention. In this context, the Committee refers to its comments under the Equal Remuneration Convention, 1951 (No. 100), in which it notes that the Government has prepared a draft Employment and Service Conditions Act which contains a provision on equal remuneration for men and women. The Committee trusts that the Government will give due consideration to introducing into the legislation non-discrimination provisions prohibiting discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national extraction or social origin, and any other ground determined after consultations with workers' and employers' organizations, as provided for under *Articles 1(1)(a) and 1(1)(b)* of the Convention. The Committee recalls that where provisions are being adopted to give effect to the Convention, they should, as a minimum, cover discrimination on all the seven grounds explicitly listed in *Article 1(1)(a)* of the Convention. It is equally required by the Convention that equality of opportunity and treatment is ensured with respect to selection and recruitment, all terms and conditions of employment, as well as termination. **The Committee requests the Government to provide information on the measures taken with a view to including provisions on non-discrimination and equality in employment and occupation in the draft Employment and Service Conditions Act and to provide a copy of the Act as soon as it is adopted.**

...

*Equality of opportunity and treatment of men and women.* The Committee notes that according to the Labour Force Survey 2007/2008, the labour force participation rate (refined) was 69.5 per cent for men and 19.6 per cent for women, whereas the corresponding figures for 2001–02 were 70.3 per cent for men and 14.4 per cent for women. While welcoming the progress made with regard to women's participation in the labour force, the Committee observes that the gender differential, as regards labour force participation, continues to be high. The Committee also notes that women's participation rate increased in rural areas, whereas it actually decreased in urban areas. With regard to the employment status of men and women, the Committee notes from data established for 2001–02 and 2007–08, that the percentages of women being employees and own-account workers significantly decreased, combined with a gradual increase of women in the category of unpaid family workers (from 46.9 to 65 per cent). Women remain concentrated in unskilled elementary occupations or skilled agricultural work. In this context, the Committee notes the observations made by the Pakistan Workers Federation (PWF) in their communication dated 21 September 2008, stressing the need for measures to enable women to move from the informal to the formal economy, including through extending social security and minimum wages, and training and education for rural women.

The Committee notes the information provided by the Government in reply to the Committee's comments regarding gender equality in employment and occupation. The Government indicates that the Ministry of Women's Development is implementing a National Gender Reform Plan (GRAP) which provides for measures to increase women's employment in the public sector, including through improvements of office facilities to provide for restrooms and day care facilities. The Government also continued to implement a 10 per cent quota for women in government employment at the federal level; efforts are under way to increase the quota to 20 per cent. **The Committee requests the Government to provide more detailed information on the implementation of the public sector quota system, including statistical information on the current distribution of men and women in the different government departments, jobs and positions. The Committee further requests the Government to provide detailed information on the measures taken to promote and ensure women's equality of opportunity and treatment in employment and occupation beyond the public sector, as well as statistical information indicating the progress made in enhancing their participation in the labour market, both in rural and urban areas. In this regard, the Committee requests the Government to indicate the specific measures taken:**

- (i) to promote gender equality in the private sector; and
- (ii) to enable women to move from the informal to the formal economy.

As regards the access of women and girls to education and training, the Government states that emphasis is presently placed on increasing participation of girls in secondary school education. The measures taken in this area include scholarships and subsidies for low-income households, revision of the curricula and textbooks to avoid gender stereotypical views and media campaigns to change social attitudes towards girls' education. The new draft National Education Policy sets the target of achieving gender parity among teachers at all levels of education by 2015. **The Committee requests the Government to continue to provide information on the measures taken to promote equal access of girls to education and training at all levels, as well as updated statistical information in this regard.**

*Equality of opportunity and treatment in employment and occupation of minorities.* The Committee notes with **interest** that by a Cabinet decision of 20 May 2009, the Government introduced a 5 per cent quota for the employment of minorities in federal government employment. The modalities of implementation of the quota have been notified in Office Memorandum No. 4/15/94-R-2, dated 26 May 2009, of the Cabinet Secretariat's Establishment Division. The Committee notes that the quota is to apply to any person who is "a non-Muslim" as defined in article 260(3)(b) of the Constitution ("a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who call themselves 'Ahmadis' or by any other name, or a Bahai, and a person belonging to any of the Scheduled Castes"). **The Committee requests the Government to provide information on the progress made in implementing the 5 per cent quota for employment of minorities in the federal government employment, including statistical information on the number of minority members employed, disaggregated by sex and minority group, and according to government department, jobs and positions.**

The Committee further notes that, as indicated by the Government, the National Commission for Minorities, which was formally established in 1993, is non-functional at present, although a proposal to reconstitute it was before the Prime Minister for approval. Chaired by the Minister for Minorities, the Commission is mandated, inter alia, to examine laws and administrative practices alleged to be discriminatory against minorities, to recommend to the Government steps to ensure full and effective participation by minorities in all aspects of national life, and to look into grievances of minority communities. The Committee notes that the Government also implements a development scheme and offers scholarships to minority students. **The Committee trusts that the National Commission for Minorities will be reconstituted in the near future and requests the Government to provide information on any developments in this regard. It also asks the Government to continue to provide information on the implementation of schemes and programmes to promote and ensure equality of opportunity and treatment for minorities in training and education, and also to provide information on any other measures taken to promote access of minorities to employment and occupation, including self-employment.**

*Discrimination based on social origin.* The Committee notes that the Committee on the Elimination of Racial Discrimination, in its concluding observations of 4 March 2009, has expressed concern about the persisting de facto segregation and discrimination against Dalits regarding their enjoyment of economic, civil, political and social rights, and the fact that no specific legislation prohibiting discrimination based on caste has been adopted (CERD/C/PAK/CO/20, 4 March 2009, paragraph 21). Recalling that discrimination based on caste is a form of discrimination based on social origin covered by the Convention, the Committee stresses that ratifying States have an obligation to take effective measures towards the elimination of such discrimination in employment and occupation. **In this regard, the Committee recommends that a prohibition of discrimination based on social origin, including caste, be included in the legislation. The Committee also requests the Government to provide information on the measures taken to promote and ensure equality of opportunity and treatment in employment and occupation, irrespective of caste, through legislation and other appropriate measures.**

*Discrimination based on religion.* The Committee recalls its previous comments concerning certain provisions of the Penal Code relating to offences relating to religion ("blasphemy laws"). Some of these offences single out the members of the Ahmadi minority. For instance, section 298C establishes sentences of imprisonment for up to three years for members of this group who, inter alia, preach or propagate their faith, whether by spoken or written words, or by visible representations. The Committee also recalls that Pakistani passports include a mention of religion and that Muslims applying for a passport must sign a declaration to the effect that the founder of the Ahmadi movement is an impostor, which is designed to prevent members of this movement from obtaining passports identifying them as Muslims. The Committee recalls that the ILO supervisory bodies have expressed concern for many years over the impact of these measures on the enjoyment of equality of opportunity and treatment in employment and occupation of the religious minority concerned. The Committee also recalls that the United Nations Special Rapporteur on the question of religious intolerance concluded in 1996 that provisions specifically applying to the Ahmadi minority were questionable, stressing that blasphemy legislation should not be discriminatory and should not give rise to abuse. The Special Rapporteur also recommended that no mention of religion should be included in passports and that the declaration mentioned above be deleted (E/CN.4/1996/95/Add.1, paragraphs 82 and 85). More recently, the Committee on the Elimination of Racial Discrimination expressed concern about the risk that blasphemy laws may be used in a discriminatory manner against minority groups (CERD/C/PAK/CO/20, paragraph 19). The Committee also notes that during the Universal Periodic Review of Pakistan under the auspices of the UN Human Rights Council, the Government announced that "specific steps are being considered to strengthen laws and procedures to reduce incidence of their abuse" (A/HRC/8/42/Add.1, 28 August 2008, paragraph 8). **While noting the general explanations provided by the Government in its report regarding the protection of freedom of religion available under the Constitution, the Committee once again urges the Government to take the necessary steps to review the abovementioned measures, and to provide information on any steps taken in this regard, as announced during the Universal Periodic Review.**

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Panama

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes the communication of the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), dated 23 July 2009, sent to the Government on 31 August 2009. The Committee notes that the communication refers to the violation of the principle of equal remuneration for work of equal value in the public sector and, specifically to the absence of rates of remuneration established without discrimination based on sex. The Committee notes that it has not yet received the Government's observations in reply to the comments made by FENASEP. *The Committee asks the Government to provide information on the application of the Convention in the public sector, including statistics on the wage levels of public servants disaggregated by sex, occupational category and post, and any other information that it considers appropriate in reply to the comments submitted by FENASEP.*

*Article 1 of the Convention. Work of equal value.* The Committee refers to its previous comments in which it asked the Government to amend section 10 of the Labour Code, which is limited to guaranteeing equal remuneration for "equal work", in order to give full legislative expression to the concept of equal remuneration for men and women for "work of equal value", as provided for under the Convention. The Committee notes the Government's indication that no progress has been made in this regard given that a consensus has not been reached among the social partners to amend the Labour Code. The Committee also notes that the Government reiterates the arguments put forward by the Legal Advisory Department of the Ministry of Labour and Employment Development (MITRADEL) that there is no inconsistency between section 10 of the Labour Code and the Convention. The Committee notes, in particular, that the Government indicates in its report that the Convention takes legal precedence over Panama's national law and must therefore be applied in all labour relations and employment contracts.

However, the Committee notes the jurisprudence of the Supreme Court of Justice of Panama, referred to by FENASEP in its communication, that international conventions normally lack constitutional hierarchy and that the State therefore has an obligation to adapt its domestic legislation to the provisions of such conventions (Legal Registry of May 1991). The Committee also notes the difficulties which continue to be encountered in applying the Convention in practice, which are reflected in a significant and persistent wage gap between men and women. The Committee considers that there is a lack of understanding concerning the scope of the principle of the Convention and that incorporating this principle into the national legislation in accordance with the Convention would help to clarify the situation.

The Committee therefore draws the Government's attention once again to its general observation of 2006. The Committee emphasizes that the concept of equal remuneration for "work of equal value", although encompassing equal remuneration for "equal", "the same" or "similar" work, is broader than that because it requires that equal remuneration also be given to workers carrying out work that is of an entirely different nature, but which is nevertheless of equal value. This comparison between different jobs is essential due to the gender segregation which exists in the labour market, which results in certain jobs being performed mainly or exclusively by men or women. The Committee also reminds the Government that provisions that are expressed more narrowly than the principle of equal remuneration for work of equal value hinder progress in eradicating gender-based pay discrimination. *The Committee therefore asks the Government to:*

- (i) *promote dialogue with the social partners on the need to expressly prohibit pay discrimination in situations in which men and women perform different jobs which are nonetheless of equal value with a view to amending section 10 of the Labour Code;*
- (ii) *expressly establish in its legislation the principle of equal remuneration for work of equal value;*
- (iii) *provide information on any progress made in these respects; and*
- (iv) *provide information on the steps taken or envisaged to promote understanding of the principle of the Convention by the authorities and organizations of workers and employers.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the communication sent by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), dated 23 July 2009, sent to the Government on 31 August 2009. The Committee notes that the communication refers to the risk of public servants being dismissed because of their political opinions in connection with elections. The Committee notes that it has not yet received the Government's observations in reply to these comments. However, the Committee recalls that FENASEP had already raised the problem of discrimination on political grounds in its previous communications and the Committee addressed that matter in its previous observations.

*Discrimination based on political opinion.* In its previous comments, the Committee noted a communication from FENASEP in 2001, in which it indicated that the Government had dismissed more than 19,000 public servants without just cause and without following the procedures established by law. FENASEP pointed out that 80 per cent of those dismissed were registered members of the political party called the Democratic Revolutionary Party (PRD) and that the dismissals constituted discrimination on political grounds in breach of *Article 1 of the Convention*. In its 2008 observation, the Committee noted another communication sent by FENASEP, received on 7 October 2008 and sent to the Government on 13 October 2008, which pointed out the lack of progress made in the work of the bipartite commission comprising officials of the Ministry of Labour (MITRADEL) and FENASEP aimed at reinstating the persons concerned. The Committee notes the Government's indication in

its report that the majority of leaders dismissed were reinstated in their posts or appointed to the various state bodies. The Committee also notes that in May 2008, the Government issued the necessary instructions for all public servants working under a contract with government bodies to be made permanent so that they would be able to enter the administrative career system. ***The Committee hopes that the Government will make every effort to prevent the recurrence of similar cases of discrimination based on political opinion and requests it to provide information on the measures taken or envisaged to that end. The Committee also requests the Government to continue its efforts through the above bipartite commission, to solve the cases of dismissal based on political opinion which are still pending.***

***Administrative career system.*** The Committee recalls that the Government re-established the administrative career system to integrate public servants into the system in order to protect them from political pressure. The Committee notes that, according to the Government's report, Act No. 9 of 20 June 1994 which establishes and regulates the administrative career system was amended by Act No. 24 of 2 July 2007 and Act No. 14 of 28 January 2008 with the result that from 30 April 2008, the special procedure for entry into the administrative career system could no longer be used and the only way of entering the public administration was the regular procedure by means of competitive examination. The Committee notes the Government's indication that the aim of this amendment was to eliminate the possibility of appointing political officials to administrative career posts on a discretionary basis. The Committee also notes that according to the provisions of section 136 of Act No. 9, as amended by the above Acts, the stability of employment of career public servants is dependent, inter alia, on their effective, productive, honest, efficient and responsible performance. The Committee also notes that section 5 of Executive Decree No. 44 of 11 April 2008 stipulates that the administrative career system shall promote the occupation of all public posts by public servants who stand out for their suitability, competence, loyalty, morals and honesty. ***The Committee requests the Government to provide information on the application in practice of section 136 of Act No. 9 and section 5 of Executive Decree No. 44, particularly concerning the interpretation of the requirement of loyalty from public servants, including information on any court decisions handed down in this regard. The Committee also requests the Government to provide information on the percentage of public servants who have been integrated into the administrative career system through the special entry procedure in accordance with section 67 of Act No. 9.***

***Gender-based discrimination.*** The Committee refers to its previous comments in which it considered communications received from FENASEP concerning cases of the dismissal of women on the grounds of maternity or pregnancy. The Committee notes the Government's indication that the women were employed under fixed-term contracts and that they were removed from their posts simply because the period for which they had been recruited came to an end. The Committee notes that in its 2008 communication, FENASEP refers to new cases of the dismissal of women who were pregnant or on maternity leave by the National Bank of Panama. The Committee also notes that the United Nations Human Rights Committee expressed concern at the practice of requiring pregnancy tests as a condition for access to employment (CCPR/C/PAN/CO/3, 17 April 2008, paragraph 16). ***The Committee urges the Government to take the necessary measures to prevent discrimination on the ground of pregnancy, especially with regard to access to employment and job security and to ensure that temporary contracts are not used as a means to discriminate against women based on pregnancy. The Committee also requests the Government to provide information on the measures taken or envisaged in the context of its equality policy to ensure that women on temporary contracts do not find themselves in situations where they are vulnerable to discrimination on the basis of pregnancy.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Peru

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)***

The Committee notes the comments submitted by the Coordinator of Trade Union Federations composed of the Single Confederation of Workers of Peru (CUT), the General Confederation of Workers of Peru (CGTP), the Autonomous Confederation of Workers of Peru (CATP) and the Confederation of Workers of Peru (CTP) on 13 August 2010, sent by the Government, as well as the additional comments submitted by the CGTP on 31 August 2010. The comments refer to the significant wage gap between men and women and the participation of women in lower-paid sectors of the labour market. The Committee also notes the comments of the National Confederation of Private Employers' Institutions (CONFIEP) and the Chamber of Commerce of Lima of 12 November 2010, reiterating their previous comments. ***The Committee requests the Government to provide its comments on the issues raised in these communications.***

***Equal remuneration for men and women for work of equal value. Wage gap.*** In its previous comments, the Committee requested the Government to provide information on the measures taken or envisaged to apply section 6(f) of Act No. 28983 to implement the principle of equal remuneration for men and women for work of equal value. In this regard, the Committee notes that the Government refers to the adoption of the "Building Peru" plan, which has benefited 93,722 women, the Pro-Youth programme and the "Revalue Peru" programme. Under the Revalue Peru programme, 19,221 persons have been provided with training, including 7,363 women. The Government adds that women account for 34 per cent of the placements made by the National Employment Service. Furthermore, the Ministry for Women and Social Development has created the label "made by Peruvian women" in recognition of quality products made by women entrepreneurs, which gives their product a stronger market position. The Committee notes that the Government also refers to the study carried out by the Labour Studies and Statistics Programme of the Ministry of Labour entitled "Women in the Peruvian labour market" covering the period 2004–08. The Committee notes that according to this study, men earn more than women in all occupational groups except in the driver sector, where nearly 100 per cent of the workers are men. The widest wage gap is found among managers, administrators and public servants, professionals, technicians and related occupations and miners and quarry workers, while the weekly wage gap is narrowest in basic occupations requiring a lower level of training or qualifications. According to the study, discrimination largely accounts for the difference in wages between men and women in nearly all occupations. It also notes that the wage gaps are wider in private enterprises which require their staff to have more qualifications, in enterprises with 50 or more workers and among professional self-

employed workers. During the period 2004–08, men’s wages increased more than women’s. According to the study, this can be explained by the skills gap that exists between men and women. Although the informal economy has shrunk, it continues to be significant; women also represent the majority of workers in the informal economy. Furthermore, the study concludes that unemployment also affects mainly women. Although the study shows that the wage gap increased in 2006, the Government’s report indicates that the programmes implemented have contributed to narrowing the wage gap between men and women and that whereas in 2008, women earned a wage equivalent to 63 per cent of men’s wages, they currently receive a wage equivalent to 66.8 per cent of men’s wages. The Government also indicates that the number of women receiving a wage lower than the national minimum wage has also fallen. The Committee notes that the Government refers to the persons who have benefited under the various programmes it has implemented. However, the information provided does not allow a proper assessment of the impact of these programmes in promoting equal remuneration between men and women for work of equal value or in narrowing the wage gap. Furthermore, the Committee recalls the importance of taking proactive measures to provide education and training opportunities for women as a means of facilitating the application of the Convention. ***The Committee requests the Government to continue providing information on the programmes and measures undertaken or envisaged, in particular those designed to improve the access of women to a wider range of jobs, especially high-level jobs. The Committee requests the Government to provide information on the impact that these programmes and measures have had in terms of ensuring equal remuneration for men and women and narrowing the wage gap.***

***Objective job evaluation.*** The Committee notes the Government’s indication that the Directorate-General of Fundamental Rights and Occupational Health and Safety will develop, with assistance from the Directorate for Socio-Economic and Labour Research, a method for objective job evaluation to compare different jobs and determine whether they have the same value. ***The Committee requests the Government to continue providing information on the development of the job evaluation system.***

***Labour inspection.*** The Committee notes the Government’s indication that the Government of Canada has financed training for labour inspectors in Peru on fundamental labour rights, which has benefited 240 inspectors. ***The Committee requests the Government to continue providing information on the training measures for the labour inspectorate relating to the implementation of the principle of equal remuneration for men and women for work of equal value.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)***

The Committee notes the comments submitted by the Single Confederation of Workers of Peru (CUT) of 25 August 2010, which refer in particular to the adoption of various legal provisions which could result in indirect discrimination, namely: the Act on the promotion of the competitiveness, formalization and development of micro and small enterprises and access to decent work (Legislative Decree No. 1086); the Act approving the standards for the promotion of the agricultural sector (Act No. 27360); the Act establishing the new administrative services contract (Legislative Decree No. 1057); and the Domestic Workers Act No. 27986 which excludes the workers covered by that Act from certain benefits. The Committee notes the Government’s indication that not all inequalities necessarily constitute discrimination and that the schemes mentioned can be justified objectively and reasonably by the need to improve the regulatory framework, modernize the State and promote employment in small and medium-sized enterprises and that, in the case of domestic workers, the Act concerned aims to integrate these workers into the market. ***In order to assess the legal provisions mentioned in light of the provisions of the Convention, the Committee requests the Government to provide information on the application of these provisions and their impact in practice.***

***Equality between men and women at work. Policies, plans, programmes and application.*** In its previous comments, the Committee requested the Government to provide information on the implementation of the measures adopted, in particular on indicators and statistics, and on any new measures adopted under the Act on equal opportunities between men and women (Act No. 28983 of 2007), as well as on the participation of the social partners in the development and implementation of those measures. In this regard, the Committee notes the comments of the Chamber of Commerce of Lima (CCL) of 12 November 2010, transmitted by the Government, referring to the limited implementation of the Act on equal opportunities between men and women, which means that an assessment cannot be made of compliance with that Act. The Committee notes that the Government provides information on ministerial resolutions establishing compulsory indicators and targets in areas such as equality between men and women. In this regard, it indicates that 60 per cent of sectors have adopted or planned action in this area, including in particular: (1) action to strengthen the presence of women in managerial and decision-making positions; (2) measures relating to sexual harassment; and (3) measures on gender quotas. To date, 11 regional plans on equal opportunities between men and women have been adopted. In addition, Deputy Ministerial resolution No. 003-2009-IN-0103 was adopted by the Ministry of the Interior establishing the Observatory for Equal Opportunities between Men and Women and Ministerial resolution No. 052-2009-MIMDES was adopted by the Ministry for Women and Social Development issuing guidelines on the use of inclusive language. The Ministry of Economy and Finance, the Ministry of the Interior and contain bodies in the agricultural sector have drawn up plans and adopted measures on gender. In accordance with Directive No. 001-2008-IN-0908 of the Ministry of the Interior, which provides that women shall occupy no less than 25 per cent of managerial posts in the non-police state sector, the Government indicates that 41 of the 111 managerial posts are occupied by women,

19 per cent of the workforce of the police is composed of women and three women are in charge of police stations. The Government also includes statistics from the ministries and offices of the State. In the private sector, the “Building Peru” programme of the Ministry of Labour and Employment Promotion, has helped 100,000 women to gain access to temporary employment and training, projects involving women have been funded and enterprises managed by women have been established. The Government adds that the Working Group with Civil Society established on 31 May 2006 constitutes a forum for dialogue and collaboration between the State and civil society for the purposes of implementing and monitoring the National Plan on Equal Opportunities between Women and Men 2006–10, as well as the Act on equal opportunities. In this regard, the Committee notes from the information provided by the Government that, although some progress has been made, the participation of women in the public sector continues to be considerably lower than that of men. The Committee notes that the Government provides no information on the system of monitoring and following up on the Plan on Equal Opportunities between Men and Women or the Statistics Plan 2008–12 and the gender-based indicators established by the National Institute of Statistics and Computing, which were noted by the Committee in its previous observation and which would give a clearer picture of developments relating to gender equality in the country. ***The Committee requests the Government to provide information on the implementation and results of the system to follow up and monitor the Plan on Equal Opportunities and on the gender-based indicators, as well as on the reports prepared by the Observatory for Equal Opportunities between Women and Men of the Ministry of the Interior. The Committee also requests the Government to provide information on the implementation of the National Plan and the regional plans on equal opportunities and their impact in practice in both the public and private sectors. Finally, the Committee requests the Government to provide its response to the comments of the Chamber of Commerce of Lima (CCL) and to continue taking the necessary measures to increase the participation of women in employment in both the public and private sectors.***

The Committee is raising other points in a request addressed directly to the Government.

## Philippines

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)***

***Article 1(b) of the Convention. Work of equal value.*** The Committee recalls that it has for a number of years urged the Government to take the necessary steps to amend the legislation to guarantee equal remuneration for men and women not only for equal, the same or similar work, but also for work that is of a different nature but nevertheless of equal value. Such amendment is necessary given the restrictive interpretation given to section 135 of the Labor Code through the 1990 Rules implementing the Republic Act No. 6725, defining “work of equal value” to mean “activities, jobs, tasks, duties or services ... which are identical or substantially identical”. The Committee notes with *regret* that the Government’s report does not provide any information in this regard. ***The Committee strongly urges the Government to take steps, without further delay, to amend section 135(a) of the Labor Code or section 5(a) of the 1990 Rules implementing the Republic Act No. 6725, in order to bring the legislation into full conformity with the Convention.***

***Article 2. Pay inequality in the public sector.*** The Committee notes the concerns raised by the Public Services Labor Independent Confederation (PSLINK) regarding the large pay gap between women and men in the public sector, a large proportion of which, according to PSLINK, can be attributed to discriminatory factors in the wage-setting process. PSLINK points particularly to occupational segregation, with women being concentrated in lower paid and undervalued jobs, and to inequalities in the Salary Standardization Law. ***The Committee asks the Government to provide information on the causes and extent of the gender pay gap in the public sector, including any research, as well as statistics on the earnings of men and women in the public sector. Please indicate the steps taken or envisaged to address the pay gap in the public sector, including with regard to occupational segregation, and inequalities in the Salary Standardization Law.***

***Article 2(2)(b). Minimum wages.*** The Committee recalls its previous comments regarding the establishment of minimum wages, and noting that several establishments were reported for non-compliance with the general labour standard, including underpayment of minimum wages. The Committee also notes the communication from the Kilusang Mayo Uno Labor Center, dated 15 September 2008, which was forwarded to the Government, stating that many companies have been found to be violating the minimum wage law, particularly in industries where women predominate, such as garments, electronics and food manufacturing. The Committee notes further that the Kilusang Mayo Uno Labor Center indicates that mandatory wage orders are not being implemented and that the overtime rate actually paid is not based on the mandatory minimum wage. Moreover, the Committee refers to the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) expressing concern that the minimum wage legislation does not apply to some important sectors, including government employment and export-oriented and labour-intensive manufacturing. The CESCR also notes that enforcement of the minimum wage legislation has been made difficult especially by the shortage of labour inspectors (E/C.12/PHL/CO/4, 1 December 2008, paragraph 22). ***The Committee asks the Government to provide information on the following:***

- (i) the steps taken or envisaged to ensure that the principle of equal remuneration for men and women for work of equal value is taken into account in the minimum wage-setting process;***

- (ii) *any steps taken or envisaged to extend the minimum wage legislation to cover other sectors, in particular sectors predominantly employing women;*
- (iii) *the detected violations of the national legislation on minimum wages and section 135(a) of the Labour Code by the labor inspectorate, including any remedies provided or sanctions imposed, and any relevant judicial decisions;*
- (iv) *the number of men and women respectively affected by the violation of the minimum wage legislation;*
- (v) *practical measures taken or envisaged to improve the enforcement of minimum wage legislation; and*
- (vi) *any measures taken to assist workers to enforce their rights to receive minimum wages.*

*Article 3. Objective job evaluation.* The Committee notes with **regret** that for many years, the Government has not provided the information requested regarding the methods available to promote an objective evaluation of jobs, free from gender bias. **The Committee must, therefore, once again, urge the Government to take measures to promote an objective evaluation of jobs, in order to be able to compare the value of different jobs, and to cooperate with employers' and workers' organizations in this regard. Please provide specific information in this regard.**

The Committee is raising other points in a request addressed directly to the Government.

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)***

*Article 1 of the Convention. Equality of opportunity and treatment between men and women.* The Committee notes with **interest** the adoption of the Magna Carta of Women (Republic Act No. 9710), which came into force in 2009. The Magna Carta provides that the State shall: “refrain from discriminating against women and violating their rights; ... protect women against discrimination and from violations of their rights by private corporations, entities, and individuals; and ... promote and fulfil the rights of women in all spheres, including the rights to substantive equality and non-discrimination. The State shall fulfil these duties through law, policy, regulatory instruments, administrative guidelines, and other appropriate measures, including special temporary measures” (section 5). With respect to employment and opportunity, in section 2 of the Magna Carta, the State is to provide opportunities for women to enhance and develop their skills and acquire productive employment. Pursuant to section 11(f), the State is required to take measures to encourage women’s leadership in the private sector. Section 22 provides further that: “the State shall progressively realize and ensure decent work standards for women that involve the creation of jobs of acceptable quality in conditions of freedom, equity, security, and human dignity”. **As the Magna Carta of Women is a framework law requiring specific laws, regulations and guidelines for the full implementation of many of the principles set out therein, the Committee asks the Government to provide information on any implementing measures taken or envisaged with respect to promoting equality of opportunity and treatment in employment and occupation, with a view to eliminating any discrimination against women in respect thereof, including by the newly established Philippine Commission of Women. Recalling its previous observation regarding the need to amend the Labour Code to ensure that women are protected against discrimination in all aspects of employment, including hiring, the Committee urges the Government to take the opportunity of the adoption of the Magna Carta to adopt the necessary legislation or amendments. Please also provide information on any measures taken in practice to prevent and address discrimination against women in access to employment, and the results achieved.**

*Application in the public sector.* The Committee notes the Government’s indication that vacancies in the public sector are published in accordance with the Act requiring publication of existing vacant positions in government offices (Republic Act No. 7041 of 1991), to ensure transparency and equal opportunities in hiring. The Government also refers to item 2(2) of Memorandum Circular No. 3, series 2001, issued by the Civil Service Commission (CSC) which provides that “[t]here shall be no discrimination in the selection of employees on account of gender, civil status, disability, religion, ethnicity or political affiliation”. The Committee further notes from the Government’s report that, pursuant to Memorandum Circular No. 40, series 1998, a number of high-level positions are exempted from the publication requirement, including primarily confidential positions, positions which are policy determining, highly technical positions, other non-career positions and third-level positions. **The Committee asks the Government to indicate how Republic Act No. 7041 and Memorandum Circular No. 3, as well as Resolution No. 98-463, to which the Committee referred in previous comments, are applied in practice, and their impact with respect to ensuring equal access to employment in the public sector, irrespective of race, colour, sex, religion, national extraction, political opinion and social origin. The Committee also requests information on the application of the principle of the Convention to the positions exempted from the publication requirement. As the Government provides very general information regarding the Merit Promotion Plans, the Committee also asks the Government to provide more specific information on how the Plans address discrimination and promote equality. Please also supply an illustrative sample of procedures and criteria provided in the Merit Promotion Plans, as well as a copy of the Omnibus Implementing Book V (Executive Order No. 292).**

*Gender equality in the public service.* The Committee notes from the Government’s report that women represent 48.75 per cent of those employed in the public service, and are concentrated in second-level positions (78 per cent in 2007), while men are likely to be in executive or managerial positions. The Committee, furthermore, notes that a draft of

the Memorandum Circular implementing the provisions of the Magna Carta of Women is under review by the CSC. In this connection, the Committee notes that section 11(a) of the Magna Carta of Women provides that the Government shall institute affirmative action mechanisms in order to increase incrementally the number of women in third-level positions in Government, to achieve a “50–50 gender balance” within the next five years. ***The Committee requests the Government to provide information on the implementation of the Magna Carta of Women in the public service, and particularly the measures taken to implement section 11(a). In this regard, the Committee recalls the importance of collecting statistical data disaggregated by sex in order to assess the impact of measures to advance gender equality in the public service, and it urges the Government to provide such information. Please also supply a copy of the draft of the Memorandum implementing the Magna Carta of Women. The Committee once again urges the Government to provide full details on the impact of Civil Service Resolution No. 99-0684 on the promotion of gender equality.***

The Committee is raising other points in a request addressed directly to the Government.

## Russian Federation

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)***

The Committee recalls its previous observation which addressed the following issues: (1) Resolution No. 162 adopted by the Government on 25 February 2000 which contains a list of industries, occupations and work from which women are excluded; (2) the enforcement of the Labour Code’s non-discrimination provisions; (3) equality of opportunity and treatment for men and women; and (4) equality of opportunity and treatment of ethnic minorities and indigenous peoples.

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2010. In its conclusions, the Conference Committee raised concerns regarding Resolution No. 162 of 25 February 2000 which excludes women from being employed in 456 occupations and 38 branches of industry, and section 253 of the Labour Code, which provides that the employment of women in arduous work and work in harmful or dangerous conditions shall be limited. The Conference Committee noted that Resolution No. 162 and section 253 of the Labour Code went beyond protecting women’s reproductive health and broadly restricted their access to occupations and sectors that involve equal health and safety risks to men and women, and it urged the Government to take steps to revise section 253 of the Labour Code and Resolution No. 162 to ensure that any limitations on the work that can be undertaken by women are not based on stereotyped perceptions regarding their capacity and role in society and are strictly limited to measures to protect maternity. The Conference Committee asked the Government to ensure that the planned review of the existing system of health and safety protection addressed the need to provide a safe and healthy working environment for both men and women, and one that would not lead to measures hindering women’s participation in the labour market. The Conference Committee also asked the Government to take measures to address the legal and practical barriers to women’s access to the broadest possible range of sectors and industries, as well as at all levels of responsibility, and it urged the Government to take measures, through tripartite consultation, to ensure non-discrimination and promote equality of opportunity and treatment in employment and occupation for all groups protected under the Convention, including ethnic minorities. Such measures should include strengthening the legal framework, which should address direct and indirect discrimination and the burden of proof, and provide for effective remedies in discrimination cases. The strengthening and establishment of appropriate mechanisms to promote, analyse and monitor equality of opportunity and treatment in employment and occupation should also be part of these measures.

The Committee notes with *regret* that the Government’s report has not been received, despite the fact that the Conference Committee expressly requested the Government to include in its report to the Committee of Experts complete information replying to all the matters raised by the Conference Committee and the Committee of Experts, including relevant statistical information disaggregated by sex. ***In these circumstances, the Committee urges the Government to make every effort to reply to its previous comments, as well as to the conclusions of the Conference Committee.***

## Rwanda

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)***

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 2(2)(a) of the Convention. Application of the principle of equal remuneration for work of equal value. Legislation.* The Committee notes the adoption of Act No. 13/2009 of 27 May 2009 regulating labour in Rwanda. It notes that the new Act refers to the present Convention in its Preamble and that it contains a definition of the expression “work of equal value” (section 1.9). However, it notes that this definition is too narrow to give full effect to the provisions of the Convention since it refers to “similar work”, and further, that the new Act contains no substantial provisions prescribing “equal remuneration for work of equal value”. Furthermore, the Committee notes that the Government mentions in its report article 11 of the Constitution which prohibits any discrimination in general, and notes that article 37 of the Constitution specifies that “every person having equal competence and capacity shall have the right, without any discrimination, to equal pay for equal work”.



Referring to its previous comments, the Committee notes with *regret* that the Government has not taken the opportunity to give full legislative expression to the principle of equal remuneration for work of equal value within the meaning of the Convention.

While it is important to prohibit discrimination on the basis of sex in employment, this is not sufficient to ensure the full application of the principle of equal remuneration pursuant to the Convention. Referring to its general observation of 2006, in which it clarifies the meaning of the concept of “work of equal value” under the Convention, the Committee would like to stress that, whilst this concept encompasses the concept of “equal”, “the same” and “similar” work it also goes beyond that because it encompasses work which is of an entirely different nature but which is nevertheless of equal value. The concept of “work of equal value” therefore allows for a much broader comparison to be made between jobs performed by men and women in different places or sectors, or between different employers. It therefore allows pay discrimination to be combated more effectively where men and women traditionally perform work that is of an entirely different nature but which is nevertheless of equal value. *The Committee therefore once again urges the Government to take the necessary steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value as set out in the Convention.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. Legislative developments. Scope of protection of workers against discrimination.* The Committee notes that section 12 of Act No. 13/2009 of 27 May 2009 regulating labour in Rwanda extends the protection afforded to workers covered from all the grounds of discrimination prohibited under *Article 1(1)(a)* of the Convention as well as from other grounds (*Article 1(1)(b)*). Section 12 of that Act prohibits any discrimination, either directly or indirectly, in the course of employment intended to deprive workers of equality of opportunity and treatment where such discrimination is based on: (1) race, colour, origin; (2) sex, marital status or family responsibilities; (3) religion, beliefs or political opinions; (4) social or economic conditions; (5) national extraction; (6) handicap; (7) previous, current or prospective pregnancy; and (8) any other form of discrimination. The Committee also notes that the new Act establishes general penalties in the case of the violation of its provisions (section 169), namely two months’ imprisonment and/or a fine of 50,000 to 300,000 Rwandan francs. It notes, however, that, in the French version of the Act at least, direct or indirect discrimination is prohibited only “during the course of employment” and that this prohibition does not therefore cover all stages of employment and occupation, particularly recruitment. The Committee also notes that section 12 appears to prohibit acts done with an intention to deny equality of opportunity and treatment, which would be more restrictive than the definition of discrimination set out in *Article 1* of the Convention under which intent is not required. *The Committee therefore requests the Government to provide information on the measures taken or envisaged to prohibit discrimination during access to employment or to an occupation. It also requests the Government to clarify whether intent is required for an act to constitute discrimination under section 12 of Act No. 13/2009. The Government is also requested to provide information on the application of section 12 of the Act, in practice and to specify, in particular, whether any appeals have been lodged on the basis of any one of the prohibited grounds of discrimination and whether penalties have been imposed under section 169 of that Act.*

*Sexual harassment.* The Committee notes the adoption of Act No. 59/2008 of 10 September 2008 on the prevention and punishment of gender-based violence, section 24 of which establishes punitive measures in the case of “sexual harassment of a subordinate” imposed on “any employer or any other person who uses his or her position to harass a subordinate by way of orders, intimidation and terror for the purpose of sexual pleasure”. It also notes the inclusion in Act No. 13/2009, of provisions prohibiting “gender-based violence” in employment (section 9), that is “any act of a physical, psychological or sexual nature directed at a person or likely to damage their property on the grounds of their sex” which “infringes their rights and affects their integrity”. Section 9 of Act No. 13/2009 also prohibits moral harassment at work, either directly or indirectly, which is defined as “any act of harassment at work of any origin, either external or internal to the enterprise, which manifests itself in particular through behaviour, words, intimidation or anonymous written communications designed to have an adverse effect on the dignity of a worker in the workplace, endanger his or her job and constitute an obstacle to his or her work”. The Committee welcomes the adoption of these new legislative provisions which, when combined, appear to cover the two essential elements of sexual harassment at work as defined in its 2002 general observation, namely: (1) any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job (*quid pro quo*); and (2) conduct that creates an intimidating, hostile or humiliating working environment for the recipient (*hostile work environment*). *However, in order to ensure adequate protection for men and women workers and to clarify the legal regime applicable to this discriminatory practice, the Committee requests the Government to consider taking the necessary measures to adopt a clear and precise definition of sexual harassment in the workplace, ensuring that this definition covers both quid pro quo and the creation of a hostile working environment. Furthermore, the Committee requests the Government to provide information on any measures taken or envisaged to prevent this form of gender-based discrimination in the workplace, particularly in the context of the national gender policy adopted in 2004 (education programmes, awareness-raising campaigns on preventive measures and appeal mechanisms, etc.).*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Saint Lucia**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)**

The Committee notes that the Government’s report contains no reply to its previous comments. 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 matters raised in its previous observation, which read as follows:

*Definition of remuneration.* The Committee recalls the absence of a definition of the term “remuneration” in the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, which provides for equal remuneration for work of equal value. The Committee notes the Government’s reply that the new Labour Code, which was the subject of final consultations with the social partners in 2008, will contain a broader definition of remuneration in accordance with *Article 1(a) of the Convention*. **Noting the Government’s statement that it is moving forward to giving effect to the new Labour Code, the Committee asks the Government to confirm that the new Labour Code has been adopted and has entered into force, and that it defines “remuneration” in accordance with the Convention. Please also provide a copy of the Labour Code. The Committee also asks the Government to confirm that the term “remuneration” as used in the Equality of Opportunity and Treatment in Employment and Occupation Act is to be understood as defined in the new Labour Code.**

*Different wages and benefits for women and men.* The Committee recalls that the Contracts of Service Act provides for different ages for men and women with respect to entitlement to severance pay. It also recalls its previous comments regarding the existence of certain laws and regulations establishing differential wage rates for men and women, contrary to the Convention. The Committee notes the Government’s statement that the differences in ages between men and women with regard to severance pay have been corrected in the new Labour Code. **Recalling the Government’s previous statements that the Contracts of Service Act would be revoked with the adoption of the new Labour Code, the Committee asks the Government to confirm that all legislation containing wage differentials for men and women, including the Contracts of Service Act, has been revoked.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**

## Saudi Arabia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)**

*Article 1 of the Convention. Work of equal value.* For a number of years, the Committee has expressed the hope that full legislative expression would be given to the principle of equal remuneration for men and women for work of equal value. The Committee noted in previous comments that the new Labour Code, 2006, contained no reference to equal remuneration for men and women for work of equal value. The Committee therefore notes with *satisfaction* the adoption on 18 September 2010 of Ministerial Order No. 2370/1, providing that “any discrimination in wages shall be prohibited between male and female workers for work of equal value”. The Order is made pursuant to section 243 of the Labour Code which provides for the issuing of implementing decisions and regulations, and makes specific reference to the ratification of Convention No. 100 and to the pursuit of social justice. **The Committee asks the Government to provide information on the application in practice of Ministerial Order No. 2370/1.**

## Sierra Leone

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 2 and 3 of the Convention. Lack of national policy.* The Committee regrets that the Government does not provide any new information in respect to the Convention’s application. Since Sierra Leone has ratified the Convention, the Government has consistently reported that no legislative or administrative regulation or other measures existed to give effect to the provisions of the Convention and the Government has failed to provide information on any measures taken in this regard. In its latest report the Government repeats the general statement that it had a broad-based policy which ensured jobs for all who apply and are willing to work, regardless of sex, religion, ethnicity or political opinion. The Committee is therefore bound to recall that under the Convention, Sierra Leone has the obligation to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination regarding vocational training, access to employment and particular occupations, as well as terms and conditions of employment.

In connection with the above, the Committee recalls that articles 7 to 9 of the 1991 Constitution establish economic, social and educational objectives for the State that potentially promote the application of the Convention. Article 15 guarantees the right to equal protection of the law irrespective of race, tribe, place of origin, political opinion, colour, creed or sex, and article 27 of the Constitution provides constitutional protection from discrimination. The Committee considers that these provisions may be an important element of a national equality policy in line with the Convention, but recalls that provisions affirming the principles of equality and non-discrimination in itself cannot constitute such a policy. As stated in the Committee’s 1988 General Survey on the Convention, the national policy on equality of opportunity and treatment should be clearly stated and should be applied in practice, presupposing state implementation measures in line with the principles set out in *Articles 2 and 3* of the Convention and Paragraph 2 of the accompanying Recommendation No. 111.

**While being aware of the many challenges the Government is facing in the process of consolidating peace, the Committee encourages the Government to give serious consideration to the application of the Convention in law and practice as an integral part of its efforts to promote peace and social and economic stability. The Government is requested to provide information on measures taken or envisaged to promote and ensure equal access to technical and vocational training, public and private employment, as well as equal terms and conditions of employment, including through educational programmes and cooperation with employers’ and workers’ organizations. The Committee also reiterates its previous requests to the Government to provide information in particular on the measures taken to ensure equality in employment and occupation between women and men and among members of the different ethnic groups.**

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Slovakia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(b) of the Convention. Work of equal value.* The Committee recalls its previous observation in which it noted that section 119(3) of the Labour Code, which provided for equal wages for work of an equal level of complexity, responsibility and difficulty, performed under the "same working conditions and upon achievement of the same efficiency and work results", had been amended in 2007 to guarantee "equal wages for men and women for equal work or work of equal value". The Committee notes that section 119(2) of the Labour Code, as amended in 2007 by Act No. 348/2007 Coll., now states that women and men have the right to equal pay for like work or work of equal value, which is considered as work of the same or comparable complexity, responsibility and arduousness, performed in the same or comparable working conditions, producing the same or comparable productivity and results for the same employer. Furthermore, section 119(3) states that if a system of job evaluation is being used, this must be based on the same criteria for men and women without sex discrimination; the employer may use other objectively measurable criteria in addition to those given in paragraph 2 if they can be applied to all employees without regard to sex. *The Committee asks the Government to confirm that the wording "comparable working conditions, productivity and results" permit a comparison between jobs performed by men and women that are of an entirely different nature but nevertheless of equal value. It also asks the Government to provide copies of judicial decisions concerning the application of section 119 of the Labour Code, and in particular those decisions which show how the courts have interpreted the wording "comparable working conditions, productivity and results".*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Sudan

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)**

*Absence of conditions to ensure protection against discrimination in employment and occupation.* For a number of years, the Committee has been expressing serious concern at the human rights situation in the country, in particular in Darfur. In its previous comments, the Committee expressed its profound regret at the Government's persistent general statements that no discrimination exists in Sudan. It urged the Government to take immediate measures to ensure that all population groups in Darfur, including the Fur, Maasaalit and Zaghawa tribes, could exercise their occupations free from discrimination, irrespective of ethnic origin or political opinion, and that the right to non-discrimination for all population groups, including the establishment of adequate and effective dispute resolution and complaints mechanisms, was effectively enforced.

The Committee notes the Government's acknowledgement in its report that there is no society without discrimination and therefore continued measures are required to eliminate it. The Government further indicates that it is planning to undertake consultations with the social partners and other parties concerned in order to determine whether discrimination in employment and occupation exists in Darfur and, if so, how to eliminate it, including through the establishment of a conflict resolution mechanism, a national human rights commissioner and a human rights commissioner in southern Sudan.

The Committee however is *deeply concerned* that, according to the report of the Independent Expert on the situation of human rights in the Sudan for the period May–August 2010, the general human rights situation in the country has deteriorated, including due to a pattern of political repression with severe restrictions on political and civil rights. Furthermore, in Darfur, inter-communal conflicts intensified, resulting in large numbers of casualties and significant population displacement, and women and young girls continued to experience gender and sexual-based violence. The Independent Expert also pointed out the existence of widespread human rights abuses, inter-communal conflicts and the weakness of the judicial system, resulting in widespread impunity in southern Sudan (A/HRC/15/CRP.1). The Committee notes that in southern Sudan, according to the Independent Expert's statement following his first visit in 2010, human rights commissioners have been appointed and the Human Rights Commission is fully functional. In November 2010, the Southern Sudan Human Rights Commission emphasized the need to put in place effective mechanisms to address human rights issues, particularly those associated with gender rights, and urged the relevant institutions, civil society and the media to assist the Commission in educating the public to defend human rights and to monitor compliance thereof.

*Deeply concerned by the worsening of the human rights situation throughout the country, particularly in Darfur, the Committee once again urges the Government to take immediate measures to create the necessary conditions to ensure effective protection against discrimination for all members of the population, including the Fur, Maasaalit and Zaghawa tribes, with respect to the exercise of their occupations without distinction based on any of the grounds set out in the Convention, as well as measures to reinforce the capacities of the judicial and supervisory authorities. In this respect, the Committee further urges the Government to ensure the establishment and effective functioning of the*

*National Commission of Human Rights, and to provide information on its action and on the measures taken by the Southern Sudan Human Rights Commission that give effect to the provisions of the Convention. Finally, the Committee asks the Government to provide detailed information on the consultations to be held with workers' and employers' organizations to assess the extent to which discrimination occurs in employment and occupation and on any conclusions reached and follow-up action taken.*

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination.* In its previous comments, the Committee recalled that article 31 of the Interim Constitution of the Republic of Sudan 2005 provided for equal protection under the law for all persons without discrimination based on the grounds set out in the Convention, except social origin. It also recalled the absence of a provision in the 1997 Labour Code of the Republic of Sudan explicitly prohibiting discrimination on the grounds set out in the Convention with respect to all aspects of employment and occupation, whereas such a provision was included in the Southern Sudan draft Labour Act (section 10(1) and (2)). *Noting that the Government reiterates its statement that it will take into account the Committee's comments when revising the Interim Constitution 2005 and the Labour Code of 1997, the Committee once again requests that concrete steps be taken to insert provisions in the final Constitution and the Labour Code in order to ensure that all workers are protected against discrimination based on all the grounds set out in the Convention and with respect to all aspects of employment, including vocational training, access to employment and to particular occupations, and terms and conditions of employment. Please also provide information with respect to the adoption of the Southern Sudan draft Labour Act.*

The Committee is raising other points in a request addressed directly to the Government.

## Syrian Arab Republic

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)**

*Legislative developments.* The Committee notes the adoption of a new Labour Law (No. 17/2010), section 75(a) of which provides that the employer shall apply the principle of “equal pay for work of equal value” to all workers without any discrimination, including discrimination based on gender. Section 75(b) then defines “work of equal value” as “work that requires equal scientific qualifications and professional skills, as attested by a work experience certificate”. While welcoming the specific reference to “work of equal value” in the new Labour Law, the Committee is concerned that the definition in section 75(b) may unduly restrict the application of section 75(a), as it does not appear to allow a comparison of jobs requiring different qualifications and skills, which are nonetheless of equal value. *The Committee asks the Government to provide information on the practical application of section 75 of the new Labour Law, including any administrative or judicial decisions. Please also provide specific information regarding the scope of comparison permitted under section 75(b), and in particular whether it is possible to compare jobs of an entirely different nature, requiring different qualifications and skills, to determine whether they are of equal value under section 75(a).*

*Application in practice.* The Committee notes that the Government's report contains no information in response to its previous observations regarding concrete measures taken to determine the nature, extent and causes of inequalities in remuneration that exist in practice, in order to identify specific measures to address these inequalities. *The Committee once again urges the Government to undertake studies to determine the nature, extent and causes of inequalities in remuneration existing in practice between men and women for work of equal value in the public and private sectors, and to identify specific measures to address these inequalities. Please also provide full information on the occupational classification system referred to in the previous report, including information on the criteria used to ensure that this classification system is free from gender bias.*

The Committee is raising other points in a request addressed directly to the Government.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

*Legislative developments.* The Committee notes with *interest* that the new Labour Law (No. 17/2010), unlike the Labour Code of 1959 which it repeals, contains specific provisions addressing equality of opportunity and treatment, and protection against discrimination including, in keeping with *Article 1(1)(b) of the Convention*, grounds going beyond *Article 1(1)(a)*. In particular, section 2(a) of the Law provides that it is prohibited to breach or infringe the principle of equal opportunity or equal treatment, for any reason whatsoever, “in particular, to discriminate against workers on the basis of race, colour, gender, marital status, belief, political opinion, trade union membership, nationality, extraction, clothing or dress style, in employment, work organization, vocational training, wages, promotion, entitlement to social benefits, disciplinary measures and actions, or dismissal”. Section 95 further provides that workers have the “right to equal opportunity, equal treatment and non-discrimination”. *The Committee welcomes the adoption of the equality and non-discrimination provisions of Labour Law No. 17/2010, and asks the Government to provide information on the application of the relevant provisions in practice, including any relevant administrative or judicial decisions. Please provide information on the measures taken or envisaged to promote the implementation of the new non-discrimination provisions, as well as any relevant follow-up under the five-year plan and the Decent Work Country Programme, and their impact on promoting the principle of equality of opportunity and treatment in employment and occupation.*

*Restricting women's access to employment.* The Committee notes the Government's reference to a special order relating to women's employment, which lists the tasks, industries and occupations in which women may be employed and those prohibited for women, which was not annexed to the report as indicated. The Committee notes that, pursuant to section 120 of the new Labour Law, "the Minister shall determine, by ministerial decision, such activities, instances and circumstances where women shall be allowed to perform night work, as well as harmful, immoral and other activities prohibited for women". In this connection, the Committee recalls its previous comments stressing the need to repeal protective measures for women which are based on stereotyped perceptions regarding their capacity and role in society. With regard to section 139 of the Personal Status Act respecting child custody and limiting the right of female custodians to work, the Committee notes the Government's indication that no statistical information exists on the number of women who have left work to have custody of their children. ***The Committee asks the Government to take steps to ensure that protective measures for women which exclude women from certain tasks, jobs or occupations, or limit their access thereto, are limited to maternity protection. It requests the Government to supply a copy of the special order to which it refers in its report, as well as any ministerial decisions taken pursuant to section 120 of the new Labour Law. Recalling its previous comments on employment restrictions imposed on female custodians, the Committee also requests the Government to take steps to amend section 139 of the Personal Status Act.***

*Equality of opportunity and treatment for men and women in employment and occupation.* The Committee recalls its previous comments noting the various measures taken to address traditional stereotypes concerning women's role in society hindering their participation in the labour market. ***Noting that the Government's report contains no information regarding its previous observation on this matter and having regard to the importance of effectively addressing occupational gender segregation in the public and private sectors to ensure equal opportunities for women and men in employment and occupation, the Committee requests the Government to provide information on the following:***

- (i) *the measures taken or envisaged, and the results achieved, to address the obstacles to women's access to the labour market and the persistent occupational gender segregation, including promoting women's access to a wider range of occupations and increasing their chances of career advancement in both the public and private sectors;*
- (ii) *specific measures to address traditional views and stereotypical assumptions that may exist regarding women's aspirations, preferences, capabilities and "suitability" for certain jobs;*
- (iii) *how the National Strategy for Women (2006–10) and the measures taken or envisaged to implement it have addressed occupational gender segregation; and*
- (iv) *detailed statistical information on the distribution of men and women in the different economic sectors, occupational categories and positions in order to have an appreciation of the progress made in applying the Convention.*

*Access of women to education and vocational training.* Noting that the Government's report provides no new information regarding the access of women to education and vocational training courses traditionally dominated by men, the Committee recalls the importance of collecting and analysing relevant data in order to allow the Government and the Committee to assess the progress made over time in achieving a balanced representation of men and women in education and vocational training. ***The Committee requests the Government to provide specific information on the following:***

- (i) *measures taken to promote women's access to a broader range of educational and vocational training courses, including those traditionally dominated by men;*
- (ii) *the extent to which women undertaking vocational training and attending university are able to find appropriate employment;*
- (iii) *statistical data, disaggregated by sex, on participation in training courses and vocational training centres, and in the various university programmes.*

*Enforcement.* The Committee notes that the non-discrimination provision in section 2 of the new Labour Law provides that workers have the right to claim compensation for material and moral damage sustained before the competent court. Pursuant to section 204 of the new Labour Law, a worker or employer may bring a dispute regarding the application of the Law to the competent court. It also notes that section 249 provides that every inspector shall monitor the enforcement of the Law "in connection with working conditions and protection of workers at work", and that they have the authority to take action against employers who violate the law, including referring the matter to the court. The Committee recalls its concerns regarding the vulnerability of certain groups, particularly ethnic minority Kurds and Bedouins, despite the existence of legislative protection, and notes that in response to its previous comments concerning difficulties encountered by some groups of the population in lodging complaints, the Government indicates that natural persons have the right to institute legal proceedings against any public official or private person if their rights are jeopardized. ***The Committee requests the Government to take measures to increase knowledge and understanding of the objectives of the Convention and of the relevant legal provisions of the new Labour Law providing for equality of opportunity and treatment in employment and occupation and non-discrimination, including among ethnic minority Kurds and Bedouins, and to provide specific information in this regard. The Committee also requests the Government to provide information regarding the following:***

- (i) *the measures taken or envisaged to raise awareness of the labour inspectorate and judges regarding discrimination in employment and occupation against ethnic minorities;*
- (ii) *the measures taken, through surveys or otherwise, to undertake an evaluation of the effectiveness of the complaints procedures, including any difficulties encountered by women or men, including from minority groups, in seeking judicial remedies with regard to cases of discrimination on the basis of all the grounds covered by the Convention;*
- (iii) *the activities of the labour inspectorate relevant to equality of opportunity and treatment and non-discrimination, including any complaints received or violations detected, the sanctions imposed and the remedies provided.*

The Committee is raising other points in a request addressed directly to the Government.

## Tajikistan

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1993)

*Equality of opportunity and treatment between men and women. Legislative developments.* The Committee notes with **interest** the adoption of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005. It notes that the Law defines and prohibits discrimination based on sex in any sphere (sections 1 and 3), and provides for the obligation of public authorities to ensure gender equality (section 4). The Law further includes provisions concerning state guarantees regarding equal opportunities between men and women in the sphere of education and science (section 6) and in the state service (Chapter 3). Equal opportunities in the socio-economic sphere (Chapter 4) include measures aimed at advancing gender equality in labour relations (section 13), provisions placing on the employer the burden of proof to demonstrate the lack of intent to discriminate (section 14), measures aimed at ensuring gender equality in the mass termination of employees (section 15) and measures ensuring equal opportunities of men and women in collective contracts and agreements (section 16). Finally, the Law includes certain provisions aimed at assisting workers with family responsibilities (section 7). **The Committee requests the Government to provide information on the implementation in practice of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005, including on the manner in which violations of its provisions are being addressed.**

The Committee is raising other points in a request addressed directly to the Government.

## Trinidad and Tobago

### **Equal Remuneration Convention, 1951 (No. 100)** (ratification: 1997)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Assessment of the gender pay gap.* The Committee notes from the statistical data provided by the Government that in 2007 women earned 80.3 per cent of men's monthly income (average and median), which amounts to a gender pay gap of 19.7 per cent. It is concerned that this gap was considerably higher than in 2006, where it was 14.8 per cent (2005 – 15.8 per cent; 2004 – 16.4 per cent). In 2007, the gender wage gap was highest in the occupational group of service and sales workers (47 per cent) and legislators, senior officials and managers (39.4 per cent). **The Committee asks the Government to indicate the measures taken or envisaged to address the apparently widening gender pay gap. It also asks the Government to continue to provide detailed statistical information on the earnings of men and women according to occupational group and industry, as well as on an hourly basis, if possible.**

*Articles 1 and 2 of the Convention. Legislation.* The Committee recalls its previous comments concerning the Equal Opportunity Act, 2000, which prohibits discrimination in employment, including in respect of remuneration. However, the Act contains no specific provisions regarding equal remuneration for men and women for work of equal value. **Recalling its previous comments on this matter, as well as its 2006 general observation, the Committee asks the Government to provide information on any measures taken to give full legislative expression to the Convention's principle.**

*Collective agreements.* The Committee previously asked the Government to provide information on the progress made in removing sex discriminatory provisions from collective agreements. **Noting that the Government has not yet replied to this request, the Committee asks the Government to provide this information in its next report. It also asks the Government to provide the report of the Joint Working Party on Reclassification regarding all the jobs in the bargaining unit represented by the National Union of Government and Federated Workers, which has still not been received by the ILO.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Legislation.* The Committee recalls that the Equal Opportunity Act which set up an Equal Opportunity Commission and an Equal Opportunities Tribunal was declared unconstitutional by the High Court of Trinidad and Tobago in May 2004. In its

report, the Government indicates that the decision of the High Court was appealed and that the Court of Appeal delivered its judgement on 26 January 2006, upholding the decision of the High Court. A further appeal was made to the Privy Council (No. 84 of 2006) which delivered its judgement on 15 October 2007. The Privy Council overturned the decision of the Court of Appeal, ruling that the creation of the Equal Opportunity Tribunal by the Act is not unconstitutional. The Committee notes that the members of the Equal Opportunity Commission were appointed in April 2008 and that the Government is preparing for the setting up of the Equal Opportunity Tribunal. ***The Committee requests the Government to continue to provide information on further developments with regard to the establishment and functioning of the Equal Opportunity Commission and Tribunal, and the implementation and enforcement of the Equal Opportunity Act.***

The Committee recalls its longstanding comments expressing concern about the discriminatory nature of the provisions of several government regulations, which provide that married female officers may have their employment terminated if family obligations affect their efficient performance of duties (section 57 of the Public Service Commission Regulations; section 52 of the Police Commission Regulations; and section 58 of the Statutory Authorities' Service Commission Regulation). It also noted that a female officer who marries must report the fact of her marriage to the Public Service Commission (section 14(2) of the Civil Service Regulations). With respect to section 14(2) of the Civil Service Regulations, the Committee had taken note of the Government's view that this provision is not considered discriminatory in Trinidad and Tobago, as it is an administrative matter related to the practice of women changing their names upon marriage. However, in order to avoid the potential discriminatory impact of such a provision on women, the Committee had suggested that the Civil Service Regulations be amended to require notification of name change of both men and women. The Committee notes the Government's statement that steps are being taken to have the relevant regulations amended in accordance with the Committee's comments. ***Noting the statement of the Government and given the serious nature of the matter, the Committee urges the Government to take the necessary action to bring the regulations concerned into conformity with the Convention, and to indicate in its next report the specific steps taken, the progress, if any, made or any difficulties encountered in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Tunisia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 2 and 3 of the Convention. National policy relating to discrimination on grounds other than sex.* The Committee notes with ***regret*** that the Government has once again failed to provide any details on the measures adopted to combat discrimination on grounds of race, colour, national extraction, religion, political opinion and social origin in the context of a national policy of equality of opportunity and treatment. The Committee notes that the Government reiterates its indication that under article 6 of the Constitution all Tunisians have the same rights and the same duties and are equal before the law. It also notes the Government's indication that the competent services of the Ministry of Employment and the Vocational Integration of Youth have not reported any case of discrimination based on race, colour, religion, political opinion, national extraction or social origin in relation to employment and occupation, and that no complaints have been registered by the administrative services or the courts.

The Committee once again reminds the Government that constitutional provisions providing for equal protection under law are not sufficient in themselves to ensure the full application of the Convention. Similarly, the fact that the authorities have not received any complaints does not mean that there is no discrimination in the country. The Committee considers that this may on the other hand indicate that the victims either have an inadequate knowledge of the relevant legal provisions and dispute resolution procedures available, or fear possible reprisals by the employer. The Committee also wishes to emphasize once again that *Article 2* of the Convention requires the Government to declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating any discrimination in employment and occupation on the basis of the criteria set out in the Convention. ***The Committee requests the Government to:***

- (i) consider in the context of a national policy of equality of opportunity and treatment adopting legislation explicitly prohibiting discrimination based on race, colour, national extraction, religion, political opinion or social origin, and to take concrete measures to eliminate such discrimination in practice;***
- (ii) take measures to raise awareness in the public and among the social partners of the principles set out in the Convention and the legal provisions relating to equality of opportunity and treatment in employment and occupation;***
- (iii) take measures, for example in the form of studies, to evaluate the effectiveness of dispute resolution procedures, including any difficulties of a practical nature encountered by men or women workers in obtaining legal redress for discrimination based on any of the grounds set out in the Convention.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to taken the necessary action in the near future.***

## Turkey

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Training and awareness raising.* In its previous observation, the Committee asked the Government to provide information on any measures taken to promote awareness and understanding of the principle of equal remuneration for men and women for work of equal value as set out in the Convention and section 5(4) of the Labour Act, among relevant target groups,

including labour inspectors. In its report, the Government provides information on a number of activities and projects aimed at the promotion of gender equality more generally and greater access to employment for women. However, the information does not indicate whether any specific activities were undertaken to promote understanding and awareness of the principles of the Convention. In this context, the Committee notes that according to the Confederation of Turkish Trade Unions (TÜRK-İS), inadequate supervision by the labour administration is one of the reasons for unequal pay between men and women. ***The Committee hopes that the Government, in consultation with the workers' and employers' organizations, will carry out training and awareness-raising activities specifically addressing equal remuneration for men and women for work of equal value among relevant target groups, including labour inspectors, and asks it to provide information on the measures taken in this regard.***

***Labour inspection.*** The Committee notes the Government's indication that there is currently no system for classifying infringements identified by the labour inspectorate according to the related provisions of the labour legislation. However, it indicates that a new system is to be established allowing for such a classification. ***The Committee welcomes this information and hopes that the new system will allow the labour inspectors to establish data on the number, nature and outcome of infringements of section 5(4) with regard to equal remuneration of men and women for work of equal value. The Committee asks the Government to provide information on the number, nature and outcomes of the cases addressed by the labour inspectorate under section 5(4) of the Labour Code, as soon as possible.***

***Article 3 of the Convention. Objective job evaluation.*** The Committee notes that the Government has provided no information in reply to its previous comments on the issue of objective job evaluation. However, it welcomes the information provided by the Turkish Confederation of Employers' Associations (TISK) on the use of objective job evaluation systems by its affiliates. For instance, the Metal Industry Job Classification System (MIDS) examines jobs on the basis of twelve factors which are classified under four main factors, namely dexterity, responsibility, effort and working conditions. In 2007, the Union of Turkish Metal Industrialists organized seminars for heads of human resources departments in four cities with a view to making the MIDS known, and assessing problems in its application and possible solutions to them. ***The Committee asks the Government once again to provide information on any steps it is taking to promote objective job evaluation as envisaged in Article 3 of the Convention, both in the private and public sectors, including information on any measures taken to ensure that equal remuneration for men and women for work of equal value is made an explicit objective of job evaluation.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the Government's report, as well as the comments made by the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ), which were attached to the report.

***Articles 1 and 2 of the Convention. Discrimination based on political opinion.*** The Committee recalls its previous comments concerning the application of the Anti-Terrorism Act or the Penal Code in cases involving journalists, writers and publishers expressing their political opinions. ***Noting that the Government has provided no information, the Committee requests the Government once again to provide information on the number and outcomes of cases against journalists, writers and publishers, including a brief summary of the facts and specific charges brought. The Committee also requests the Government to provide information on any measures taken, including legislative measures, to ensure that no journalist, writer or publisher is restricted in the exercise of their employment or occupation because of political opinions expressed by them.***

***Article 2. Equality of opportunity and treatment for women and men.*** The Committee notes from ILO statistical data that the rate of economically active women (15 years of age and more) further declined to 24.5 per cent in 2008 (24.8 per cent in 2005). By comparison the activity rate for men was 70.1 per cent in 2008 (72.2 per cent in 2005). The Committee notes that between 2001 and 2008 there was a decline of economic activity of women younger than 20 years of age and of women older than 45 years of age. The decline of economic activity of younger women, which coincides with their increasing participation in education, has translated into some increases of economic activity of women between 20 and 45 years of age. The Committee notes that according to the Government's report the enrolment rate of girls in secondary school was 55.8 per cent in 2007–08, compared to 61.1 per cent for boys for the same period.

The Committee welcomes progress towards equal opportunities of men and women in education, but notes with ***concern*** the continuing overall low level of participation of women in the labour market, and particularly the decline of the activity rate of women older than 45 years of age. In its previous observation, the Committee requested the Government to provide detailed information on the measures taken to promote equality of opportunity and treatment of men and women in employment and occupation. The Committee notes that the Government's report refers to the equal treatment provisions of the Constitution, the Labour Code and the regulations governing active labour market programmes; that 13,123 unemployed women and 30,418 unemployed men have participated in training courses and integration programs organized by the Turkish National Employment Agency; the preparation of legislative amendments regarding paternity leave which the Committee already noted in 2007; and efforts to analyse the situation of women in the labour market in the context of the European Employment Strategy. The Committee notes that the Government has provided very little information on practical and promotional measures to promote women's equality of opportunity and treatment in practice and that no information was provided on the follow-up to the Women's Employment Summit held in Istanbul in 2006, or any related collaboration with workers' and employers' organizations. The TISK refers to 24 projects to assist unemployed women and youth to acquire vocational skills and experience submitted in April 2008 under a scheme financed by the European Union. The TISK also states that as a corollary to the National Employment Strategy the National Employment Policy for Women needs to be implemented. TÜRK-İŞ considers that the vocational training institutions at the provincial level did not function satisfactorily. ***Noting that overcoming the persisting inequality between men and women in the labour market will require proactive policies and measures, the Committee requests the Government to provide more detailed information on the practical measures or projects implemented to promote women's equal opportunities and treatment in employment and occupation, including specific measures targeting women in rural areas and women over 45 years of age. The Committee requests the Government to provide information on any measures taken to follow up on the 2006 Women's Employment Summit, including the steps taken to cooperate with the social partners. Further,***



***the Committee reiterates its request to the Government to provide detailed statistical information on the situation of men and women in the labour market, including their participation in the various sectors and occupations.***

In its previous comments, the Committee requested the Government to provide an assessment of the impact of the current prohibition for university students to wear head coverings on the participation in higher education of women wishing to wear headscarves out of religious obligation or conviction. In this regard, the Committee asked the Government to provide information on the number of female students expelled from universities for wearing headscarves on university premises. In reply to these comments, the Government indicates that it was not in a position to provide such information. The Committee recalls its previous comments in which it has pointed out that, while the existing prohibition of head coverings includes all forms of coverings and applies to men and women, this measure may have a discriminatory effect on women with regard to their access to university education. ***The Committee therefore reiterates its request to the Government to obtain and provide information on the number of female students expelled from universities for wearing headscarves on university premises, and to report on the measures taken to assess and review this matter.***

***Articles 1, 2 and 3. Legal protection from discrimination in respect of recruitment and selection.*** The Committee recalls that section 5(1) of the Labour Code prohibits any discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect or similar reasons in the employment relationship. In its previous comments the Committee has concluded that this provision does not prohibit discrimination at the recruitment stage. However, the Committee has noted that section 122 of the Turkish Penal Code, which entered into force in 2005, provides that a person, practising discrimination on grounds of language, race, colour, sex, disability, political opinion, philosophical beliefs, religion, creed or other grounds, who makes the employment of a person contingent on one of these grounds or who prevents a person from carrying out an ordinary economic activity shall be sentenced to imprisonment for a term of six months to one year or a judicial fine. The Committee notes that as indicated by the Government there has been one case invoking section 122 of the Penal Code. ***Recalling that under the Convention, there is an obligation to address discrimination in respect of access to employment, including recruitment and selection, the Committee requests the Government to continue to provide information on the number, nature and outcome of criminal proceedings under section 122 of the Penal Code to allow the Committee to ascertain whether effective protection from discrimination at the recruitment stage is available under the existing legislation. The Committee also requests the Government to indicate whether persons considering themselves victims of discrimination in recruitment can bring complaints under section 122 of the Penal Code and whether they can obtain compensation or other remedies.***

***Enforcement of section 5 of the Labour Code.*** In its previous comments, the Committee noted that according to trade union comments it had received, discrimination continues to occur in practice, despite the equal treatment clause set out in section 5 of the Labour Code. In reply to the Committee's request for information on the measures taken by the labour inspectorate to monitor compliance with these provisions, the Government generally states that compliance with section 5 is being considered in the context of inspections and that an individual application can trigger an inspection. However, the data provided do not indicate whether any of the inspections carried out or fines imposed involved issues under section 5 of the Labour Code. ***The Committee requests the Government to provide information on whether the labour inspectorate has dealt with any cases under section 5 of the Labour Code and it reiterates its request to the Government to indicate whether the courts have decided any such cases. Please indicate the number, nature and outcome of such cases.***

***Articles 1, 2 and 3(d). Application of the Convention in the civil service.*** The Committee recalls the concerns expressed by the Confederation of Public Employees Trade Unions (KESK) that the legislation covering public employees was lacking non-discrimination provisions, indicating that the general protection against discrimination based on sex available under article 10 of the Constitution was insufficient. The KESK referred to instances of discriminatory job announcements and unequal access of women to managerial positions in the civil service. In reply to the Committee's previous comments regarding this matter, the Government states that civil servants are nominated according to the result of a centralized examination throughout the country. Interviews are only conducted for a limited number of positions, which, in the Government's view, reduce the possibility of discrimination. Further, the Government asserts that there is no gender discrimination as regards appointment to higher level positions. ***While noting this information, the Committee trusts that the Government will take swift action to address any allegations of discrimination in the civil service. It also requests the Government to provide detailed statistical information on the participation of men and women in the examinations for different branches and positions in the civil service, the actual number of appointments made after interviews and the measures taken to promote equal opportunities for men and women, including measures to allow men and women to reconcile work and family responsibilities.***

The Committee further recalls its previous comments in which it expressed concern that security investigations may lead to exclusions from civil service employment contrary to the requirements of the Convention, for instance due to having peacefully expressed political opinions. ***Noting that the Government failed to provide the information requested by the Committee in this regard, the Committee once again requests the Government to assess the extent to which security investigations have led to exclusions from public employment, and indicate the outcome of such assessment. In this context, the Committee requests the Government to indicate the number of administrative appeals filed by persons excluded from public employment on the basis of security investigations and the outcomes of these proceedings.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Ukraine

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)***

***Articles 1 and 2 of the Convention. Equal remuneration for men and women for work of equal value.*** The Committee recalls its previous observation noting that section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, 2006, requiring the employer to ensure equal pay for men and women for work involving equal skills and working conditions is more restrictive than the principle of equal remuneration for men and women for work of equal value as set out in the Convention. Furthermore, by linking the right to equal remuneration for men and women to two specific factors of comparison (skills, working conditions), the Committee considered that section 17 may have the effect of discouraging or even excluding objective job evaluation on the basis of a wider range of criteria, which is crucial in order to eliminate effectively the discriminatory undervaluation of jobs traditionally performed by

women. The Committee consequently urged the Government to take the necessary steps to amend the legislation to give full legislative expression to the principle of equal remuneration for men and women for work of equal value.

The Committee notes that the Parliamentary Committee on Social Policy and Labour, with the support of the Project “Gender Equality in the World of Work in Ukraine”, co-funded by the European Union (EU) and the International Labour Office (ILO), organized on 27 May 2010, a high-level round-table discussion on the implementation of Convention No. 100 and of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which included a discussion on the Committee’s comments regarding the application of the Convention. The Committee notes that this event resulted in the adoption of specific recommendations intended to serve as a roadmap for the authorities and the social partners in bringing the national gender equality legislation into compliance with international labour standards. ***The Committee asks the Government to take the necessary steps to follow-up on the recommendations approved by the Parliamentary Committee on Social Policy and Labour with a view to giving full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee further asks the Government to provide information on the implementation and enforcement of the current equal remuneration provisions of section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, 2006, including information on the number and outcome of any relevant cases dealt with by the competent administrative authorities or the courts.***

*Articles 2(2)(c) and 4. Collective agreements.* The Committee recalls that section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, 2006, provides that collective agreements at the different levels should include provisions which ensure equal rights and opportunities for women and men and that agreements should, inter alia, envisage the elimination of inequality in the remuneration of the labour of men and women, wherever it exists. The Committee notes that one of the recommendations adopted by the Parliamentary Committee on Social Policy and Labour was for the parties to the General Agreement to reproduce the gender equality principle in the Agreement pursuant to section 18 of the Law of 2006. ***The Committee asks the Government to indicate the follow-up by the social partners to the insertion of a gender equality provision in the General Agreement, including on equal remuneration for men and women for work of equal value, as well as any other steps taken by the Government to cooperate with the social partners to ensure that collective agreements promote equal remuneration for men and women for work of equal value, as well as examples of relevant provisions of collective agreements.***

*Article 3. Objective job evaluation.* The Committee notes the Government’s description of the manner in which wages are being established, notably that official salary rates are established based on the complexity of the work, the organizational and legal level of a position, the functions and working conditions, and that wages in sectoral agreements are broken down by occupation and occupational qualifications without making distinctions between men and women. The Government adds that wage and salary levels are therefore established irrespective of gender. The Committee notes that it continues to remain unclear whether the methods used to evaluate the work performed in the different jobs and occupations are appropriate to eliminate gender bias in determining wage rates, including the undervaluation of jobs and occupations that are predominantly carried out by women, resulting in lower wages compared to those applying for jobs and occupations predominantly carried out by men. ***The Committee asks the Government to take specific measures to promote the use of objective job evaluation methods free from gender bias with a view to promoting and ensuring the establishment of wages and salary scales in accordance with the principle of equal remuneration for men and women for work of equal value.***

*Statistical information.* The Committee notes from the Government’s report that, according to data from the State Statistics Committee, monthly wages in 2009 were 1,677 Ukrainian Hryvnia (UAH) for women and UAH2,173 for men, reflecting a monthly wage gap of 23 per cent (compared to 27.3 per cent in 2007). While noting that the gender wage gap with respect to average monthly wages appears to be decreasing, the Committee notes that the gender wage gap is still very high. The Committee further notes that one of the recommendations adopted by the Parliamentary Committee on Social Policy and Labour is to ensure the collection and analysis of statistical data, particularly on the wages of men and women at the various grades and levels of the civil service, by occupational groups, and in the private and public sectors in accordance with the general observation on this Convention of 1998. ***The Committee asks the Government to make every effort to collect, analyse and supply statistical data on the earnings of men and women, in as much detail as possible, including data on the earnings in the different economic sectors and occupations in the private and public sectors.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)***

The Committee notes the communication of the National Forum of Trade Unions of Ukraine (NFTU), received on 30 April 2010, submitting comments on the draft Labour Code, and the Government’s reply received on 1 October 2010.

*Discrimination on the basis of race, colour or national extraction.* The Committee notes with **regret** that, despite the Committee’s repeated requests, the Government’s report includes no information on the measures taken or envisaged to ensure and promote equality of opportunity and treatment in employment and occupation on the grounds of race, colour and national extraction, and particularly the measures taken in respect of the Crimean Tartars and the Roma. The Committee reminds the Government of its obligation to adopt and implement a policy to promote equality in employment

and occupation with a view to eliminating discrimination on all the grounds referred to in the Convention, including any discrimination on grounds of race, colour or national extraction in employment faced by groups and communities such as the Crimean Tartars and the Roma. In this context, the Committee recalls that the United Nations Committee on the Elimination of Racial Discrimination (CERD) in its concluding observations of 17 August 2006 expressed concerns over reports indicating that many Roma are deprived of their right to equal access to employment and education. The Crimean Tartars reportedly remain under-represented in the public service of the Autonomous Republic of Crimea and many of them have been excluded from the agrarian land privatization process (CERD/C/UKR/CO/18, paragraphs 11, 14 and 15). Similar issues were raised more recently by the European Commission against Racism and Intolerance in its third report on the Ukraine (CRI(2008)4, of 12 February 2008). ***The Committee urges the Government to provide full information on the measures taken to promote and ensure equality of opportunity and treatment in employment and occupation of the Crimean Tartars and the Roma. It also requests the Government to provide statistical data indicating the extent to which members of both communities participate in vocational training, as well as in public and private employment.***

***Discrimination based on sex.*** In its previous observation, the Committee requested the Government to provide information on the progress made in implementing the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including information on any examples of positive action taken by employers, and the activities carried out by the different components of the national machinery to promote gender equality at work. The Committee also requested information on the number, nature and outcome of any appeals concerning employment discrimination filed under section 22 of the Law. ***Noting that the Government's report, although containing general explanations regarding the applicable legislation, does not reply to these requests for information, the Committee urges the Government to provide this information in its next report. While noting the information provided regarding the rates of economic activity of men and women and regarding the number of women who have benefited from the services provided by the State Employment Service, the Committee reiterates its request to the Government to provide detailed statistical information on the participation of men and women in the different jobs, occupations and sectors of the economy, including data on women's employment in managerial and decision-making positions (private and public sectors).***

***Sexual harassment.*** The Committee recalls its previous comments regarding section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men under which the employer must take measures to prevent sexual harassment, which is defined as “actions of a sexual nature, expressed verbally (threats, intimidation, indecent remarks) or physically (touching, slapping), which humiliate or insult persons who are in a position of subordination in terms of their employment, official, material or other status” (section 1). As noted previously, this definition would not appear to cover situations where conduct of a sexual nature creates a hostile working environment, irrespective of whether there is a relationship of subordination between the harasser and the victim. The Committee notes that following a high-level round table discussion organized in May 2010 by the Parliamentary Committee on Social Policy and Labour with the support of the project “Gender Equality in the World of Work in Ukraine”, co-funded by the European Union (EU) and the International Labour Office (ILO), a tripartite working group was established to elaborate amendments to the equality legislation, including provisions expanding the definition of sexual harassment and provisions relating to its prevention, including at the workplace. ***The Committee therefore requests the Government to take the necessary steps to expand the definition of sexual harassment to extend beyond relationships of subordination and to cover hostile environment sexual harassment, and to indicate the progress made in this regard. The Committee further reiterates its request to the Government to provide information on any complaints of sexual harassment received and addressed by the competent authorities.***

***Cooperation with employers' and workers' organizations.*** The Committee recalls that section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men recognizes that collective bargaining should contribute to the promotion of gender equality at work by providing that collective agreements and contracts should contain provisions promoting gender equality, including time lines for the implementation of such provisions. In this context, the Committee notes that the EU–ILO technical cooperation project on gender equality in Ukraine seeks, among other things, to enable the social partners to promote, implement and monitor relevant international commitments and national laws and policies. ***Noting that the Government's report does not reply to the previous comments regarding this matter, the Committee once again requests the Government to provide information on the implementation of section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including examples of collective agreements that promote and ensure gender equality in accordance with the Law. Please indicate any measures taken to seek the collaboration of employers' and workers' organizations on this matter, and any measures taken to support the social partners in relation to gender equality matters.***

***National policy on gender equality.*** The Committee notes that the round table organized by the Parliamentary Committee on Social Policy and Labour in May 2010 resulted in the adoption of a series of recommendations, including providing a clearer definition of gender-based discrimination covering both direct and indirect discrimination, collecting and analysing appropriate data disaggregated by sex on employment and occupation, developing a National Programme on Gender Equality, conducting large-scale public awareness-raising activities on gender equality and the need to eliminate gender-based stereotypes, and taking measures to strengthen the capacity of the enforcement bodies to identify and eliminate gender discrimination. ***The Committee requests the Government to indicate the measures taken to follow up the recommendations of the Parliamentary Committee on Social Policy and Labour.***

*Draft Labour Code.* The Committee notes that the NFTU refers to the need to include the grounds of gender and conditions of birth in the draft provisions prohibiting discrimination, the need for provisions prohibiting workplace discrimination by companies, as well as procedures of investigation and sanctions for companies allowing such discrimination; and the prohibition of HIV/AIDS testing in compulsory medical examinations. The NFTU also considers restrictions on women's rights to work in hard and dangerous working conditions, if they are physically fit to do so, as being unfair. The Committee notes the Government's reply, received on 1 October 2010, which cites section 4 of the draft Labour Code. ***The Committee asks the Government to take into account the concerns raised by the NFTU in the context of the drafting process and to ensure that the new Labour Code provides effective protection against direct and indirect discrimination on all the grounds covered by the Convention and with respect to all aspects of employment and occupation. The Government is also requested to ensure that restrictions on women's employment are strictly related to maternity, and not based on stereotyped presumptions regarding the type of employment suitable for women, and to provide information on any developments with respect to the status of the adoption of the draft Labour Code.***

## United Kingdom

### Gibraltar

#### ***Equal Remuneration Convention, 1951 (No. 100)***

*Gender remuneration gap.* The Committee notes from the Employment Survey Report published by the Statistics Office that the gender remuneration gap for 2009, based on average monthly earnings for full-time jobs was 27 per cent. Based on average weekly earnings for full-time employees, the gap increases to 33 per cent. The Committee notes that in some industries the gap is particularly high (based on average monthly earnings for full-time jobs), including in financial intermediation (46.4 per cent) and health and social work (40 per cent), and in occupations such as managers and senior officials (29 per cent). ***Noting the wide gender remuneration gap, and that the Government provides no information in this regard in response to its previous request, the Committee urges the Government to take measures to analyse and address the causes of the gender remuneration gap, including studies and surveys, and to provide detailed information in this regard. Please also continue to provide information on the earnings of men and women in the various industries and occupations, in both the public and private sectors.***

*Article 1 of the Convention.* The Committee noted previously the provisions of the Equal Opportunities Act, 2006, related to equal remuneration for work of equal value, and asked for information on the implementation and enforcement thereof. The Committee notes the Government's indication that there have been no relevant court cases or violations detected regarding the principle of the Convention. ***The Committee once again asks the Government to provide specific information regarding the practical implementation and enforcement of section 31 of the Equal Opportunities Act. Noting the absence of cases and violations detected or reported, the Committee asks the Government to take specific measures to promote awareness of the equal remuneration provisions and the dispute resolution procedures available, among workers, employers and their representatives, as well as government officials. Please provide specific information on the measures taken to enhance the capacity of the responsible authorities, including judges, labour inspectors and other public officials, to identify and address issues concerning section 31 of the Equal Opportunities Act.***

*Article 2. Collective agreements, minimum wages.* The Committee recalls that, pursuant to section 63(2)(a) and (b) of the Equal Opportunities Act, terms contained in a collective agreement or any rule made by an employer are void where "the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of this Act" or "the term or rule is included or made in furtherance of an act which is unlawful by virtue of this Act". ***Noting that the Government provides no information in response to its previous request, the Committee once again asks the Government to indicate whether section 63 renders void terms of collective agreements or terms or rules of undertakings that violate the right to equal remuneration for men and women for work of equal value. The Committee would also welcome receiving copies of collective agreements that contain specific clauses regarding equal remuneration for work of equal value. Noting that the Conditions of Employment (Standard Minimum Wage) Order, 2001, as amended in 2008, excludes domestic workers, the Committee asks the Government to provide information on the number of men and women employed as domestic workers, and how it is ensured that the work of these workers is not undervalued.***

*Article 3. Objective job evaluation.* The Committee notes that the Government has provided no information regarding the promotion and use of methods for the objective evaluation of jobs, as previously requested. ***Noting that the Equal Opportunities Act refers to notions of "work rated as equivalent" and "work of equal value", the Committee asks the Government to take measures to promote the development and use of objective job evaluation methods, and draws the Government's attention to its 2006 general observation in this regard.***

## Yemen

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*National policy on equality of opportunity with respect to political opinion, national extraction and social origin.* The Committee **regrets** to note the Government's failure to reply to the Committee's repeated requests for information on the measures taken to adopt and implement a national policy with respect to all the grounds set out in the Convention. **The Committee urges the Government to take immediate steps to collect and provide detailed information on all the measures taken or envisaged to ensure that no discrimination on the basis of political opinion, national extraction and social origin occurs in employment and occupation in accordance with Articles 2 and 3 of the Convention.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 100** (Albania, Algeria, Argentina, Australia, Australia: Norfolk Island, Azerbaijan, Bahamas, Belarus, Belgium, Benin, Botswana, Burkina Faso, Burundi, Cambodia, Canada, Chile, China, China: Macau Special Administrative Region, Comoros, Congo, Croatia, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, France: French Polynesia, France: New Caledonia, Gambia, Germany, Guinea, Guinea-Bissau, Guyana, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Ireland, Israel, Italy, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lesotho, Malawi, Mali, Malta, Republic of Moldova, Montenegro, Mozambique, New Zealand: Tokelau, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Spain, Sudan, Syrian Arab Republic, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, Uzbekistan, Yemen, Zambia, Zimbabwe); **Convention No. 111** (Algeria, Argentina, Australia, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Benin, Burkina Faso, Burundi, Cambodia, Canada, Chile, China: Macau Special Administrative Region, Congo, Côte d'Ivoire, Croatia, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Finland, France, France: French Polynesia, France: French Southern and Antarctic Territories, France: New Caledonia, Gambia, Germany, Guinea, Guinea-Bissau, Guyana, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Jordan, Latvia, Lesotho, Liberia, Luxembourg, Malawi, Mali, Malta, Mexico, Republic of Moldova, Mongolia, Montenegro, Mozambique, New Zealand: Tokelau, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Seychelles, Sudan, Syrian Arab Republic, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, United Kingdom, Uzbekistan, Yemen, Zambia, Zimbabwe); **Convention No. 156** (Albania, Belize, Plurinational State of Bolivia, Ethiopia, Guinea, The former Yugoslav Republic of Macedonia).

## Tripartite consultation

### Burundi

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its 2007 observation which read as follows:

*Article 5(1) of the Convention. Tripartite consultations required by the Convention.* The Government stated in a brief report received in November 2007 that it has prepared a note on Conventions to ratify or denunciate. This note has been transmitted to the Burundi Employers Association (AEB) and the Trade Union Confederation of Burundi (COSYBU). The result of these consultations will be communicated to the ILO. *Referring to its 2006 observation, the Committee trusts that the Government will be able to provide detailed information on the content and results of tripartite consultations held during the period covered by the report, on questions concerning international labour standards, and in particular on the reports to be made to the ILO as well as the re-examination of unratified Conventions and of Recommendations (Article 5(1)(c) and (d)).*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### Congo

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its 2008 observation which read as follows:

*Article 2 of the Convention. Effective tripartite consultations.* In its report received in January 2008, the Government indicates that in compliance with the Convention an Advisory Technical Committee on International Labour Standards, composed of representatives of the administration, unions and employers, was established by Order No. 788 of 6 September 1999. The Committee refers to its previous comments in which it noted the Government's statement that, due to a lack of adequate financial resources, the Advisory Technical Committee was still not operational. *The Committee therefore requests the Government to provide information on the steps taken to establish the Advisory Technical Committee on International Labour Standards, with a description of the consultation procedures established within the Committee in accordance with Article 2 of the Convention.*

*Article 4(2). Training.* The Government indicates that the necessary training for participants in the consultation procedures is provided by the State. *The Committee requests the Government to continue providing information on training for persons participating in consultation procedures, with an indication of whether arrangements have been made or are envisaged to finance the necessary training for such participants.*

*Article 5(1). Tripartite consultations required by the Convention.* The Government indicates that the consultations cover general conditions of labour and government replies to questionnaires concerning items on the agenda of the Conference. The Committee recalls that, under the terms of *Article 5(1)*, tripartite consultations also have to be held on the submission to the National Assembly of the instruments adopted by the Conference, the re-examination at appropriate intervals of unratified Conventions and of Recommendations, reports on ratified Conventions and the denunciation of ratified Conventions. *The Committee refers to its comments on the constitutional obligation of submission and requests the Government to provide detailed information on the tripartite consultations held, including those in the Advisory Technical Committee on International Labour Standards, on each of the issues covered by Article 5(1) during the period covered by the next report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### Czech Republic

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

*Effective tripartite consultations. Questions arising out of article 22 reports.* In its previous comments, the Committee invited the Government and social partners to promote effective consultation in relation to the preparation of the reports required on the application of the ratified Conventions (*Article 5(1)(d) of the Convention*). In the report received in October 2010, the Czech-Moravian Confederation of Trade Unions (CMKOS) indicated that, while appreciating the consultation on the draft reports on the application of international labour standards, it would prefer to have more time to consider these draft reports and submit its comments. The Government confirms its willingness to provide more time to social partners to consider the draft reports and recognizes that it is important to identify critical issues raised by the social partners in the reports as soon as possible and if necessary, to discuss such issues with them. In this way, issues could be clarified and where appropriate, effective and immediate measures could be taken to fully comply with Convention requirements. The Government believes that such an approach, which gives additional space for opinions of workers and employers to be heard, strengthens social dialogue at the national level on the application of ILO Conventions and helps produce more relevant reports on ratified Conventions. The Government further states that it will work towards improving time management of the whole reporting system. *The Committee welcomes this approach in promoting effective consultations required by the Convention on this matter and invites the Government to continue to*

**report on measures taken to promote tripartite consultations on international labour standards and on any follow-up to recommendations derived from such consultations.**

*Re-examination of unratified Conventions and denunciation of Conventions.* The Committee notes with **interest** that, following consultations with the social partners, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), was submitted in 2007 and was ratified in October 2008, and further recalls that the denunciation of the Underground Work (Women) Convention, 1935 (No. 45), was registered in April 2008. The Committee recalls that the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), was registered in October 2000. The Government indicates in its report that, as regards the last governance Conventions to be ratified – the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129) – following a re-assessment of national legislation and practice in the area of labour inspection, proposals for ratification of Conventions Nos 81 and 129 were submitted to the social partners for comments and subsequently to the Cabinet for approval. The Cabinet agreed on both proposals in June 2010 and the proposals were submitted to Parliament and are currently under discussion. Regarding the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), CMKOS reiterates that while the legal conditions for ratification of Conventions Nos 151 and 154 are met, the Government has taken no further action in this regard. The Government indicates that it is prepared to discuss this issue through the Council of the Economic and Social Agreement Working Group on cooperation with the ILO. **The Committee invites the Government to include information in its next report on the consultations held to re-examine the prospects of ratification of unratified Conventions (Article 5(1)(c) of the Convention).**

## Democratic Republic of the Congo

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)**

*Articles 2 and 5(1) of the Convention. Effective tripartite consultations.* The Committee notes the Government's report received in June 2010. In its previous comments the Committee expressed concern at the fact that the Government had not provided information on the application of the Convention since July 2004 and had emphasized that technical assistance might be useful to rectify the situation. The ILO undertook a mission to Kinshasa in May 2010 precisely for this purpose. The Committee notes with **interest** the ministerial orders adopted after consultation with the National Labour Council in order to apply the Labour Code, and the reports of extraordinary meetings of the National Labour Council held in July 2005 and March 2008. The Government also indicates that the Standing Committee on Social Dialogue, which was established in September 2007, has provided the social partners with a new forum for discussing key economic and social issues, particularly with regard to the revision of minimum wages. The Committee also notes the fact that the Government forwards to the workers' and employers' organizations the documents sent by the ILO for preparing items on the agenda of the International Labour Conference and also the reports on the application of Conventions and Recommendations. **The Committee hopes that in its next report the Government will be in a position to announce further progress on tripartite consultations held on each of the matters relating to international labour standards covered by the Convention.**

*Article 3. Choice of employers' and workers' representatives.* The Committee notes that the Government organized trade union elections for the fifth time, between October 2008 and July 2009. **It requests the Government to indicate in its next report who were the employers' and workers' representatives chosen for the purpose of tripartite consultations covered by the Convention and to state the manner in which it was ensured that they were freely chosen by their representative organizations.**

## Grenada

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

*Tripartite consultations required under the Convention.* The Committee notes that the brief statement contained in the report submitted by the Government in November 2009 does not provide any information on the consultations required on the Convention. **It must invite again the Government to provide information on the measures taken to ensure effective tripartite consultations within the meaning of the Convention, including detailed information on the consultations held by the Labour Advisory Board on each of the subjects concerning international labour standards listed in Article 5(1) of the Convention.**

**[The Government is asked to reply in detail to the present comments in 2011.]**

## Guinea

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observations which read as follows:

*Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention.* In a report received in May 2005, the Government recalled that, with a view to holding tripartite consultations on matters relating to ILO activities, it established an Advisory Committee on Labour and Social Legislation (CCTLS) in 1995. However, the Government recognized that this body has met rarely since its establishment and that there has been no tripartite dialogue on the items on the agenda of the Conference. The Government indicated that this situation is due, among other factors, to the lack of reaction of the social partners. Furthermore, the Government reported that, following a tripartite workshop on international labour standards held in October 2004, the Department of Employment and the Public Service renewed the officers of the CCTLS and relaunched legislative activities. The Committee expresses again the firm hope that the Government will be in a position to provide information in its next report on the measures adopted to ensure effective tripartite consultations on the matters covered by the Convention. ***It requests the Government to provide reports regularly containing detailed information on the consultations held on all the subjects covered by Article 5(1), including precise information on the activities of the Advisory Committee on Labour and Social Legislation.***

*Article 4. Financing of training.* The Government indicated that there are no specific arrangements for the training of participants. However, when training is initiated at the national level by the competent authority in the context of social consultations, it is generally tripartite in nature. In this respect, the Committee recalls that, where training for participants in the consultations proves to be necessary to enable them to perform their functions effectively, its financing should be covered by appropriate arrangements between the Government and the representative organizations (see the General Survey of 2000 on tripartite consultation, paragraphs 125 and 126). It requests the Government to take measures for this purpose and to describe in its next report, where appropriate, the content of these arrangements (*Article 4(2)*). Finally, the Government indicated that a training programme was envisaged in the context of the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF), but that, in the absence of any reaction by the social partners, it was limited to activities initiated by the Ministry of Employment and the Public Service and carried out at the national level. ***The Committee requests the Government to describe in its next report the training activities undertaken in relation to international labour standards. It also requests the Government to provide information on any progress achieved in the implementation of the PRODIAF programme in relation to the necessary training for participants in the consultation procedures, as required by the Convention.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Guyana

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)**

The Committee notes with *regret* 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 matters raised in its previous comments:

*Effective tripartite consultations.* The Committee notes the brief replies supplied by the Government in May 2006 to its 2003 direct request. It refers to its previous comments and recalls again that certain subjects covered by *Article 5(1) of the Convention* (replies to subparagraphs (a), submissions to the National Assembly (b), reports to be made to the ILO (d)) involve annual consultation, while others (re-examination of unratified Conventions and of Recommendations (c), proposals for the denunciation of ratified Conventions (e)) call for less frequent examination. ***The Committee recalls its interest in any consultations concerning unratified Conventions. Please also supply information on the frequency of consultations and the nature of any reports or recommendations resulting therefrom (Article 5(2)).***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Ireland

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)**

*Tripartite consultations required by the Convention.* The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in October 2005. ***The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including particulars on the effective tripartite consultations held on replies to questionnaires concerning items on the agenda of the Conference, proposals made on submission to Parliament of the instruments adopted by the Conference, re-examination of unratified Conventions and Recommendations, questions arising out of the report to be made on the application of Conventions, denunciation of Conventions (Article 5(1) of the Convention).***



## Kenya

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1990)**

*Effective tripartite consultations.* The Committee notes the information provided in the Government's report received in September 2010. The Committee notes with *interest* that the National Labour Board was constituted in November 2008 and had its first meeting in April 2009. The International Labour Standards Committee is one of the committees of the Board. The Government indicates that the Board discussed the unratified ILO Conventions in its third meeting held on 30 March 2010. The Conventions presented for discussion were: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Maternity Protection Convention, 2000 (No. 183), the Safety and Health in Agriculture Convention, 2001 (No. 184), the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), the Maritime Labour Convention, 2006, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Work in Fishing Convention, 2007 (No. 188). The Board referred the matter to the International Labour Standards Committee to study and make appropriate recommendations before presentation to the Board in its next meeting. *The Committee invites the Government to include information on any follow-up to the recommendations of the International Labour Standards Committee of the National Labour Board concerning the prospects of ratification of the abovementioned Conventions (Article 5(1)(c)).*

The Committee further notes that the protocols adopted at the 82nd and 84th Sessions and all the other instruments adopted by the Conference from 2000 to 2007 were submitted to the National Assembly on 13 September 2010. The Government also intends to forward the instruments referenced in the preceding sentence to the National Labour Board. *The Committee also invites the Government to communicate any proposals which may have been made by the National Labour Board regarding these instruments (Article 5(1)(b)).*

## Kuwait

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

*Effective tripartite consultations required by the Conventions.* The Committee notes the reply supplied by the Government to its previous observation in the report received in August 2010. It further notes with *interest* that, following the adoption in February 2010 of new labour legislation for the private sector, a Consultative Committee for Labour Affairs was established by Ministerial Order No. 132/a of 2010. The Committee is presided over by the Ministry of Labour and Social Affairs and is composed of Government representatives, as well as representatives of employers and of workers. The Government also states that it intends to communicate to the Committee all decisions and recommendations formulated by the new Consultative Committee after it holds its first meeting. *The Committee welcomes the Government's intention to provide information on these developments and hopes that the Government will provide in its next report detailed information on the consultations held by the Consultative Committee for Labour Affairs on the matters relating to international labour standards covered by Article 5(1) of the Convention.*

## Liberia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2003)**

*Consultations required by the Convention.* The Committee notes that the Government's report received in May 2010 does not reply to its 2009 direct request. The Committee recalls that consultations required under the Convention are conducted in the context of the National Tripartite Committee which was established in June 2008 following the conclusion of a Memorandum of Understanding among the social partners for the implementation of the Convention. *It invites the Government to provide detailed information on the content and outcome of the tripartite consultations held on each of the matters relating to international labour standards covered by Article 5(1) of the Convention, including information as to the frequency of such consultations and the nature of any reports or recommendations made as a result of the consultations.*

*Representatives of employers and workers.* *The Committee asks the Government to provide information on the manner in which it ensures that the representatives of the Liberia Labour Congress and the Liberia Chamber of Commerce are freely chosen by their representative organizations, and how it ensures that employers and workers are represented on an equal footing on the National Tripartite Committee.*

*Financing of training.* The Committee recalls that the National Tripartite Committee was in dire need of training to improve the capacity-building needs of the social partners. *The Committee invites the Government to report on the*

*arrangements made, possibly with ILO assistance, for the financing of any necessary training of participants in the consultation procedures on international labour standards covered by the Convention (Article 4(2)).*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Madagascar

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

*Articles 2 and 5(1) of the Convention. Effective tripartite consultations required by the Convention.* The Committee notes the indications provided by the Government in a report received in October 2010. The Government indicates that considerable efforts have been made in the context of tripartite consultation and that the role of the social partners in the implementation of economic and social policies is now beginning to increase but that, as the crisis situation in the country has not yet been resolved, it is not possible to provide further information. Under these conditions, the Committee invites the Government and the social partners to promote and strengthen tripartism and social dialogue on the issues relating to international labour standards covered by the Convention. In this respect, it recalls that, in accordance with the 2008 Social Justice Declaration, Convention No. 144 is one of the instruments that is most significant from the viewpoint of governance. ***The Committee requests the Government to provide updated and detailed information in its next report on the manner in which the representatives of employers and workers are selected for the purposes of the procedures covered by the Convention (Article 3 of the Convention) and on the content and outcome of the tripartite consultations undertaken on each of the matters covered by Article 5(1).***

## Malawi

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1986)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2008 observation which read as follows:

*Article 5(1) of the Convention. Tripartite consultations required under the Convention.* The Committee notes a brief report received in May 2008 reiterating that the Government carries out consultations with the social partners as stipulated in the Labour Relations Act of 2000. ***It asks the Government to include in its next report particulars of the tripartite consultations held on each of the matters covered by the Convention, including information on the nature of any reports or recommendations made as a result of such consultations.***

*Article 5(1)(c) and (e).* In its previous comments, the Committee recalled that the ILO Governing Body recommended the denunciation of Conventions Nos 50, 64, 65, 86, 104 and 107 concerning indigenous workers and the ratification of the most updated instrument, the Indigenous and Tribal Peoples Convention, 1989 (No. 169). In the Committee's 2005 direct request on the Underground Work (Women) Convention, 1935 (No. 45), the Government was invited to give favourable consideration to the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), which shifts the emphasis from a specific category of workers to the safety and health protection of all mineworkers, and in turn to denounce Convention No. 45. ***The Committee again invites the stakeholders concerned to hold consultations to re-examine unratified Conventions – such as Conventions Nos 169 and 176 – in order to promote, as appropriate, their implementation, ratification or denunciation.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Nepal

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)**

*Tripartite consultations required by the Convention.* The Committee notes the Government's report received in September 2010. It notes that this report adds no new details or additional information to what was said in 2008. The Government states that it maintains its firm belief in the principle and value of tripartite consultation for maintaining harmonious labour relations in the country. It also refers to a draft law regarding a Labour Commission prepared in 2008. The Committee also notes that the new legislation will incorporate the mechanisms for tripartite consultation. The three social partners are still represented in tripartite committees formed under previous legislation. The Government also recalls that the representatives of the employers and workers are consulted at various levels while preparing different reports or proposals for submission of the instruments adopted by the Conference to the National Assembly. ***The Committee refers to its previous comments and invites the Government to report on the adoption and operation of any new procedure that ensures effective consultations with respect to matters concerning the activities of the ILO set out in the Convention (Article 2(1) of the Convention). It also invites the Government to include in its next report specific information on the content of the consultations held regarding international labour standards, as required by Article 5(1) of the Convention, and especially on questionnaires concerning items on the agenda of the Conference, submission of instruments adopted by the Conference to the National Assembly, and reports to be made on the application of ratified Conventions.***

## Nicaragua

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)**

*Article 5(1) of the Convention. Tripartite consultations required by the Convention.* The Committee notes the Government's report received in August 2010 in reply to the observation of 2009, including information on the consultations held on the matters covered by the Convention. The Government also indicates that, on 18 March 2010, the National Labour Council was set up, with the focus on strengthening social dialogue and real tripartism. The Committee recalls that the powers and duties of the Plenary of the National Labour Council included serving as an entity and means of consultation for the purposes of compliance with the Convention (section 5(j) of Act No. 547 of August 2005). **The Committee requests the Government to supply detailed information in its next report on the consultations held on matters relating to international labour standards provided for in Article 5(1) of the Convention. The Committee requests the Government to specify the activities of the National Labour Council relating to the tripartite consultations required by the Convention.**

*Article 5(1)(d). Transmission of draft reports.* The Committee again observes the Government's indication that copies of the reports have been transmitted to the employers' and workers' organizations. The Committee recalls its previous comments in which it stated that the obligation to consult the representative organizations on the reports to be made concerning the application of ratified conventions, under the terms of *Article 5(1)(d)* of the Convention, must be distinguished from the obligation to communicate reports under article 23(2) of the ILO Constitution. The tripartite consultations required by the Convention must be held during the process of preparing reports. Where consultations are held in writing, the Government should transmit a draft report to the representative organizations in order to gather their opinions before preparing its definitive report (paragraph 92, General Survey of 2000 on tripartite consultation). **The Committee requests the Government to supply information on the manner in which its practice has developed with regard to the consultations required when preparing draft reports on the application of ratified Conventions.**

## Nigeria

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last replies in August 2004. **The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the previous observations, which set forth the following matters:**

*Consultations with representative organizations.* The Committee noted that the Nigeria Employers Consultative Association (NECA) and the Nigeria Labour Congress (NLC) are consulted at the National Labour Advisory Council (NLAC) level with regard to some matters covered by the Convention. The Government further indicated that the National Labour Institutions Bill, which makes provision for the NLAC, was before the National Assembly. The Committee reminds the Government that it is important for employers' and workers' organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation. **It asks the Government to report on the results of the legislative reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under this Convention.**

*Tripartite consultations required by the Convention.* The Committee recalls that the tripartite consultations covered by the Convention are essentially intended to promote the implementation of international labour standards and concern, in particular, the matters enumerated in *Article 5(1) of the Convention*. **The Committee therefore requests the Government to provide full and detailed information on the tripartite consultations dealing with:**

- (a) **the Government's replies to questionnaires concerning items on the agenda of the International Labour Conference and the Government's comments on proposed texts to be discussed by the Conference; and**
- (b) **questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the Organization.**

*Prior tripartite consultation on proposals made to the National Assembly.* The Committee notes that the instruments adopted at the 95th Session of the Conference were submitted to the National Assembly for noting on 21 August 2006. The Government further stated that there was no tripartite consultation as there was no request for their ratification. The Committee points out that, for those States which have already ratified Convention No. 144, effective prior consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (*Article 5(1)(b)*). Even if the Government does not intend proposing the ratification of a Convention, the social partners must be consulted sufficiently in advance for them to reach their opinions before the Government finalizes its decision. **The Committee trusts that the Government and the social partners will examine the measures to be taken with a view to holding effective consultations on the proposals made to the National Assembly when submitting the instruments adopted by the Conference, as required by the Convention.**

*Operation of the consultative procedures.* **The Committee once again requests the Government to indicate whether, in accordance with Article 6, the representative organizations have been consulted in the preparation of an annual report on the working of the consultation procedures provided for in the Convention and, if so, to indicate the outcome of these consultations.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Norway

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1977)***

*Effective tripartite consultations required by the Convention.* The Committee notes the Government's report received in October 2010, which includes comments by the Norwegian Confederation of Trade Unions (LO). The Committee notes with *interest* that means to improve the reporting procedures were discussed in the Norwegian Tripartite ILO Committee in February 2010. As a result, the Government has completed a thorough review of the reporting procedures to ensure that social partners receive the reports in a timely manner and to present satisfactory comments. Measures taken have been communicated to the social partners in the Norwegian Tripartite ILO Committee. In this regard, LO states that it is satisfied with the improved practice in the reporting procedures which were applied during 2010 and will follow the positive approach embarked upon very closely. LO also indicates that, notwithstanding the formal difficulties expressed by the Government with regard to the ratification of the Maternity Protection Convention, 2000 (No. 183), the Government should put more strength and emphasis on solving these difficulties and proceed with ratification of the Convention. In this regard, the Government replies that currently there have been no changes in legislation or other measures that could warrant a re-examination of the prospects for ratification of Convention No. 183. The Committee notes that 90 international labour Conventions are in force for Norway and that the Maritime Labour Convention, 2006, was ratified in February 2009. *The Committee invites the Government to continue to report on measures taken to promote effective tripartite consultations including information on the consultations held to re-examine the prospects of ratification for unratified Conventions (Article 5(1)(c) of the Convention).*

## Pakistan

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)***

The Committee notes the Government's report received in June 2010 which contained some replies to the matters raised in its 2008 observation.

*Selection of employer and worker representatives.* The Committee recalls the comments submitted by the Pakistan Workers Federation (PWF) in July 2009. The PWF referred to the principle set out in the Convention which provides that tripartite consultations are carried out with the most representative organizations of workers and employers. The PWF indicated that it has the largest membership of workers in the country and is duly registered and certified by the National Industrial Relations Commission. The PWF also maintained that the most representative organization of workers in terms of membership may not be excluded from tripartite consultations and its views should be taken into consideration. In its reply, the Government recognizes that there are a number of representative organizations of the employers and workers which are registered with the National Industrial Relations Commission and the Directorate of Labour Welfare in the provinces. The Government indicates that the most prominent organizations of employers and workers working at the national and provincial level are the Employers Federation of Pakistan (EFP), the All Pakistan Textile Manufacturing Association, the Pakistan Workers Confederation and the All Pakistan Federation of Trade Unions (APFTU). The Government also provided a list of different tripartite consultation bodies established under different labour laws. The Committee notes the Government's statement indicating that the Federal Government and Provincial Governments do convene meetings, seminars and workshops on different labour issues. Representatives of employers and workers participate in brainstorming sessions on labour issues and forward their viewpoint and recommendations to the Government for policy decisions. *The Committee asks the Government to provide further specific information on the manner in which the representatives of employers and workers are nominated and chosen for the purposes of tripartite consultations, indicating the representative organizations of employers and workers for the application of the Convention in Pakistan (Articles 1 and 3 of the Convention).*

*Tripartite consultations required by the Convention.* The Committee notes that the Government has not provided information on effective tripartite consultations held on matters expressly set forth in the Convention. The Committee further recalls that *Article 2* provides that each Member which ratifies the Convention must undertake to operate procedures which ensure effective consultations with respect to the matters set forth in *Article 5(1)* between representatives of the Government, employers and workers. The nature and the form of procedures are to be determined by each country in accordance with national practice, following consultations with representative organizations, where such procedures have not yet been established. *The Committee asks the Government to provide information on how it gives effect to Article 2 and on the content and outcome of tripartite consultations held on each of the matters related to international labour standards listed in Article 5(1) of the Convention.*

## Peru

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2004)**

*Tripartite consultations required by the Convention.* The Committee notes the Government's report for the period ending in September 2010 and the comments added by four trade union organizations (Single Confederation of Workers of Peru (CUT), General Confederation of Workers of Peru (CGTP), Autonomous Confederation of Workers of Peru and Confederation of Workers of Peru (CTP)). The Government provides information on action taken in May 2008 by the National Labour Council in relation to the tripartite examination of the instruments adopted by the Conference for submission to the Congress of the Republic (*Article 5(1)(b) of the Convention*). Furthermore, the Government supplies information on the procedure for the drawing up of reports: (1) the comments of the Committee of Experts are sent to the most representative workers' and employers' organizations for their information and to enable them to issue an opinion in this regard; (2) the comments from the organizations are taken into account when drawing up the first draft of the report; (3) after the first draft report has been drawn up, this is sent again to the most representative workers' and employers' organizations so that they can issue their final comments in this respect; (4) the comments are taken into account for preparing the final version of the report, and (5) the final version of the report is sent to the most representative workers' and employers' organizations as well as to the ILO. The four trade union organizations participating in the National Labour Council claim that the consultation processes are insufficient and do not help to ensure compliance with the Convention, and they refer to the provisions of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152). In particular, the four trade union organizations state that requests from the Legal Affairs Office of the Ministry of Labour for commenting on the draft reports do not tally with the schedule for the presentation of reports, with variable deadlines given (in some cases, three days). Nor is there adequate access to the texts of the reports presented by the Government to the ILO. According to the four trade union organizations, there is no training programme either.

The Committee understands the concerns expressed by the four trade union organizations. Under the terms of *Article 5(1)(d)* of the Convention, consultations must be held on questions arising out of reports to be made to the ILO in connection with the application of ratified Conventions. In such cases, consultations must deal with the content of replies to the comments made by the supervisory bodies. Before adopting a decision, the Government should consult the representative employers' and workers' organizations with regard to the problems encountered and the measures to be taken to solve them. This is essential when both employers' organizations and trade union organizations may hold different positions from that of the Government. As regards the results of the consultations, even though these are not binding on the Government, the latter is still obliged to ensure effective tripartite consultations, in conformity with *Article 2(1)* of the Convention. In the 2000 General Survey on tripartite consultation, the Committee emphasized that, in order to be "effective", consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. The important factor here is that the persons consulted should be able to put forward their opinions before the Government takes its final decision. The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions (paragraph 31 of the 2000 General Survey). *The Committee requests the Government to provide information in its next report on the consultations held on each of the matters referred to in Article 5(1) of the Convention. In particular, in order to ensure that the views of the representative organizations are taken into account, the Committee requests the Government to consider the possibility with the social partners of establishing a schedule for the drawing up of reports (Article 5(1)(d)). The Committee also hopes that suitable agreements will be reached for the financing of any necessary training of participants in the consultation procedures (Article 4(2)).*

## Philippines

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1991)**

*Article 5(1) of the Convention.* *Tripartite consultations required by the Convention.* The Committee notes with *interest* the detailed replies to the 2009 observation provided in the Government's report received in September 2010. The Government indicates that continued consultations for the possible ratification of Conventions enrolled in the Decent Work Agenda are being undertaken. The Government reports specifically on the measures taken by the Tripartite Industrial Peace Council (TIPC) in order to examine the Home Work Convention, 1996 (No. 177), the Private Employment Agencies Convention, 1997 (No. 181), the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the Maritime Labour Convention, 2006 (MLC, 2006). The Government indicates that in August 2009, the TIPC decided to recommend ratification of Convention No. 185. The TIPC ratification proposal of Convention No. 185 is currently being carried out in accordance with the established process of consultation and documentation decided. On Convention No. 177, the TIPC also endorsed its ratification. The Government is now gathering relevant information regarding compliance with the provisions of the Convention. On Convention No. 181, a task force was created in order to review existing policies and review the provisions of the Convention. In July 2010, as part of the review process of

Convention No. 181, salient features of the Convention were presented for better understanding and to address the need to review existing policies and the value of consultation of the stakeholders in preparation for ratification. On the MLC, 2006, the Government indicates that a Maritime Industry Tripartite Council in the domestic seafaring industry is being institutionalized as an advocacy and consultation venue to facilitate reforms for the eventual ratification of the MLC, 2006. ***The Committee wishes to receive in the Government's next report information on the developments that might occur regarding the ratification of Conventions Nos 177, 181, 185 and the MLC, 2006. It invites the Government to also include information regarding the other matters covered by Article 5(1) of the Convention.***

*Article 3. Selection of representatives of employers and workers.* In its previous observation, the Committee requested specific information on the manner in which the representatives of employers and workers are nominated, for the purposes of the Convention, specifically on how it is ensured that they have been freely chosen by their representative organizations. The Government indicates that the criteria and process of nomination is generally left to the sound discretion of the nominating sectoral organization, with "most representative status". The Government reports that the organization submits their nominees to the Secretary of the Department of Labour, who in turn endorses the same for appointment by the President through an executive issuance, to the tripartite bodies. The "most representative status" criteria for organizational representation in the tripartite bodies is determined based on the scope and coverage of organizational membership. The Committee notes that the process of appointment is embodied in an Executive Order issued in 1998 which provides that there shall be a maximum of 20 regular representatives each from workers' and employers' organizations, to be designated by the President upon nomination by their respective sectors. The Committee also notes that the new administration is preparing invitations to participate in the TIPC for groups that in the past refused to participate or engage in tripartite dialogues. The tripartite partners are currently formulating a standard criteria and process of selection and nomination of representatives of sectoral organizations with "most representative status". ***The Committee welcomes this approach and would appreciate receiving updates on this matter as soon as they are available.***

## Portugal

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)***

*Consultations required by the Convention. Consultations on unratified Conventions.* In its previous comments, the Committee invited the social partners to hold consultations to re-examine unratified Conventions and Recommendations to which effect could be given (*Article 5(1)(c) of the Convention*). The Committee notes the detailed reply provided by the Government in the report received in July 2010 and the further substantive comments made by the Confederation of Trade and Services of Portugal (CCP) and the General Union of Workers (UGT). The CCP recognizes that consultation mechanisms exist, operate and are well established in Portugal. Nevertheless, it indicates that the comments made during consultations in some cases have little impact. In this respect, the Government reiterates that all the views put forward by the organizations are transmitted with the Government's reports and replies to the ILO, and that it is not responsible for such comments being reflected in the Organization's documents. The UGT agrees that consultation procedures on ratified Conventions and denunciations are given effect. Nevertheless, the UGT contends that the procedures for the ratification of Conventions are excessively long and lack transparency. In the view of UGT, it is essential to be informed of the procedures followed for the ratification of Conventions so as to determine responsibilities and remedy the situation. The UGT advocates simpler procedures so that the information on the ratification or non-ratification of a Convention are clearer and known in advance to the social partners. The UGT emphasizes that three Conventions are still to be ratified: the Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168), the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and the Maternity Protection Convention, 2000 (No. 183). The UGT welcomes the fact that the Government has provided information to the Standing Committee for Social Dialogue (CPCS) on the process of ratifying two Conventions (the Occupational Health Services Convention, 1985 (No. 161), and the Home Work Convention, 1996 (No. 177)). The Government recalls that the process of ratification involves consultation with various ministerial departments, as well as with the ILO concerning the meaning of certain provisions of Conventions. An assessment also has to be made of whether it is appropriate to introduce legislative amendments when they are identified as being necessary by studies on the feasibility of ratification. On many occasions, the public administration lacks the human resources to carry out feasibility studies rapidly. The Government understands that further use can be made of the CPCS to provide information on ratifications. In the case of Conventions which lie within the competence of the legislative authority or when it wishes to hold a parliamentary debate, the Government proposes ratification for approval by the Assembly of the Republic. It notes that the Assembly of the Republic may also take the initiative of deciding upon the ratification of Conventions. The representative organizations of employers and workers are assured the right to express their views on the approval of new Conventions, in accordance with the Labour Code. ***The Committee invites the Government to continue providing information on the tripartite consultations required by Article 5(1) of the Convention, and hopes that information will be provided in the next report on the progress achieved in relation to the matters raised in this observation, including information related to continuing examination of unratified Conventions (Article 5(1)(c)).***

## Saint Kitts and Nevis

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

*Tripartite consultations required under the Convention.* The Committee notes the Government's reports received in November 2009 and October 2010. It notes the Government's information indicating that the National Tripartite Committee on International Standards was previously expected to be institutionalized by the end of 2009 but is now expected to be institutionalized by the end of 2010. The Government reports that it and the social partners participated in a two-day session in May 2010 on the Decent Work Country Programmes, at which strengthening tripartism and social dialogue was discussed. It further indicates that the Department of Labour has submitted the instruments adopted at various sessions of the Conference to the tripartite members and to the Ministry of Labour (*Article 5(1)(b) of the Convention*). **The Committee invites the Government to supply further information on the tripartite consultations held, especially within the National Tripartite Committee on International Labour Standards, on the matters regarding international labour standards covered by the Convention. It further requests the Government to provide examples of any reports or recommendations made as a result of the consultations held under the established procedures. The Committee requests specific information on the tripartite consultations held on questionnaires concerning items of the agenda of the Conference and on the preparation of reports on the application of ratified Conventions (Article 5(1)(a) and (d)).**

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Sao Tome and Principe

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observations which read as follows:

*Mechanisms for tripartite consultations and the consultations required by the Convention.* In a brief report received in March 2007, the Government refers to the tripartite consultations carried out through the National Council for Social Dialogue. The Government also indicates that the National Council meets regularly. **The Committee refers to its previous observations and once again invites the Government to indicate in its next report the manner in which the National Council is involved in the consultations required by the Convention and to provide particulars of the consultations held on each of the matters on international labour standards referred to in Article 5(1) of the Convention, including information on the reports or recommendations made on international labour standards as a result of such consultations.**

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Sierra Leone

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1985)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observations which read as follows:

*Effective tripartite consultations.* The Committee notes the Government's report supplied in June 2004 indicating its commitment to promote tripartite consultation throughout the country as well as supporting the tripartite delegation to the International Labour Conference. **The Committee hopes that the Government and the social partners will examine how the Convention is applied and that the Government's next report will contain indications on any measures taken in order to implement effective tripartite consultation in the sense of the Convention (Articles 2 and 5 of the Convention).**

The Committee recalls that the Office has the technical capacity to help strengthen social dialogue and support the activities that governments and employers' and workers' organizations undertake for the consultations required by the Convention.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Slovakia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

*Tripartite consultations required by the Convention.* In its 2009 observation, the Committee noted the social partners' proposals and the steps taken by the Government to achieve ratifications of Conventions. The Committee notes that the proposals to ratify were the subject of consultation with the social partners in the Economic and Social Councils and notes with *interest* the registration of the ratification of Conventions Nos 81, 129, 135 and 154 in September 2009, and of Conventions Nos 151, 158, 181 and 187 in February 2010. **The Committee welcomes this progress and invites the**

*Government to continue to report on the content and scope of the tripartite consultations held in the Economic and Social Council on the matters set out in the Convention.*

## Togo

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)**

*Effective tripartite consultations.* The Committee notes the detailed information sent by the Government in May 2010 in reply to the previous observations. The Committee notes with *interest* the setting up, by Order No. 018/MTESS of 28 October 2008, of the National Unit on Standards, one of the tasks of which is to prepare the necessary technical files for tripartite consultations on international labour standards required by the Convention. It also notes with *interest* that the Government requested and obtained technical and financial assistance from the ILO in November 2009 for training for the members of the national unit with respect to reporting obligations in connection with ratified Conventions. Activity was also planned for the 2010–11 period with regard to strengthening the capacities of the members of the national unit in relation to the content of fundamental Conventions and Conventions on governance which might be submitted for ratification in the near future (Conventions Nos 81 and 122). *The Committee hopes that the Government will supply up-to-date information in its next report on the progress made with the social partners to ensure effective tripartite consultations on the matters relating to international labour standards (Articles 2 and 5 of the Convention).*

## Uganda

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

The Committee notes that the Government has not provided any information on the application of the Convention since June 2004. *The Committee trusts that the Government will be able to provide a report, including information in reply to the following points raised in 2004:*

The Government indicated that the application of this Convention continues to depend on active tripartite participation, and that consultations were undertaken particularly at the time of revision of the national labour legislation. It also stated that training on the procedures and content of international labour standards might increase the effectiveness of tripartite consultation. The Government stated that it has received technical and financial assistance from the ILO to hold seminars and workshops on consultative procedures. *The Committee invites the Government to report on any progress achieved in the field covered by the Convention, following the assistance received from the Office.*

*Tripartite consultations required by the Convention.* *The Committee requests the Government to provide details on the consultations regarding international labour standards covered by the Convention (Article 5(1)).*

*Article 5(1)(c) and (e).* The Committee recalls that the ILO Governing Body has invited States which are parties to certain Conventions that Uganda has ratified to contemplate ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and denouncing Conventions Nos 50, 64, 65 and 86. States parties to the Underground Work (Women) Convention, 1935 (No. 45), were invited to contemplate ratifying the Safety and Health in Mines Convention, 1995 (No. 176). *Please indicate if tripartite consultations are envisaged on this matter.*

*Article 6.* *The Committee again requests the Government to indicate whether the representative organizations were consulted with regard to the production of an annual report on the operation of the procedures covered by the Convention and, if so, to state the outcome of these consultations.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## United Kingdom

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1977)**

*Effective tripartite consultations.* The Committee notes the Government's detailed report received in August 2010 including replies to its 2008 observation. The Government indicates that it holds regular tripartite meetings and also arranges for separate tripartite consultations on particular subjects. The Government further indicates that it continues to provide comprehensive information, beyond the minimum necessary, so that the Committee of Experts, the Trades Union Congress (TUC) and the Confederation of British Industry (CBI) can have more context to scrutinize and understand action taken, to allow for fuller dialogue, including with the ILO, and for the sharing of good practice. The Government also regrets that not every report is completed in time to include comments of the social partners when reports are sent to the ILO. The Government intends to continue to update social partners on progress of reports and is open to, and encourages discussion with, social partners on all ILO matters. *The Committee invites the Government to continue to report on measures taken to promote tripartite consultations on international labour standards, as required under the Convention, and on any follow-up to recommendations derived from such consultations.*



## United States

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1988)**

*Effective tripartite consultations.* The Committee had requested information on the outcome of consultations held to re-examine the prospects of ratification of unratified Conventions and any follow-up thereto (*Article 5(1)(c) of the Convention*). In this regard, the Committee welcomes this progress and notes with *interest* the reinvigoration of the President's Committee on the ILO (PC-ILO) and the Tripartite Advisory Panel on International Labour Standards (TAPILS), as reported by the Government in the report for the period ending July 2010. The Committee further notes that on 4 May 2010, the PC-ILO Committee called upon TAPILS to resume its work of reviewing the legal feasibility of the ratification of selected Conventions, such as the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the Maritime Labour Convention, 2006 (MLC, 2006). TAPILS was further asked to work toward the successful completion of the ratification process for the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and to submit to PC-ILO a shortlist of other Conventions that appear to be suitable for legal review and possible ratification in the near future. The Government further reported that TAPILS was convened on 20 May 2010 for the first time since 2005 and has started to work on the review of United States law and practice with regard to Convention No. 111; TAPILS also decided on the expedited review of Convention No. 185 and the MLC, 2006, in conjunction with the Coast Guard and other relevant agencies. TAPILS further intends to develop a shortlist of Conventions suitable for legal review. *The Committee invites the Government to continue regularly to supply information on the outcome of and the follow-up to tripartite consultations relating to the PC-ILO mechanism, including, in particular, its function of reviewing selected Conventions for possible ratification.*

## Uruguay

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1987)**

*Effective tripartite consultations.* The Committee notes the Government's report for the period ending May 2010. The Committee notes Decree No. 558/008 of 21 November 2008 establishing the Tripartite Advisory Commission, which will operate under the auspices of the Ministry of Labour and Social Security. The mandate of the Tripartite Advisory Commission reflects the provisions of *Article 5(1) of the Convention*. The operation of the Tripartite Advisory Commission is governed by the following rules: (1) the Tripartite Advisory Commission holds ordinary monthly meetings and extraordinary meetings when so required by the subjects or matters to be addressed; (2) meetings shall be convened five days in advance, with the exception of extraordinary meetings, which may be convened, upon request by the parties giving their reasons, 72 hours in advance; (3) the agenda shall be determined in advance and new items may only be included with the unanimous agreement of the parties; (4) items shall be addressed in a double discussion, unless it is unanimously decided otherwise: during the first discussion, the subject shall be presented and debated, and in the second discussion, following further debate, a decision shall be adopted; (5) if one sector is not present, the agenda will still be followed, with the Government delegates being under the obligation to forward a copy of the minutes with the items addressed to the absent sector: where such absence occurs in the meeting at which a decision has to be adopted, the decision shall not be prevented by such absence; (6) both the government sector and the social partners shall attend the meetings with their positions decided upon when the matter has previously been addressed in an earlier meeting; and (7) unless consensus or unanimity is achieved, decisions shall be adopted by a simple majority, with those voting against or abstaining having the opportunity to express their views. The Committee notes with *interest* that these rules consolidate the rules for the operation at the national level of a Tripartite Advisory Commission. *Taking into account the observations of the International Organisation of Employers (IOE), the Chamber of Industries of Uruguay (CIU) and the National Chamber of Commerce and Services of Uruguay (CNCS), and the Government's reply received in November 2010, the Committee hopes that the next report will include detailed information on the operation of the Tripartite Advisory Commission and indicate how account has been taken of the views expressed by the representative organizations consulted on each of the subjects enumerated in Article 5(1) of the Convention.*

*Article 5(1)(c). Re-examination of unratified Conventions.* With regard to the proposals made for the ratification of new Conventions, the Committee notes that, following tripartite consultations, the National Parliament approved in October 2009 the ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and Workers' Representatives Convention, 1971 (No. 135). The Committee notes with *interest* that the ratification of Convention No. 102 was registered in October 2010.

## Bolivarian Republic of Venezuela

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)***

*Strengthening social dialogue and tripartite consultations.* The Committee notes the observations made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) received in August 2009 and 2010. Observations were also received from the Confederation of Workers of Venezuela (CTV) in August 2009 and from the Independent Trade Union Alliance (ASI) in August 2010. The Government forwarded its own comments in December 2009 and November 2010 in relation to the observations made by the social partners. The Committee notes the Government's report on the application of the Convention for the period ending September 2010. FEDECAMARAS reiterated its concern for the establishment of social dialogue and tripartite consultations as a genuine and sure path towards the socio-economic development of the country. The CTV and ASI also reported the lack of social dialogue between the national Government and trade union organizations. The matters raised by FEDECAMARAS include the approval of the Act of May 2009 reserving for the State the goods and services of primary hydrocarbon activities, the increases in minimum wages and the amendment of the new Act respecting the National Cooperation and Education Institute, some of which are also referred to in the Committee's comments on the application of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Human Resources Development Convention, 1975 (No. 142). The Committee also notes the record of the proceedings of the meeting on 12 May 2009, of nine employers' organizations with the Standing Committee on Integral Social Development of the National Assembly on possible reforms to the Basic Labour Act, which was transmitted by FEDECAMARAS. ***The Committee refers once again to its previous comments and reiterates its conviction that the Government and the social partners should undertake to promote and strengthen tripartism and social dialogue on the matters covered by the Convention. The Committee therefore invites the Government and the social partners to provide information in the next report on the "effective consultations" on international labour standards required by Convention No. 144, which is a major Convention from the viewpoint of governance.***

*Tripartite consultations required by the Convention.* The Committee notes with *interest* that the President of the National Assembly was provided with information on 30 August 2010 on 41 international labour Conventions, Recommendations and Protocols adopted by the Conference between 1992 and 2007 (*Article 5(1)(b) of the Convention*). The ASI indicated that the Government failed to apply Convention No. 144 because it has not brought the information supplied to the Committee of Experts to the attention of the workers' organizations. The Government indicated in the reply received in November 2010 that it fully complies with its obligation to communicate to the representative organizations of workers and employers regarding copies of the reports sent to the ILO, in conformity with article 23(2) of the ILO Constitution and in accordance with the requirements of Convention No. 144. The Committee recalls that the obligation to consult representative organizations with regard to the reports to be made on the application of ratified Conventions, under the terms of *Article 5(1)(d) of the Convention*, must be distinguished from the obligation to communicate reports under article 23(2) of the Constitution. The tripartite consultations required by the Convention must be held during the process of preparing reports. Where consultations are held in writing, the Government should transmit a draft report to the representative organizations in order to gather their opinions before preparing its definitive report (paragraphs 92–93 of the General Survey of 2000 on tripartite consultation). The effectiveness of consultations thus presupposed that the representative organizations have all the necessary information far enough in advance to formulate their own opinions and then to be in a position to put forward those opinions before the Government takes its final decision (paragraph 31 of the General Survey of 2000). ***The Committee once again invites the Government to indicate in its next report the manner in which the opinions expressed by the representative organizations consulted on each of the matters covered by Article 5(1) of the Convention have been taken into account, with particular reference to the manner in which its practice has developed with regard to tripartite consultation on draft reports on the application of ratified Conventions (Article 5(1)(d)).***

## Zimbabwe

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1989)***

*Strengthening social dialogue. Support of the Office.* The Committee notes the information provided by the Government in November 2010 indicating that it intends to prepare a bill to legislate the Tripartite Negotiating Forum (TNF). The Government reports on the TNF full meeting, held on 16 September 2010, during which its members were informed about the progress made to finalize the principles of the TNF legislation and to make the appropriate arrangements for an independent TNF secretariat. TNF members were also invited to note the adoption of the National Employment Policy by the Cabinet on 1 June 2010. Prospects for ratification of the Employment Policy Convention, 1964 (No. 122), will also be discussed in the TNF. The Government further reports that at a meeting on 16 October 2010, the social partners deliberated on the agreed upon priority areas of employment creation; social protection and HIV and AIDS at the workplace; social dialogue; and gender equality and women empowerment. ***The Committee welcomes this***

*approach in achieving solutions and building up social cohesion and the rule of law through effective tripartite consultations. It therefore invites the Government to include in its next report further information on the progress made to institutionalize the Tripartite National Forum and its contribution to the tripartite consultations on international labour standards required under Convention No. 144, a Convention that is to be regarded as most significant from the viewpoint of governance.*

*Effective tripartite consultations. Referring to its previous comments, the Committee requests the Government to provide information on the operation of the procedures which ensure tripartite consultations in respect of each of the matters listed in Article 5(1) of the Convention. The Government is also requested to indicate the frequency of consultations held in this regard and to indicate the nature of any reports or recommendations made as a result thereof (Article 5(2) of the Convention).*

*Article 5(1)(d). Reports on ratified Conventions.* In the comments forwarded to the Government in November 2009, the Zimbabwe Congress of Trade Unions (ZCTU) indicated that it did not receive a copy of the Government's reports on ratified ILO Conventions and thus submitted its own comments without reference to the Government's reports. The Committee again recalls that "the obligation to consult the representative organizations on the reports to be made concerning the application of ratified Conventions must be clearly distinguished from the obligation to communicate these reports under article 23(2) of the ILO Constitution. To fulfil their obligations under this provision of the Convention, it is not sufficient for governments to communicate to employers' and workers' organizations copies of the reports that they send to the Office, since any comments that these organizations may subsequently transmit to the Office on these reports cannot replace the consultations which have to be held during the preparation of the reports" (paragraph 92 of the 2000 General Survey on tripartite consultation, bearing in mind the discussion of "effective consultations" in paragraphs 29–31 of the General Survey). *The Committee invites the Government to examine the measures to be undertaken to hold "effective consultations" on questions arising out of reports to be made to the ILO under article 22 of the ILO Constitution.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 144** (Algeria, Benin, Burkina Faso, China: Macau Special Administrative Region, Djibouti, Ecuador, France: French Polynesia, France: New Caledonia, Kazakhstan, Republic of Korea, Lesotho, Malaysia, Mali, Republic of Moldova, Mongolia, Montenegro, Mozambique, Namibia, Netherlands: Aruba, Romania, Serbia, Seychelles, Sri Lanka, Suriname, Swaziland, Syrian Arab Republic, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Ukraine, Viet Nam, Yemen, Zambia).

## Labour administration and inspection

### General observation

#### **Labour Inspection Convention, 1947 (No. 81)**

*Articles 20 and 21 of the Labour Inspection Convention, 1947 (No. 81). Publication and content of an annual report on the functioning of labour inspection services.* The Committee notes that the general discussion at the 100th Session of the International Labour Conference (2011) will be on labour administration and labour inspection, and particularly on the measures to be taken to improve the collection and standardization of data and information from labour inspectorates (GB.308/5(Add.3) and GB.309/ESP/3). The Committee has constantly placed emphasis on the essential importance that it attaches to the publication and communication to the ILO within the prescribed time limits of an annual labour inspection report.

When well prepared, the annual report offers an indispensable basis for the evaluation of the results in practice of the activities of the labour inspection services and, subsequently, the determination of the means necessary to improve their effectiveness. The ILO's supervisory bodies, including the Committee of Experts, based on all the information contained in the annual report, are able to provide support to governments in the most relevant manner possible in the implementation of the commitments deriving from the ratification of the Convention, as well as other ratified ILO standards addressing conditions of work and the protection of workers. This support may take various forms with a view to the achievement of the socio-economic objectives of the Convention, namely the continued improvement of conditions of work and the protection of workers while engaged in their work and, by the same token, as is now widely recognized, the improvement of the economic performance of enterprises.

The publication of the annual inspection report, particularly through modern technological means, can also facilitate the development of exchanges in the fields of the conditions of work and the protection of workers at the regional and international levels, including through technical and financial cooperation. In addition, the protection of migrant workers through international labour policies and agreements could be reinforced through the information made available in this way.

If the national and international objectives of the Convention in relation to the annual report are to be achieved, the report has to be published and communicated to the ILO within a reasonable time and contain, at the very least, up-to-date information on the following subjects:

- the field of the legal and material competence of the labour inspection services (legal provisions defining their organization and powers);
- the human resources and institutional, logistical and material means available to the institution;
- its field of personal competence (enterprises, establishments and other workplaces liable to inspection, as well as the workers occupied therein);
- its means of operation (inspections, notifications of violations or non-compliance, technical advice and information, observations, warnings, the initiation or recommendation of prosecutions, the imposition of penalties);
- finally, occupational risks (through data on industrial accidents and cases of occupational diseases).

In this respect, the Committee recalls that extremely valuable guidance on the presentation and analysis of this information are provided in the Labour Inspection Recommendation, 1947 (No. 81). It underlines once again, in particular, the need for the inclusion in the annual report of data on the scope of the national labour inspection system (workplaces and persons covered) so as to be able to assess the coverage rate in practice, if necessary, through the appropriate inter-institutional cooperation

*The Committee encourages governments to continue making efforts to ensure the publication in due time of the annual report stipulated in Article 20 and the inclusion in this report of the information required by Article 21.* The Committee recalls that the technical assistance of the Office can be requested to facilitate the implementation of Articles 20 and 21 of the Convention.

*Further to the campaign for the ratification and implementation of the governance Conventions launched by the Director-General of the ILO in the context of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (ILC, 97th Session, June 2008), the Committee wishes to encourage member States which have not yet ratified the Labour Inspection (Agriculture) Convention, 1969 (No. 129), to examine the possibility of engaging in tripartite consultations on the benefits of ratifying this instrument and requests governments to keep the ILO informed of any developments in this respect.*

## Albania

### **Labour Administration Convention, 1978 (No. 150) (ratification: 2002)**

The Committee notes with *interest* that, according to the Government Law No. 7995 “On the promotion of employment” of 20 September 1995 has been amended to improve the definition of employment, introduce the concept of employment services, counselling and orientation for the profession, and develop new employment programmes, such as professional practice for recent high school graduates. It also notes with *interest* that the Government carried out 2008 different programmes in this context to promote employment, which provided financial support to employers participating in these programmes, such as: 15 projects promoting employment of unemployed women jobseekers, as a result of which 456 women were employed; 44 projects promoting employment through training at work, as a result of which 1,180 unemployed jobseekers were trained; 29 projects promoting employment of unemployed jobseekers in difficulties, as a result of which 250 unemployed jobseekers were employed within a 12-month term; 69 projects offering professional practice to recent high school graduates, as a result of which 302 unemployed jobseekers took professional practice at public and private institutions. The Government also reports on the implementation of other programmes promoting training and employment of women, with priority given to particular groups of women such as victims of trafficking, women with disabilities, Roma women, women over the age of 35, young mothers and divorced women, as well as about the programmes providing vocational training for free or reduced rates for the Roma community.

The Government also supports capacity building through the development of a public vocational training system. At present there are ten regional directorates of public professional training and a mobile regional directorate centre for professional training in the north-east of the country where unemployment is high, the latter being funded by the Swiss Government under the AlbVET project. These centres offer courses of occupations mainly for those who want to take up a profession or keep their workplace by getting new skills. In this context, the EU assists the Government under the CARDS programme, “Support for the VET reform”, as a result of which the National Agency for Vocational Education and Training was established. At the same time, the German Government assists to improve the VET system by solving and equipping the centres with materials, assisting in curricula development, offering training and coaching through the project “Learning during life”. So, in 2008, as a result of the activity of ten regional directorates 7,577 trainees were certified, of whom 1,857 were unemployed jobseekers. Moreover, in order to integrate jobseekers into the labour market, the Government organized few employment fairs in cities like Durres, Fies, Berat and Tirana in 2008, where up to 70 per cent of the vacancies offered by the employers were filled.

*The Committee would be grateful if the Government would provide information on the organization of the preparation, administration, coordination, checking and review of the national employment policy, and on the functions and existing policies of the entrusted bodies with respect to the national employment policy. The Government is also requested to provide information on the implementation of the abovementioned National Strategy of Employment and Professional Training, transformation of the national employment service, as well as on the measures taken to ensure a positive impact of the existing policies aimed at reducing the level of unemployment and the programmes carried out in this respect.*

The Committee is raising other points in a request addressed directly to the Government.

## Algeria

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes with *interest* the Government’s detailed report as well as the half-yearly inspection report published in December 2009 which completes the report covering the period from January to June of the same year.

*Articles 5 and 9 of the Convention. Cooperation between the inspection services and other government services and collaboration with employers and workers.* The Committee notes with *interest* the information provided concerning a number of instructions essentially designed, according to the Government, to increase the effectiveness of the technical assistance given to the social partners, strengthen social dialogue at the local level, encourage effective practices and raise awareness of those practices and establish structures relating to the prevention of occupational hazards by promoting the widespread use of new technological communication processes to disseminate information relating to conditions of work and employment, strengthening the monitoring of illegal employment practices and working conditions and coordinating efforts to combat and prevent child labour with other ministerial departments. *The Committee would be grateful if the Government would provide a copy of the above instructions in its next report and indicate the measures actually implemented to give effect to those instructions in practice. It requests the Government to inform the ILO of the results achieved by means of institutional collaboration and collaboration with the social partners in the specific areas of the prevention of occupational hazards, illegal practices relating to working conditions and child labour.*

*Article 7. Training of labour inspectors.* The Committee notes with *interest* that the training of labour inspectors has continued and has covered investigation and survey methods, methods of analysing occupational hazards and their prevention, and information technology. According to the Government, the training provided has improved the level of technical knowledge of inspection staff and increased the effectiveness of their work. *The Committee would be grateful if*

***the Government would continue providing detailed information on the training provided for inspection staff and its impact on inspection activities and their results.***

*Articles 8, 10 and 16. Number of labour inspectors. Inspections carried out.* The Committee notes that while the number of public servants providing administrative support for labour inspectors was increased significantly during the period covered by the Government's report (83 new members of staff), the number of labour inspectors of all grades fell from 900 to 874. Furthermore, the number of inspectors working in the field fell from 697 to 659. According to the Government, this continuous fall in the number of inspectors over several years is the result of staff retiring or being promoted. It considers the ratio of one inspector for every 9,000 workers to be satisfactory and as a result, has not announced any measures to halt this trend. Furthermore, it indicates that each inspection section operates with two inspectors.

The Committee further notes that women account for only one tenth of the number of inspection staff (91 out of 874) and that this proportion should be increased by means of recruitment programmes. However, the Government does not provide details of the measures implemented to that end.

With regard to the inspections carried out by labour inspectors, the Committee notes with *interest* that the number of inspections carried out rose from 108,372 in 2008 to 126,326 in 2009, representing an increase of 16.56 per cent. In this regard, it notes with *interest* the implementation in practice of the instructions laying down how often inspections of enterprises should be carried out: at least twice a year for workplaces in which workers are most exposed to occupational hazards, enterprises included in the chart for the prevention of collective disputes and small and medium-sized enterprises, and at least once a year for workplaces in which workers are not exposed to major safety and health risks. However, given that the total number of workplaces liable to inspection is not available, it is virtually impossible to assess the rate of coverage of the labour inspectorate. It once again reminds the Government of the importance of ensuring the availability of such information not only for that purpose but also to enable the central authority to give sufficient grounds in requests for budgetary allocations with a view to ensuring optimum coverage with regard to labour inspections.

***The Committee requests the Government to ensure that, in future, the report on the work of the labour inspectorate contains figures relating to the workplaces liable to inspection, as well as the number of workers employed therein, and to indicate in its next report the manner in which it is ensured that the annual objectives relating to the minimum number of inspections of workplaces liable to inspection are achieved. The Committee requests the Government to indicate the measures envisaged or taken to compensate for separations from service due to retirement or personal promotion so that the number of inspectors in the field remains sufficient in relation to the number of workplaces to be covered and the complexity of labour inspection duties, to increase the number of female inspectors taking into account the composition of the workforce and to keep the ILO informed of the results achieved.***

*Article 11. Material means available to labour inspectors.* The Committee notes that five new *wilaya* labour inspection headquarters have been completed in the context of the project to build 43 regional and *wilaya* inspection headquarters during the period 2005–08 (Skikda, El Tarf, Béchar, Souk Ahras and Tlemcen) and that 21 additional headquarters are in the process of being built. It also notes that new vehicles have been acquired since the Government's last report on the application of the Convention and that a fleet of 131 vehicles is now available to labour inspectors. ***The Committee notes with interest this information which shows the Government's efforts to improve the means of action of the labour inspectorate and would be grateful if the Government would continue keeping the Office informed of any developments in this regard.***

*Articles 14 and 21(g). Industrial accidents and occupational diseases.* The Committee notes that, under section 13(c) of Act No. 83-13 of 2 July 1983, any industrial accident shall be reported by the social security body to the labour inspector covering the enterprise concerned. According to the Government, in the event of a serious industrial accident, the labour inspection services carry out thorough investigations based on a standardized framework.

With regard to occupational diseases, under section 71 of the same Act, a copy of the document reporting the case shall be transmitted to the labour inspectorate. The Government adds that, in general, the labour inspectorate receives information on industrial accidents and cases of occupational disease by means of investigations carried out by the employer, workers, the prevention body or by the services of the National Social Insurance Fund for Salaried Employees. However, the Committee notes that the reports on the work of the labour inspectorate do not contain relevant information. ***The Committee requests the Government to provide information on the methods actually used to provide the labour inspectorate with information relating to industrial accidents and cases of occupational disease, as well as a copy of any relevant document, such as the text implementing sections 68 and 69 of Act No. 83-13 of 2 July 1983, instructions, report forms, etc. It would be grateful if the Government would also provide information on the role of labour inspectors in the context of the investigations carried out following serious industrial accidents, as well as the measures to be taken to avoid the occurrence of new accidents or cases of occupational disease.***

*Articles 5(a), 13, 17, 18 and 21(e). Action taken in response to reports of violations or occupational safety and health risks. Cooperation with judicial bodies.* The Committee notes the general information contained in the reports of the labour inspectorate concerning its activities (routine, special and follow-up inspections) and the measures taken by labour inspectors (written comments, formal warnings and reports of violations). In its previous comments, it requested the Government to provide a copy of any court decisions handed down concerning violations reported by the labour

inspectorate and to indicate the measures taken or envisaged to develop effective cooperation between the labour inspection services and the judicial bodies. It notes that in 2009, inspectors issued 57,666 formal warnings, 37,782 reports of violations and 14,796 written comments and that the actions mainly concerned the failure to declare the employment of workers and occupational safety and health. However, no information is provided concerning the action taken by the courts in order to follow up on the reports of violations issued during the periods covered by the previous government reports or concerning any measures taken to promote effective cooperation between the labour inspectorate and the judicial bodies. *In this regard, the Committee refers to its general observation of 2007 and requests the Government to take measures to promote effective cooperation between the labour inspectorate and the judicial bodies and to ensure that, in future, the report on the work of the labour inspectorate contains the most detailed information possible concerning the violations noted by labour inspectors during their inspections, as well as the administrative measures (cessation of work, for example), administrative fines and judicial decisions handed down against those responsible for violating the legal provisions on working conditions and the protection of workers.*

*Article 21. Content of annual reports.* Noting the efforts made by the central labour inspection authority to publish and transmit to the ILO half-yearly reports on inspection activities, the Committee draws its attention to the guidance provided in paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), concerning the ideal level of detail for the information which should be included in the annual inspection report. It emphasizes the importance of this report as a tool for evaluating the operation of the labour inspectorate and determining measures to ensure its gradual improvement. The presentation of the information required is not an end in itself. It should be processed and analysed by the central labour inspection authority with a view to achieving the socio-economic objective inherent in the eminently important function of the labour inspectorate. *The Committee would be grateful if the Government would take measures to give full effect to the provisions of Articles 20 and 21 of the Convention, so that the annual report on the work of the labour inspectorate constitutes, each year, a reliable basis for assessing the budgetary resources required to improve its operation.*

*Labour inspection and child labour.* Referring to its previous comments, the Committee notes that the Government has not provided the information required on inspection activities in the area of combating child labour. *The Committee once again requests the Government to provide information on the measures taken by the labour inspectorate to enforce the legislation relating to child labour and, if necessary, punish those responsible, as well as on the impact of these measures on developments relating to the phenomenon.*

## Angola

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)**

The Committee notes with *interest* the annual inspection report for 2009, containing figures on the staff of the labour inspection services, estimated data of workplaces liable to inspection, statistics of inspection visits, violations and penalties imposed and of industrial accidents as well as other instructive information on the activities of the General Labour Inspectorate (IGT), such as on preventive measures in the area of occupational safety and health.

The Committee notes an ongoing reform of the labour inspection system and a relevant plan for 2010–14. Further, it notes with *interest* that, following a request by the Government for technical assistance and an assessment of the situation of labour inspection in the country by a multidisciplinary team of the ILO in March and April 2010 in response to this request, various recommendations were made. These recommendations relate to the need for legislative reforms, particularly as regards safety and health, the conditions of service (remuneration, career prospects) and powers of labour inspectors (with a view to relieving them of additional functions, such as mediation or conciliation), classification of breaches of labour law according to their gravity and determination of appropriate sanctions, as well as the obligation of notification to the labour inspectorate of cases of occupational accidents and diseases, and the need to ensure the application in practice of the relevant legal provisions. In addition, the Committee notes recommendations for improved initial and regular training of labour inspectors; initiation of proactive inspection visits through check-lists and computerized registers of workplaces and other useful data; the promotion of collaboration with the social partners and other bodies, such as the National Institute for Social Security (INSS), as well as the strengthening of coercive enforcement mechanisms. *The Committee would be grateful if the Government would keep the ILO informed of the steps taken in the framework of the ongoing reform, particularly in relation to the recommendations made by the ILO, and communicate a copy of any relevant texts or document.*

## Antigua and Barbuda

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)**

*Articles 3(2) and 16 of the Convention.* *Additional functions entrusted to labour inspectors and frequency of inspection visits.* With reference to its previous comments, the Committee notes the Government's statement that labour inspectors only carry out labour inspection functions. The Committee recalls however, that according to the job description communicated by the Government, labour inspectors may be required from time to time to function in other areas of the Labour Department and may be assigned other duties by their immediate supervisor, the Labour

Commissioner or the Deputy Labour Commissioner. *The Committee would be grateful if the Government would indicate the numbers and frequency of inspections in industrial and commercial workplaces achieved as a result of the main focus of labour inspectors on the effective discharge of their primary functions and to give details as to additional functions that may be entrusted to them.*

*Article 5. Cooperation between the labour inspection services and other Government services or public institutions and collaboration with employers' and workers' organizations.* The Committee notes that according to the Government there has been no change on the question of promoting cooperation between the labour inspectorate and the Ministry of Health despite the Committee's longstanding comments on this question and a previous commitment to this effect by the Government. *The Committee requests the Government to supply detailed information on the difficulties which prevent the adoption of practical measures to develop cooperation between the labour inspectorate and the Ministry of Health (for instance, the regular exchange of information and data, common training seminars or conferences, etc.). It also asks the Government once again to provide details on the content and modalities of any existing cooperation.*

Furthermore, the Committee notes that according to the Government, there has been no change on the issue of collaboration with trade unions. Recalling once again that the existing collaboration is very limited, merely consisting of the trade unions informing the Labour Department of violations of legal provisions in workplaces, the Committee refers the Government once again to Part II of the Labour Inspection Recommendation, 1947 (No. 81), on examples of measures that might be taken to encourage collaboration between labour inspectors and both workers and employers, such as the organization of conferences or joint committees, or similar bodies to provide a space for discussions on safety and health issues. *The Committee once again urges the Government to take measures to encourage collaboration between the labour inspectorate and the social partners, and to keep the ILO informed of the results achieved. With regard to occupational safety and health in particular, noting that the tripartite National Labour Board is responsible for the revision of the Labour Code which relates to safety and health issues in the private sector, the Committee requests the Government to indicate whether the labour inspectorate is associated in the work of this Board in any way.*

*Articles 6, 7 and 10. Number, status and qualifications of labour inspectors.* The Committee notes that according to the Government's report the inspectorate is comprised of nine "non-established" labour inspectors and one "established" civil servant (or two such civil servants according to the annual labour inspection report). All labour inspectors conduct general inspections with reference to *Article 3(1)* of the Convention. Only one labour inspector specializes in the area of occupational safety and health. There is no requirement as to the qualifications and level of competence required of the other labour inspectors who are not labour inspectors in the strict sense of the word. Labour inspectors are remunerated according to the scale of the department in which they are placed. They received training during the reporting period in various areas including modern inspection techniques, basic inspections, the Labour Code, ILO Conventions and occupational hygiene.

The Committee recalls that according to *Article 10*, the number of labour inspectors should be sufficient to secure the effective discharge of their duties. Moreover, under *Article 6*, the inspection staff should be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and improper external influences. Finally, under *Article 7*, labour inspectors should be recruited with sole regard to their qualifications and should be adequately trained for the performance of their duties.

*The Committee requests the Government to indicate the steps taken or envisaged to ensure that:*

- *the labour inspectorate is staffed with adequate numbers of labour inspectors, especially in the area of occupational safety and health;*
- *all labour inspectors are recruited with sole regard to their qualifications;*
- *all labour inspectors are assured of the status, notably stability of employment and adequate wages, which is necessary to ensure their independence vis-à-vis changes of government and improper external influences. In this regard, the Committee requests the Government to specify the scale of remuneration of labour inspectors by comparison to the remuneration of comparable categories of public officers such as tax inspectors.*

*Moreover, the Committee would be grateful if the Government would provide details on the training programmes provided to labour inspectors, in particular the subjects, duration, attendance, evaluation and impact and to communicate copies of any relevant documents.*

*Articles 17 and 18. Necessary balance between warnings and the prosecution of employers in violation.* With reference to its previous comments, the Committee notes the Government's statement that labour inspectors are free to decide whether to prosecute those found in breach of the law. The Committee recalls once again that while advice and information can only encourage and lead to compliance with legal provisions, it should nonetheless be accompanied by an enforcement mechanism allowing for prosecution where needed. The functions of enforcement and advice are inseparable in practice and the credibility of the labour inspectorate depends to a large extent on the existence and implementation of a sufficiently dissuasive enforcement mechanism (see 2006 General Survey on labour inspection, paragraphs 279 and 280). *The Committee requests the Government to provide detailed information on the number of warnings issued by labour inspectors and the number of prosecutions initiated, as well as their outcome in practice.*

*Articles 19, 20 and 21. Annual report on labour inspection activities.* The Committee notes with *interest* that for the first time since 1995, an annual labour inspection report on the year 2009 was communicated to the ILO. *The*



*Committee invites the Government to take all necessary measures so as to ensure that the annual report is published as required by Article 20, and draws attention to Part IV of Recommendation No. 81 which provides guidance on how the information and statistics requested under Article 21 can be disaggregated to give a reliable basis for the assessment of the work of the labour inspection system.*

## Armenia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)**

The Committee notes the Government's report accompanied by the comments made by the Union of Manufacturers and Entrepreneurs of Armenia (UMEA) and the Confederation of Trade Unions of Armenia (CTUA) received by the ILO on 23 December 2009.

*Articles 16 and 18 of the Convention. Obstructions to the performance of inspection duties.* The Committee notes with **concern** the Government's indication that 137 inspections of enterprises were prevented from being carried out. **The Committee requests the Government to indicate why it was not possible to carry out the inspections mentioned and to specify the measures taken to overcome the obstacles identified, if necessary through the application of penalties in the case of obstructions.**

*Article 5(b). Collaboration between labour inspectorate officials and employers and workers or their organizations.* In its comments, the UMEA reports a lack of collaboration between the labour inspectorate and the social partners and expresses the hope for periodic exchanges on problems faced. The Committee requests the Government to refer to paragraphs 163–172 of its General Survey of 2006 concerning the role of the social partners in the operation of the labour inspectorate, in which it emphasizes that the labour inspectorate can attain its objectives only if appropriate measures are adopted by the competent authority to promote effective collaboration with employers and workers in its operations and activities. Such collaboration may take place within a tripartite advisory body with a general mandate for labour issues. **The Committee requests the Government to indicate the measures taken or envisaged to promote collaboration between the labour inspectorate and organizations of workers and employers and to keep the Office informed of the results achieved in that regard.**

*Articles 20 and 21. Annual reports on the work of the labour inspectorate.* The UMEA emphasizes that although section 12 of the Act on the conditions of service of the labour inspectorate provides for the preparation and publication of an annual report on the work of the labour inspectorate, such reports are not published (2008 report), are incomplete or are published late. The Committee reminds the Government that a report on the work of the labour inspectorate should be published and transmitted to the ILO each year. **The Committee requests the Government to take the necessary measures to publish and transmit an annual report on the work of the labour inspectorate as soon as possible. It draws the Government's attention to the guidance provided in paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81) on the presentation of the information required.**

*Communication of legal texts.* The Committee notes that the Government has not yet provided the ILO with the documents requested by the Committee in its previous comments. **The Committee therefore once again requests the Government to provide the ILO with the following texts as soon as possible:**

- **the Administrative Infringements Code of 6 December 1985;**
- **the Act of 17 May 2000 on the Organization and Conduct of Inspections;**
- **the Act of 13 December 2004 on Administrative Conduct and Principles;**
- **Government Decision No. 1146-N of 29 August 2004 establishing the State Labour Inspectorate within the Ministry of Labour and Social Affairs, confirming the statutes of the State Labour Inspectorate and amending previous Government Decision (14 November 2002) No. 1821-N;**
- **Government Decision No. 1893-N of 6 October 2005 on the provision of information to the State Labour Inspectorate;**
- **Government Decision No. 2301-N of 6 October 2005 adopting the procedure for the submission of quarterly reports by employers to the State Labour Inspectorate;**
- **Government Decision No. N876 of 16 June 2006 establishing the form, use and procedure for issuing a copy of a workbook;**
- **Government Decision No. N1882-N of 20 October 2005 on the procedure for publication, accounting, conservation and archiving of the employer's internal and private legal documents;**
- **The Public Service Act.**

The Committee is raising other points in a request addressed directly to the Government.

## Australia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1975)**

The Committee notes the comments made by the Australian Council of Trade Unions (ACTU) in a communication dated 31 August 2010 as well as the Government's response thereto. ***It finally notes the observations by the ACTU dated 25 October 2010 and requests the Government to communicate any comment it deems relevant in this regard.***

*Articles 3(1), 16, 17 and 18 of the Convention. Impact of legislative developments on the functioning of the system of labour inspection.* In its previous comments, the Committee had noted that following the replacement of the Workplace Relations Act (WR Act) by the Fair Work Act 2009 (FW Act), the Workplace Ombudsman, i.e., the inspection body which had been previously criticized by the ACTU for using aggressive methods of investigation in order to determine whether trade unions and workers had been in breach of the workplace legislation, had ceased operations on 30 June 2009, all of its functions having been assumed by the Office of the Fair Work Ombudsman (FWO).

The Committee notes with ***interest*** from the Government's report that the FWO is committed to encouraging and enforcing compliance with the provisions of the FW Act and other specified legislation through procedural fairness and that the FWO's authority has expanded to include oversight of almost all workplaces in New South Wales, Queensland, South Australia and Tasmania as a consequence of the referral to the Commonwealth of the industrial relations power of these states on 1 January 2010. In this framework, contracts for services were signed with the New South Wales, Queensland and South Australian industrial relations agencies, as a result of which, 203 inspectors from these provinces have been appointed as fair work inspectors and will carry out investigations under the direction of the FWO. In addition, the FWO has appointed 12 inspectors from the Western Australian labour inspection agency to investigate federal matters that have some relevance to the Western Australian state system. Fair work inspector numbers have therefore increased by approximately 74 per cent.

The Committee also notes that the FWO implements a compliance model that combines complaints, investigations, targeted education and compliance campaigns (undertaken upon the basis of evidence of systemic non-compliance, or in the presence of a higher percentage of vulnerable workers within a given industry), and prosecutions deemed to be in the public interest. The Committee notes in particular with ***interest*** from the annual report of the FWO the increased use of civil litigation as a form of insistence on compliance and the significant penalties awarded by the courts which confirms according to the FWO that "the light-handed approach to industrial regulation is a thing of the past". From 1 July 2009 to 30 June 2010, the FWO had: finalized over 21,070 investigations; recovered AU\$21,312,749 on behalf of employees; and had 66 proceedings commenced and enforceable undertakings received for breaches of the FW Act.

Furthermore, the Government indicates that extensive education efforts are continually being applied to allow employers and employees to understand their rights and obligations through a range of guides, tools and educational material, the Fair Work Infoline, the Transition Assist Service (aimed at unions and industry groups), the National Employer Branch (to assist large national enterprises) and media campaigns.

***The Committee requests the Government to continue to provide information on the activities of the FWO, and to indicate in particular the matters in relation to which most violations were found, prosecutions initiated and penalties imposed.***

Furthermore, the Committee notes from the Government's report that the FWO has tried a new compliance technique, termed assisted voluntary resolution (AVR), which is typically applied in the first 30 days of a complaint, and involves fair work inspectors facilitating communication between complainants and the other party to reach mutually acceptable outcomes; the FWO will roll out this method more widely during 2010–11. ***The Committee would be grateful if the Government would provide detailed information on the scope of activities carried out by the FWO and the range of subjects addressed in the framework of the AVR and also indicate the percentage of labour inspection activities dedicated to AVR and their outcomes.***

*Article 5(b). Collaboration between officials of the labour inspectorate and employers and workers or their organizations.* In its previous comments, the Committee noted that the FW Act maintained certain restrictions initially imposed by the WR Act on the wide powers traditionally conferred upon trade unions to ensure enforcement of awards and agreements and transferred most of this power to a public authority, namely, the FWO. The Committee notes that according to the latest comments by the ACTU, despite some improvements in relation to the former statutory regime (the WR Act), the FW Act has retained much of the WR Act architecture on the right of entry, i.e., a permit system, the prohibition of obtaining, through collective bargaining, entry rights that are superior to those in the statutory regime and the possibility for a party (e.g., employer) to apply for a "representation order" which may have the effect of preventing a trade union from representing certain classes of employees (including with regard to the access to workplaces to investigate suspected breaches of workplace laws). According to the ACTU, it is very important for the application of the new statutory provisions to be closely monitored so as to ensure that these provisions do not unduly limit trade union access to workplaces. The ACTU indicates certain improvements in relation to regular consultations taking place with the social partners on issues such as targeted education and compliance campaigns and best practice guides available on the FWO website.

According to the Government, collaboration and consultation with employer and employee organizations is an integral part of the FWO's activities in respect of development and implementation of framework policies as well as in the conduct of complaints, investigations and targeted education and compliance campaigns. The Government refers to the example of the development of the FWO's education and advice material such as best practice guides, and guidance notes, including the interpretation of transitional arrangements created by the national workplace tribunal, Fair Work Australia. However, the Government acknowledges that the coverage of the system of the FWO has considerably expanded so that inspections of all businesses within its jurisdiction is not possible.

In this respect, the Committee is of the view that the establishment of a mechanism of collaboration between the FWO, and the organizations of workers could help maximize the effectiveness of the labour inspection system, notably through information exchange, the submission of complaints etc. Moreover, tripartite bodies and cooperation agreements at various levels could play an important role to this end (see General Survey of 2006 on labour inspection, paragraphs 163–171).

***The Committee would be grateful if the Government would furnish information in its next report on arrangements made or envisaged in order to promote collaboration between the Fair Work Ombudsman and employers' and workers' organizations. The Committee would also appreciate statistical data on the exercise by trade unions of the right of entry to workplaces for compliance purposes.***

*Article 3(1) and (2). Building and construction industry.* The Committee recalls that in its previous comments it took note of the serious concerns expressed by the ACTU on the conduct of the Australian Building and Construction Commission (ABCC), established on the basis of the Building and Construction Industry Improvement (BCII) Act, 2005, mainly in relation to an unbalanced approach of the ABCC in favour of employers and wide-ranging coercive powers bestowed upon it by the BCII Act. In particular, the ACTU had criticized the fact that the ABCC can carry out interrogations in private and the interviewees are generally not allowed to disclose to anyone else what happened during the interrogation on penalty of six months' imprisonment.

The Committee takes note of the comments by the ACTU dated 31 August 2010 according to which despite electoral commitments to abolish the ABCC and replace it by a specialist division of the general labour inspectorate, in June 2009 the Government introduced legislation to Parliament to amend the BCII Act by replacing the ABCC with a separate and autonomous statutory agency working in parallel with, but independently of, the FWO. The Bill proposes to retain the power of coercive interview for this specialist statutory agency, but in an amended form with some procedural safeguards. Although the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009 was introduced into the Parliament in June 2009, it has not passed through the Senate. Consequently, the BCII Act remains unamended and the ABCC continues to operate as it has done since September 2005. The ACTU believes that the retention of such a separate labour inspectorate runs counter to the principle of a single central system of labour inspection which is embodied in *Article 1* of the Convention. It notes in this regard that Australia is moving rapidly towards a single national system of labour law as all but one state have referred their industrial powers to the Commonwealth Government. The ACTU also notes that the ABCC does not operate in such a way as to enforce the legal provisions that are designed to protect workers in their employment. Rather, workers themselves are the subject of ABCC investigation, interrogation and prosecution for alleged breaches of industrial relations law (which includes wages and hours of work) and the BCII Act while only 4.5 per cent of the ABCC's investigations in 2008–09 were directed at employers. The ACTU provides detailed data to support this view:

- the ABCC has adopted an “understanding” with the former Workplace Ombudsman (now the FWO) that the ABCC will not deal with allegations of non-payment of wages and entitlements in accordance with applicable awards and agreements, despite the fact that the construction industry has been recently ranked as the fourth highest for employer non-compliance with legally binding awards and agreements that set employee rates of pay and conditions of employment;
- in its most recent annual report, the ABCC disclosed that 63 per cent of all its investigations were directed at trade unions and a further 8.5 per cent concerned the conduct of workers in 2008–09. In 2006–07, the corresponding figures were 73 and 11 per cent respectively. Unions or employees were the subject of on average 76.5 per cent or more than three-quarters of all ABCC investigations between 1 July 2006 and 30 June 2009;
- the ABCC's report on the exercise of compliance powers for the period 1 October 2005 to 31 March 2010, shows that out of 197 “examinations” conducted in the period, 135 were directed at employees and ten at union officials; only 50 examinees were management/employer representatives. One worker is presently on trial for allegedly refusing to attend a coercive interview facing a possible penalty of six months' imprisonment. An earlier criminal prosecution against a union official had been withdrawn in November 2008;
- as of 8 July 2010 there had been 37 ABCC prosecutions before the courts. Of these, 36 identified a trade union, trade union official or employee as respondents to the proceedings. Only one of the 37 matters has been taken by the ABCC against an employer. The number of ABCC prosecutions against unions and workers has dramatically increased in the last 18 months.

The ACTU therefore considers that the ABCC disregards the functions which should be the primary responsibility of any labour inspectorate under the Convention and exercises unwarranted powers which should not be bestowed on a body dealing with contraventions of the civil law and potentially minor breaches of industrial instruments. According to the ACTU, this situation also undermines a key element of the Convention, namely, the impartiality of inspectors in their relations with employers and workers. Finally, the ACTU observes that the ABCC remains extensively resourced, with a total workforce of 156 people, and a recent addition of AU\$33,342,000 to its annual funding.

The Government replies that the Building and Construction Industry Improvement (Transition to Fair Work) Bill 2009 has been based on the recommendations of a former Federal Court Judge and Chief Justice of the Industrial Relations Court of Australia (*Transition to Fair Work Australia for the building and construction industry*, March 2009). The Bill gave effect to the Government's commitment to abolish the ABCC and replace it with a new independent regulator, the Fair Work Building Industry Inspectorate (the Inspectorate) which was designed to ensure compliance with relevant workplace relations laws by actively pursuing the unlawful or inappropriate conduct of *all* building industry participants including, importantly, the underpayment of employee entitlements, such as wages.

However, the coercive interrogation powers currently given to the ABCC were retained since according to the abovementioned report: "there is still such a level of industrial unlawfulness in the building and construction industry, especially in Victoria and Western Australia, that it would be inadvisable not to empower the [Inspectorate] to undertake compulsory examination. The reality is that, without such a power, some types of contravention would be almost impossible to prove" (op. cit., paragraph 1.23). However, the Bill also included a number of safeguards to ensure that these coercive interrogation powers vis-à-vis workers and their organizations are used in a fair and balanced manner. The Bill passed the lower house on 13 August 2009 and was introduced into the Senate on 17 August 2009 but lapsed when, on 19 July 2010, Parliament was prorogued for General Election for the House of Representatives and half the Senate. The re-elected Australian Government is committed to reintroducing this legislation as a matter of priority. A ministerial direction which had been issued on 17 June 2009 to circumvent the application of coercive powers and the conduct of compulsory interviews by the ABCC, was finally overturned in full by the Senate on 25 June 2009.

The Committee notes with *concern* that the enforcement of legal provisions on the protection of workers constitutes a very small percentage of the ABCC's activities; this body has according to the ACTU declared that it will refrain from its primary functions under the Convention, i.e., investigating allegations of non-payment of wages and entitlements, directing instead the main bulk of its activities at the investigation, examination and prosecution of workers and trade union officials, notably for industrial action. The Committee cannot emphasize enough that under *Article 3* of the Convention, the prosecution of workers does not constitute part of the primary duties of inspectors and may not only seriously interfere with the effective discharge of their primary duties – which should be centred on the *protection* of workers under *Article 3(1)* – but also prejudice the authority and impartiality necessary in the relations between inspectors and employers and workers as provided for in *Article 3(2)*. With regard to the "unlawfulness" which justifies according to the report on "Transition to Fair Work Australia for the building and construction industry" the exercise of such functions by the labour inspection system, the Committee notes that it essentially relates to industrial action (strikes) (op. cit., paragraph 1.17) and refers in this regard to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Noting with concern that the manner in which the ABCC carries out its activities seems to have led to the exclusion of workers in the building and construction industry from the protection that the labour inspection system ought to secure for these workers under the applicable laws, the Committee urges the Government to ensure that the priorities of the ABCC (or the Fair Work Building Industry Inspectorate) are effectively reoriented so that labour inspectors in the building and construction industry may focus on their main functions in full conformity with Article 3(1) and (2) of the Convention. The Committee would be grateful if the Government would provide detailed information in this regard.*

*Noting the steps taken so far to introduce safeguards in the way in which the ABCC exercises its activities the Committee requests the Government to indicate the progress made in reintroducing and promoting the adoption of the Building and Construction Industry Improvement (Transition to Fair Work) Bill as a matter of priority.*

The Committee is raising other points in a request addressed directly to the Government.

## Austria

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)**

The Committee takes note of the Government's report replying to its previous comments and to the points raised by the Federal Chamber of Labour (BAK) in October 2008. It notes the amendment of the Labour Inspection Act, No. 27/1993 of 2009, under which data collected via the computer system of the Ministry of Finance (temporary secondment of workers) and that of the Social Security are now available to labour inspectors. The Committee also notes that the BAK has sent comments which largely concern the points raised previously.

The Committee also notes with *interest* the detailed information published on the Labour Inspectorate's website ([www.arbeitsinspektion.gv.at/AI/default.htm](http://www.arbeitsinspektion.gv.at/AI/default.htm)), including the annual inspection reports for 2007, 2008 and 2009,

information on the National Occupational Safety and Health Strategy for 2007–12 (various preventive measures, particularly to prevent psychosocial disorders caused by work), and instances of good practices, including the establishment of an annual prize awarded by the Minister of Labour, Social Welfare and Consumer Protection to the three most deserving enterprises for services rendered in the field of workers' safety and health.

*Article 5(a) of the Convention. Effective cooperation between labour inspectors and law enforcement bodies.* In its previous comments, the Committee noted that there are two systems for processing and prosecuting offences against the legislation on working conditions and worker protection (an administrative system and a penal system). In reply to the BAK's assertion that the courts must inform the inspection services when penal proceedings are concluded but need not notify the rulings, the Government states that the inspection services are nonetheless informed of decisions that concern employers responsible for training apprentices (treated by the law as particularly vulnerable). Furthermore, according to the Government, the labour inspectorate is, as a rule, informed of the decisions in penal cases in which it is represented as a witness or expert at hearings. The Committee likewise notes with *interest* that in certain specific cases, such as those involving industrial accidents, the labour inspectorate is authorized by the Code of Penal Procedure to apply for access to the dossiers or to a copy of the relevant decision.

As to the BAK's request for enhanced cooperation through joint action by the Federal Ministry of Labour and Economic Affairs and the Federal Ministry of Justice, the Government states that with the right to consult the files and the administrative support lent by the Federal Ministry of Justice to the Federal Ministry of Labour and Economic Affairs pursuant to the Federal Constitution, article 22 (mutual assistance between institutions), nothing more is needed.

As regards the matter of restrictions in the context of cross-border assistance in the enforcement of administrative sanctions, raised by the BAK, the Government refers to the provisions of the Council Act of 2000, establishing the Convention on Mutual Assistance on Criminal Matters between the Member States of the European Union, and to the provisions published in the *Official Journal* of the Federal Republic of Austria No. 65/2005 appointing the competent authorities, which likewise apply to the activities of the administrative and penal authorities and which allow the prosecution of employers that have their head offices in another member State.

With regard to *Article 21(e)* of the Convention, which provides for the inclusion in the annual report of statistics of violations and the penalties imposed, the Committee notes that according to the Government, this provision refers only to administrative, and not penal sanctions. The Committee points out in this connection that *Article 18* of the Convention applies to penalties for violations of the provisions of the law that are enforceable by labour inspectors, without any exceptions and regardless of the authority that imposes the penalty.

In its General Observation of 2007, the Committee observed that it is important for the labour inspectorate to have information about relevant judicial decisions. ***The Committee would be grateful if, in the light of the foregoing, the Government would consider the possibility of extending cooperation so that judicial decisions on violations of the provisions of the law referred to in the Convention, are made available, without restriction, to the labour inspectorate and included in an annual report, as required by Article 21(e).***

*Article 18. Adequate penalties.* According to the BAK, administrative fines imposed on employers pursuant to section 19 of the Act on the Penal Liability of Legal Entities (VbVG), are tax deductible. The Government states that according to consistent precedent, judicial fines, like administrative ones, are tax deductible only for minor infractions. ***The Government is asked to provide examples of tax-deductible pecuniary sanctions.***

*Articles 10 and 16. Adapting the resources of the inspectorate to the duties to be performed.* Having pointed out previously that the human resources of the inspection services are inadequate and that the numbers of labour inspectors need to be increased to cope with the new tasks they have to perform, the BAK refers to a government project to reassign former employees from the postal administration and elsewhere to the inspection services. ***The Committee requests the Government to make any comments it may deem relevant on the BAK's views concerning the need to strengthen the human resources of the inspection services and the measures needed.***

## Bangladesh

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)***

The Committee notes the Government's reports for 2008 and 2010. According to the Government, the latest report incorporates the comments of the Bangladesh Employers' Federation (BEF). The Committee also notes the observations of the National Coordination Committee for Workers' Education (NCCWE) transmitted with the Government's report, as well as the communications of the Bangladesh Free Trade Union Congress (BFTUC) dated 31 August 2008 and 26 August 2010, which are based on the 2010 report of the Bangladesh Occupational Safety, Health and Environment Foundation (OSHE).

Further to its previous comments, the Committee notes with *satisfaction* that the level of penalties to be imposed for violations of labour legislation has significantly increased (see below, *Article 18*): The Bangladesh Labour Act (BLA) now provides for a maximum fine of 25,000 taka (approximately US\$356) whereas the repealed 1965 Factories Act only provided for a maximum fine of 1,000 taka (approximately US\$14).

*Articles 1, 2 and 4 of the Convention. Safety and health legislation and functioning of the system of labour inspection.* The Committee notes with *interest* that the BLA came into force in October 2006 and replaced 26 Acts, 14 Ordinances and about 35 rules and regulations, repealing among others, the 1965 Factories Act. The Act has considerably enlarged the scope of the Factories Act 1965, which applied only to factories. The new Act applies to all “establishments” defined very widely to include “shops, commercial establishments, industrial establishments or premises in which workers are employed for the purpose of carrying on any industry” (section 2(31)); “industry” is defined as meaning “[a]ny business, trade, manufacturer, calling service employment or occupation” (section 2(69)); the Act also applies to the construction industry (section 6(61)(i)). In particular, the Committee notes with *interest* that section 2(7) extends the scope of labour inspection to factories employing more than five workers (in contrast with the previous Act, which only covered factories employing more than ten workers).

According to the BFTUC’s comments in 2008 and 2010, while the wider scope of application of the BLA, which is currently under revision, has considerable additional impact in terms of other obligations relating to payment of wages and trade union rights, it does not represent a reform in terms of safety and health obligations. In the view of the BFTUC, the safety and health obligations in the BLA are not relevant to the conditions of workplaces other than factories (construction sites, shops, offices, etc.), due to the fact that these obligations are worded in terms almost identical to those of the Factories Act and no additional provisions which take into account the specific safety and health requirements in the various sectors now covered by the BLA have been included in the Act. *The Committee requests the Government to make any observations it considers relevant in relation to the comments of the BFTUC and NCCWE and to indicate the impact of the BLA in terms of the labour inspection activities by economic sector, in particular, numbers of visits and their outcomes, as well as statistics of the violations detected, sanctions imposed and occupational accidents and diseases recorded. The Committee also requests the Government to forward any legal text adopted in the process of reviewing the BLA.*

*Construction sector.* According to the 2010 communication of the BFTUC, at the same time as the BLA was enacted, the Government also “gazetted” the Bangladesh National Building Code (BNBC), which was drafted as early as 1993. The BNBC became law in November 2006. It contains specific health and safety provisions for the construction sector and provides for the establishment of an agency responsible for the enforcement of the code, which does not come under the responsibility of the Department of Inspection for Factories and Establishments at the Ministry for Labour and Employment (DIFE). However, the BFTUC indicates that such an inspectorate or agency has not been established so far despite the high number of fatal casualties in the sector (106 registered deaths in 2009). *The Committee requests the Government to make any comments it deems appropriate in relation to the allegations of the BFTUC. It also requests the Government to furnish a copy of the BNBC and to specify its relationship to the BLA. Please also indicate the measures taken or envisaged to ensure that the construction sector is effectively inspected, and provide relevant statistical data regarding inspection visits and their outcomes, as well as occupational accidents and diseases in this sector.*

*Labour inspection in export processing zones (EPZs).* The Committee notes that, according to the NCCWE, EPZs are totally excluded from the labour law and there is a separate Act for workers in EPZs, which includes limitations for inspection. *The Committee requests the Government to make any observations it considers relevant to the comments of the BFTUC and NCCWE, to specify the body responsible for inspection in EPZs, to give an overview of its activities (inspection visits, violations reported, legal provisions concerned, types of sanctions imposed) and to provide relevant statistical data.*

*Article 3(1)(b) and (c). Provision of technical advice to workers and employers.* The Committee notes that the BFTUC continues to deplore that labour inspectors fail to provide sufficient advice and guidance to employers and indicates that no advice or guidance literature for workers and employers has been produced by the Government. It points out that the BLA – in the same way as the repealed Factories Act 1965 – does not explicitly entrust labour inspectors with the function of providing advice and guidance to employers and workers. However, the Committee notes from an annotated version of the BLA available at the ILO that, as a result of case law, inspectors are expected to give advice and guidance in the course of the discharge of their enforcement duties. *Recalling that enforcement and the provision of information and advice are two inseparable functions of a labour inspection system, the Committee requests the Government to provide detailed information on the activities of the labour inspectorate in relation to the provision of information and advice and to indicate the legislative and practical measures taken or envisaged to promote a more active role of labour inspectors in guiding and advising workers and employers, especially on the recently adopted labour legislation.*

*In this context, and further to its previous comments (in 2006), the Committee once again asks the Government to provide copies of the basic texts of the project “Improvement of the working environment, health and safety in factories” carried out in collaboration with the World Health Organization, together with information on the progress made in the framework of this project in terms of cooperation with the social partners to improve health and safety conditions at work and in terms of reducing the number of industrial accidents and cases of occupational disease.*

*Article 3(2). Additional functions entrusted to labour inspectors.* The Committee notes that, according to Chapter XX, section 317(3)(e) of the BLA, labour inspectors are entrusted with the function of conciliation in industrial disputes. As indicated in paragraphs 72–74 of the General Survey of 2006 on labour inspection, the Committee would like to stress

that conciliation is not among the duties of the labour inspectorate as defined in *Article 3(1)* of the Convention. It recalls the importance of avoiding overburdening inspectorates with tasks which by their nature may be understood as incompatible with their primary function of enforcing legal provisions, as provided for in *Article 3(2)*. The assignment of the conciliation of industrial disputes to any other body or officials would enable labour inspectors to carry out their supervisory function more consistently, resulting in better enforcement of labour legislation and hence a lower incidence of labour disputes. In this regard, the Committee draws the Government's attention to Paragraph 8 of the Labour Inspection Recommendation, 1947 (No. 81), according to which "the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes". ***The Committee thus requests the Government to take all the necessary legislative and practical measures to relieve labour inspection staff of all conciliation duties and to enable labour inspectors to devote themselves more fully to supervising the legislation on working conditions and the protection of workers, in conformity with Article 3(2).***

*Article 5(b) Collaboration with workers' and employers' organizations.* The Committee notes that section 323 of the BLA provides for the establishment of a tripartite national council for industrial health and safety and that section 323(2)(j) provides that the current labour chief inspector will be a member and secretary of this council. It further notes with *interest* that, according to the communication of the BFTUC in 2010, the Tripartite National Industrial Health and Safety Council has been set up and has elaborated a national policy for occupational safety and health in industrial establishments. ***The Committee would be grateful if the Government would provide a copy of any document relating to the national policy for occupational safety and health, together with information on its application in practice. It asks the Government to provide information on any other activities of the Council in relation to labour inspection and a copy of any relevant documentation.***

*Article 14. Notification of industrial accidents and occupational diseases.* Further to its previous comments, in which it asked the Government to take steps to secure the adoption of legal provisions setting forth the instances and the manner in which the labour inspectorate must be informed of cases of occupational diseases, the Committee notes with *interest* that the BLA contains, in sections 80 and 82, a reporting obligation for employers with regard to both occupational accidents and occupational diseases and provides in section 290 for a penalty for the failure of employers to give notice of an occupational accident. It further notes that, whereas section 80 provides for the period in which the labour inspectorate must be informed of industrial accidents, as far as the reporting of occupational diseases is concerned, section 82 provides that the form and time limits for the notification of occupational diseases shall be regulated by rules. The Committee notes, however that, according to information communicated by the BFTUC in 2008, the reporting of occupational accidents does not function well in practice and that the registered numbers do not seem to correspond with actual fatalities. ***The Committee requests the Government to make any comment it considers relevant on the points raised by the BFTUC. It asks the Government to indicate the measures taken or envisaged, including the rules to be issued under section 82 of the BLA, for the notification of occupational diseases, and to provide information on any progress in the development of a relevant system and its implementation in practice.*** The Committee would like to draw the Government's attention in this regard to the ILO code of practice on the recording and notification of occupational accidents and diseases, published in 1996, which contains useful recommendations intended for those responsible for the reporting, recording and notification of occupational accidents and diseases and which can be found at: [www.ilo.org/safework/normative/codes/lang--en/docName--WCMS\\_107800/index.htm](http://www.ilo.org/safework/normative/codes/lang--en/docName--WCMS_107800/index.htm).

*Articles 6 and 15(c). Probity of labour inspectors and duty of confidentiality in relation to complaints.* Further to their previous comments, the BFTUC and the NCCWE continue to question the probity of inspectors who, after the reform of the BLA, are still under no legal obligation to refrain from disclosing the identity of the author of a complaint or from indicating that an inspection took place as a result of a complaint. While the Government states that, in practice, inspectors do not disclose the identity of the complainant, the trade unions indicate that workers prefer not to report breaches of the law by employers for fear of reprisals. The Committee recalls that the granting of the appropriate status and conditions of service to labour inspectors, including appropriate wages and career prospects, in accordance with *Article 6*, and the obligation for labour inspectors to comply with the duty of confidentiality, under *Article 15(c)*, are essential safeguards against improper behaviour. It notes that, although under the terms of section 334 of the BLA inspectors shall be deemed to be public servants, there has been no apparent progress with regard to the issues raised previously by the BFTUC concerning the level of their salary and the absence of career prospects. ***The Committee asks the Government to indicate the measures taken or envisaged to ensure that the conditions of service of inspectors are such that they are assured of stability of employment and independence from any improper external influence, especially through appropriate wage levels and career prospects. Furthermore, the Committee requests the Government to take, without delay, appropriate steps aimed at supplementing the law to ensure that the duty of confidentiality regarding the existence of a complaint and its source is duly respected by labour inspectors. It asks the Government to keep the ILO informed of the progress made and to provide any text governing the conditions of service of labour inspectors.***

*Articles 7, 10, 11 and 16. Human and material resources of the labour inspectorate. Training of labour inspectors.* According to the BFTUC, while the budget allocation to labour inspection has further increased, it represents a mere 0.004 per cent of total government expenditure. The BFTUC is of the view that the lack of financing of the labour inspectorate has less to do with the lack of resources and more with the lack of interest and commitment over the years to

improving workers' safety. The NCCWE also refers to the lack of authority and accountability of the labour inspection department. While a table included in the observations made by the BTFUC shows that the number of labour inspectors has risen from 78 in 2006 to 93 in 2010, the trade union regrets the absence of significant progress in giving effect to the repeated commitments of the Government to increase labour inspection staff, and especially the staff of the occupational safety and health inspectorate where numbers have remained the same over the last 26 years. The Committee notes that the Government, in its 2010 report, acknowledges that the number of labour inspectors is insufficient in relation to the number of workplaces liable to inspection which, according to the 2010 communication by the BTFUC, has further increased, without providing information concerning its indication in its 2008 report that 48 new labour inspectors would be recruited.

Moreover, according to the comments made by the BFTUC and the NCCWE in 2010, the Government has failed to take any visible steps to modernize the infrastructure of the labour inspectorate. Despite the acquisition of some new sound and light equipment through an international donor, there continues to be a lack of logistical support (transport facilities, training materials, necessary equipments for examinations or testing). With regard to the allegations previously made by the BFTUC, the Government acknowledges the lack of proper vehicles, but refers, in a general manner, to the provision of travelling allowances to labour inspectors and denies that employers cover any travelling expenses of labour inspectors.

Finally, the Committee notes that the BFTUC again refers to the inadequacy of training in the light of the rapid changes in technology and methods of work in all sectors of the economy. It notes in this regard the information provided by the Government in 2008 and 2010 that, in addition to the initial one-month training at the Industrial Relations Institute (IRI) and the 15 days' in-house training offered by the senior officials of the DIFE, labour inspectors are provided with regular training courses by the IRI and other government training institutions, as well as training financed by organizations such as the German Society for Technical Cooperation (GTZ) or the ILO. It, however, acknowledges that inspectors are not sufficiently trained for the discharge of their duties. ***The Committee encourages the Government to do its utmost to furnish the labour inspectorate with the resources that it needs to operate effectively, if necessary within the framework of international financial cooperation, in order to ensure that the number of labour inspectors is adequate in relation to the number of workplaces liable for inspection (Article 10 of the Convention), that they are provided with the material means and transport facilities necessary for the performance of their duties (Article 11) and that they receive adequate training for the performance of their duties (Article 7(3)). The Government is requested to provide information on:***

- ***the total number of labour inspectors and their distribution at headquarters and in the various field, regional and branch offices, in relation to the number of workplaces liable to inspection and the workers employed therein, as provided for in Article 10(a)(i) and (ii);***
- ***the amounts and conditions for the reimbursement of travel costs and allowances to labour inspectors, including a copy of a reimbursement form; and***
- ***the frequency, content and duration of training, as well as the number of participants and the practical impact of such training.***

***Article 12(1). Right of inspectors to enter workplaces freely.*** The Committee notes the repeated indications by the BFTUC that employers are informed of the date of intended inspection visits. The Committee would like to draw the Government's attention to the fact that it is important that there should be no prior notification of inspection visits to the employer or her or his representative, unless the labour inspector deems such notification necessary for the effectiveness of the control to be performed. ***The Committee asks the Government to take the necessary steps to secure the full effect in law and in practice of Article 12(1) of the Convention and to provide a copy of any relevant legal or administrative text adopted to this end.***

***Article 17. Prompt legal proceedings. Modifications in the procedure for the prosecution of violations of national labour provisions.*** The Committee notes that there have been some modifications in the procedure for the prosecution of violations of national labour provisions. Whereas, under section 107(2) of the 1965 Factories Act, only the magistrate's court had jurisdiction over an offence under this Act or any rules or orders made thereunder, section 313(1) of the BLA now establishes the jurisdiction of labour courts for offences under the BLA. Further, whereas under section 107(1) of the Factories Act, prosecutions could only be initiated by labour inspectors, under section 313(2) of the BLA, aggrieved workers and trade unions can now also initiate court proceedings. The Committee notes the suggestions made by the BFTUC with regard to the prosecution of breaches of labour law, namely: (i) the creation of more labour courts, in addition to the seven labour courts already existing in the country, which might be far away from the main office; and (ii) the recruitment of lawyers to represent inspectors in the filing and prosecuting of cases which, according to the BFTUC, is a function that is extremely time consuming. The Committee further notes that the trade union regrets that no prosecutions involving breaches of health and safety duties have been filed under the BLA in three of the seven labour courts. ***The Committee asks the Government to provide information on the total number of cases filed by labour inspectors, and to provide particulars of the classification of such infringements according to the legal provisions to which they relate, and to ensure that this information is included in the annual report sent to the ILO. Further, the***



*Committee would be grateful if the Government would send any information or comments in reply to the suggestions made by the BFTUC.*

*Article 18. Adequate penalties.* With regard to the increase of the level of penalties noted at the beginning of this comment, the Committee further notes that the BLA also introduces new offences for violations, for example as regards the causing of fatalities and serious bodily injuries by employers through the breach of an obligation under the BLA, or the failure by employers to report an occupational accident. *The Committee asks the Government once again to provide available information on the number and level of the penalties imposed for offences reported by labour inspectors and to ensure that this information is included in the annual report sent to the ILO. Please also indicate the impact of the increased penalties on the observance of labour law.*

*Articles 20 and 21. Publication of an annual report.* According to the Government, the collection of comprehensive data for the publication of regular annual reports is hampered by the low number of labour inspectors and inspection visits. Noting, however, that the Government is aware of the importance of keeping registers containing useful data, the Committee would like to stress that one of the aims of *Articles 20 and 21* is to allow the central inspection authority to gather the information needed to determine, in the light of the social and economic objectives of labour inspection, the resources required to operate the services efficiently and to submit appropriate budgetary proposals for the attainment of these objectives. *Referring to its comment under Articles 7, 10, 11 and 16, the Committee once again emphasizes the importance of increasing the budget allocated to the labour inspectorate. It again asks the Government to take the necessary measures for the establishment of a register of workplaces liable to inspection and of the workers employed therein (particularly through inter-institutional cooperation as recommended in its 2009 general observation), and to provide information on any measures taken for this purpose, with a view to the fulfilment by the central inspection authority of its obligation to publish and transmit to the International Labour Office an annual report in accordance with Articles 20 and 21 of the Convention.*

## Benin

### **Labour Administration Convention, 1978 (No. 150) (ratification: 2001)**

The Committee notes the Government's report received at the ILO on 20 October 2009, and also the annual report of the Directorate-General of Labour (DGT) of the Ministry of Labour and Public Service (MTFP) for 2008 and 2009, as well as copies of the legislative texts sent as attachments to the report. It also notes the observations of the General Confederation of Workers of Benin (CGTB), dated 14 January 2010, concerning the inadequacy of the human and material resources of the labour administration.

The Committee notes with *interest* the communication of documents from the MTFP concerning the situation of the labour administration and the obstacles to its efficient functioning and also the objectives established with a view to overcoming them. It notes in particular the documents on national labour policy, occupational safety and health policy and the paper relating to the strategic plan for strengthening the labour administration for the 2007–16 period. The Committee notes with *interest* that the 2008 document on national labour policy was drawn up following wide-ranging consultations, including with the social partners.

The Committee is raising other points in a request addressed directly to the Government, notably with regard to the issues raised by the CGTB and also various aspects of the labour administration raised in the Government's report and the attached documentation.

## Plurinational State of Bolivia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)**

Further to the information available to the ILO according to which the multilateral regional technical cooperation project ILO/FORSAT, financed by the Ministry of Labour and Social Affairs of Spain, was to be launched with the objective of strengthening the labour administration, the Committee addressed an observation to the Government in 2004, repeated in 2006, 2007, 2008 and 2009, requesting it to provide information on the measures taken in the context of that project and on the results achieved, particularly in the area of labour inspection.

Despite the Committee's repeated requests, the Government has stopped providing reports on the application of this Convention. The Committee notes with *regret* that, according to the Government's indications in its report received on 1 August 2010, the project has never been launched and no relevant information could therefore be provided.

The Committee reminds the Government of its obligation under article 22 of the ILO Constitution to provide a report every two years on the measures taken to give effect to the Convention and of the fact that, in fulfilling this obligation, it could have reported the difficulties preventing the launch of the project and requested ILO support to overcome them. In any case, the suspension of this project did not prevent the Government from providing information on the application of the provisions of the Convention in both law and practice or from ensuring that an annual report on inspection activities is published and transmitted to the ILO in accordance with *Articles 20 and 21 of the Convention*. The Committee considers that this constitutes serious failure on the part of the Government to fulfil the commitments it made when ratifying the

Convention and that it has therefore prevented the Committee from carrying out its duty to oversee its application. *The Government is therefore urged to provide a detailed report containing replies to the questions raised under the Articles of the Convention in the report form relating to this Convention and to ensure that an annual report on inspection activities is published and transmitted to the ILO as soon as possible. If a report has not yet been prepared, the Committee requests it to refer to paragraphs 320 et seq. of its General Survey of 2006 on labour inspection, take all necessary measures as a matter of urgency to ensure that full effect is given to Articles 20 and 21 of the Convention and keep the ILO informed in that regard.*

*[The Government is asked to report in detail in 2011.]*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

Referring to its observation under Convention No. 81, the Committee notes that, owing to the economic crisis, the Government is encountering economic and financial restrictions which affect in particular the implementation of monitoring functions relating to the application of labour legislation and occupational safety standards in the agricultural sector. The Committee notes, however, that despite these difficulties a pilot project has been implemented by the Ministry of Labour in the regions of Bermejo, Yacuiba, Villamontes and Riberalta and that the officials operating in these regions are doing their utmost to perform their duties in accordance with the provisions of the General Labour Act, its implementing decree and other connected standards.

The Committee also notes that the Government hopes that, when the labour inspection system is reorganized as a result of the ILO/FORSAT multilateral cooperation project, of regional scope, to strengthen the labour administrations, the functioning of this system will be able to be extended to the agricultural sector. The Committee recalls that the ratification of the present Convention implies de jure obligations whose aim is the coverage of needs specific to agricultural undertakings by the inspection services with respect to monitoring of the legislation concerning conditions of work and worker protection. *The Government is therefore requested to take measures promptly to ensure the implementation of such obligations, without prejudice to any improvement expected from the overall reorganization of the inspection system which is under way, and to communicate to the ILO all available information requested in the report form according to the provisions of the Convention.*

*The Committee also requests the Government to provide further information on the activities undertaken and the results obtained by the inspection services involved in the implementation of the abovementioned pilot project.*

*Part V of the report form and article 23(2) of the ILO Constitution. Recalling the obligation to communicate to representative organizations of employers and workers, under the abovementioned article of the Constitution, copies of reports and information transmitted to the ILO Director-General, particularly under article 22 of the ILO Constitution, the Committee would be grateful if the Government would indicate the precise reasons which might explain the failure to implement these provisions in relation to the present Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Bosnia and Herzegovina**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1993)**

The Committee takes note of the text of the Work Protection Act, 2008 provided by the Government and will examine this text as soon as a translation is available.

#### **Follow-up to the recommendation of the Tripartite Committee (representation made under article 24 of the Constitution of the ILO)**

*Articles 12(1)(a) and (b), and 18 of the Convention. Right of entry of labour inspectors. Penalties for obstructing labour inspectors in the performance of their duties.* The Committee recalls that a representation submitted to the ILO on 9 October 1998 pursuant to article 24 of the ILO Constitution by the Union of Autonomous Trade Unions (USIBH) and the Union of Metalworkers (SM) alleging violation of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), stated that the federal labour inspectorate and the cantonal labour inspectorate had never been able to obtain the authorization of the cantonal minister responsible for labour to conduct an inspection visit in the factories concerned (*Aluminij dd Mostar and Soko dd Mostar*) in order to verify the allegations of the abovementioned trade unions. The tripartite committee of the ILO Governing Body responsible for examining the representation noted, in particular, that the fact that the cantonal labour inspector was obliged to request the authorization of the cantonal Minister before being able to conduct an inspection visit was not in conformity with *Article 12(1)*, of Convention No. 81 and requested that the follow-up to the case be entrusted to the Committee of Experts. In the framework of the follow-up, the Committee had addressed an observation to the Government from 2000 until 2005 requesting that all appropriate steps be taken as soon as possible to remove the requirement in the legislation whereby labour inspectors must seek authorization from the supervisory authority to exercise their right of entry to workplaces and premises liable to inspection. The Government's report sent in 2006 appeared to indicate that none of the laws on inspections contained any provision obliging labour inspectors to obtain authorization to be able to enter an enterprise and the Committee thereby concluded that, if such an authorization were required in practice, this was contrary to the law. In its 2006 report, the Government had also indicated that random inspections had been carried out in the specific enterprises in question in March 2000 and that measures had

been ordered by the chief federal inspector; however, the Government had not specified whether measures had been taken to abandon the practice of having to request authorization or to penalize the officials responsible for it.

The Committee notes the information provided by the Government in its latest report in relation to the legal provisions which prohibit obstruction of inspectors' access to workplaces and the penalties established in the law in case of violation of this prohibition (section 67(3) of the Act on Inspections of the Federation of Bosnia and Herzegovina which provides that inspectors are entitled to inspect all workplaces and section 85 of the Act on Inspections of the Republika Srpska which provides for a fine of 2,000 up to 20,000 convertible marka (BAM) if an enterprise fails to allow smooth access to the inspector for supervision purposes). The Committee notes that the Government is not aware of any cases involving obstruction of the work of labour inspectors in the Federation of Bosnia and Herzegovina or the Republika Srpska in the reporting period. The Government adds that the powers of inspectors laid down in the Act on Inspections of the Brcko District of Bosnia and Herzegovina are compatible with the powers stated in *Article 12* of the Convention. While noting this information, the Committee is bound to observe that it does not address the issue of whether labour inspectors are required to seek authorization from the supervisory authority to exercise their right of entry to workplaces and premises liable to inspection.

*The Committee requests the Government once again to indicate in its next report the steps taken or envisaged to abandon the practice of having to seek authorization from the supervisory authority in order for labour inspectors to be able to exercise their right of entry to workplaces and premises liable to inspection in the Federation of BiH. The Government is requested in particular to: (i) indicate the legal provisions which guarantee the right of labour inspectors, provided with proper credentials, to enter any workplace under their supervision without having to obtain authorization from the supervisory authority; and (ii) to furnish any relevant administrative decision or circular containing instructions ensuring the exercise of inspectors' free right of entry to workplaces under their supervision. The Committee also requests the Government to specify the state of law and practice in this regard in the Republika Srpska and the Brcko District.*

## Brazil

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1989)**

The Committee notes the communications from the Government received on 13 May 2009 in reply to the comments from the Single Confederation of Workers (CUT), on 27 August 2009 in reply to the comments from the Gaúcha Association of Labour Inspectors (AGITRA), on 8 December 2009 in reply to the comments from the Union of Workers for the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande Do Sul (SINDILÍQUIDA/RS), and on 8 November 2010 in reply to the comment from the National Union of Labour Inspectors (SINAIT).

The Committee also notes the communication from the Health, Labour and Social Welfare Workers' Union of the State of Rio de Janeiro (SINDISPREV/RJ) received by the ILO on 14 April 2009 and communicated to the Government on 11 May 2009; and also that of the Union of Workers in the Lumber, Civil Construction and Furniture Industries Altamira and Surrounding Region (SINTICMA) received at the ILO on 9 February 2010 and communicated to the Government on 12 April 2010. These comments largely relate to the lack of labour inspection staff and the inadequacy of the system of enforcement, particularly in cases of forced labour, in breach of *Articles 17 and 18 of the Convention*.

As the Government's report received in September 2010 and its reply to the points raised by SINAIT are being translated at the ILO, they will be examined at the next meeting of the Committee. The Committee will also examine any comment that the Government may wish to make in relation to the points raised by SINDISPREV/RJ.

The Committee also refers to the Government's previous report for the period from June 2006 to June 2008 and to the attached documentation, and draws the Government's attention to the following points.

*Articles 5 and 14 of the Convention. Cooperation between the labour inspectorate and other public institutions. Prevention of occupational accidents and diseases.* The Committee notes with *interest* the setting up of a tripartite occupational safety and health committee pursuant to Inter-Ministerial Order MPS/MS/MTE No. 152 of 13 May 2008. It also notes with *interest* the planned signature of a draft agreement providing for the exchange of information between the Ministry of Social Welfare and the Ministry of Labour and Employment with regard to occupational accidents and diseases. *The Committee hopes that the Government will continue to promote the establishment of inter-institutional cooperation with a view to preventing occupational accidents and diseases. It requests the Government to indicate whether the agreement providing for the exchange of information between the above ministries has been signed and, if so, to keep the Office informed of any developments in this sphere and also of any other measures taken for the same purpose.*

*Articles 10 and 16. Labour inspection staff. Planning of inspections.* The Committee notes with *interest* that the labour inspection secretariat draws up a three-stage plan for inspection visits: analysis of the employment market, planning of lines of action designed to tackle fields of irregularities in the labour sphere and monitoring of implementation of the plan. It notes that, according to the Government, the increase of the number of labour auditors/controllers from 2,911 in June 2006 to 3,153 in June 2008 is still inadequate in view of the number of workers employed in workplaces

liable to inspection. ***The Committee therefore urges the Government to continue its efforts to strengthen the labour inspection staff in order to fully implement the plan of inspections and requests it to continue to provide information on any developments in this respect.***

*Articles 17 and 18. Action taken further to reports of violations.* In its comments, AGITRA refers to the small number of prosecutions instituted against employers who have committed violations, the statute of limitations on legal action having resulted in the lapse of a large number of cases of violations for various reasons (between 2003 and 2008 a total of 34,829 cases of violations were declared out of time by the regional labour directorate of Rio Grande do Sul alone). The Government rejects this allegation, declaring that these cases have been processed, and also points out that numerous measures have been taken to strengthen the system of legal prosecution, including through improved supervision of the inspection programmes of the regional directorates. Moreover, it announces measures aimed at the gathering of information on the operation of units responsible for the imposition of fines and the processing of appeals. The Committee also notes the adoption of Decree No. 809 of 20 March 2009 providing for the participation of the staff of directorates in the collective effort to speed up procedures for the prosecution of employers who have committed violations. ***The Committee requests the Government to indicate the progress made in the prosecution of violations during the next reporting period and in particular to provide statistics on violations reported, penalties imposed and the number of penalties enforced, referring to the legal provisions concerned.***

*Physical safety of labour inspectors.* The Committee notes with ***satisfaction*** the Government's rapid reaction to the murder of four members of the labour inspection staff on 28 January 2004 in issuing Circular No. 04/SIT/MTE of 3 February 2004 providing for coordination of labour inspection in rural areas with the assistance of the trade unions of the workers involved in the inspections with respect to evaluation of the risks faced by labour inspectors. Measures were also taken to ensure the systematic presence of the police authorities during inspections, including routine inspections, in cases that required it. The Committee hopes that the Government will continue to take all relevant measures relevant to the safe conduct of labour inspections. It wishes to emphasize that these measures should, however, enable labour inspectors to continue to fully discharge their educational and preventive role with regard to employers and workers so as to enlist the support of the latter for the economic and social objective of labour inspection. In this regard, the Committee wishes to express its reservations regarding whether inspectors should be given the right to carry weapons during inspection missions, even if this right is made subordinate to the requisite technical skill and psychological aptitude. The application of such a measure must be considered with extreme caution in order to ensure that the task of inspection is not confused with the duties of the police. While supporting the measures aimed at reinforcing the authority and security of inspectors, the Committee considers that the carrying of weapons should be limited only to those exceptional cases and circumstances in which other means are not available. ***The Committee requests the Government to clarify the circumstances in which labour auditors/controllers are authorized to carry weapons and to send in support of its reply relevant statistics such as the number of labour auditors concerned and the cases in which they have been obliged to make use of their weapons. The Committee also requests the Government to provide information on the impact of the measures taken to enhance the credibility of the labour inspectorate and also on the court action taken in relation to the perpetrators of the murders of January 2004.***

## Burkina Faso

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1974)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that the Government's report does not contain a reply to its previous comments. It notes that the report is confined to indicating that the agricultural sector is largely made up of family undertakings which are not covered by the labour legislation applicable to the sector and that it refers to the report on the application of Convention No. 81. Reminding the Government of the commitments deriving from the ratification of the present Convention and observing once again the absence of specific information on the operation in practice of the labour inspectorate in agriculture, the Committee is therefore bound to reiterate its previous observation on the following matters:

Further to its previous comments, in which it drew the Government's attention to the need to adapt the activities of the inspection services to the specific features of the agricultural sector, even if these services cover other economic sectors, the Committee notes that nothing appears to have been done in this respect. Moreover, the Government has not been able to provide information, as requested, on the geographical distribution of agricultural undertakings and the workers employed therein. In the absence of such data, no assessment of the extent to which the Convention is applied is possible, either by the national authorities with a view to improving its coverage, or by the ILO supervisory bodies with a view to fulfilling their function in this respect. As the Committee emphasized in its previous observation, an appreciation of the effectiveness of the labour inspection system in agriculture is necessarily based on knowledge of the needs in this area and on the periodical updating of the relevant information. The obligation for inspection units to provide periodical reports on their activities in agricultural undertakings (*Article 25 of the Convention*) is designed specifically to enable the central inspection authority to follow, supervise and adjust their activities, as well as to allow information on the items listed in *Article 27*, which are specific to the agricultural sector, to be included in the annual general report on inspection activities required by *Article 26*. For more than ten years, no report of this nature has been transmitted to the ILO and no data on the number of agricultural undertakings liable to inspection has ever been provided.

With reference to the Government's indication of the predominance of child labour in agriculture and stock-raising, and that projects to combat this phenomenon mean that labour inspectors are taking on an important role in this field, the Committee suggests that it should take advantage of the implementation of these projects to set in motion measures to revitalize the activities of the labour inspection services in agricultural undertakings. It notes that no information has been provided by the Government in this respect.

*The Committee therefore once again requests the Government to ensure that the labour inspection services have access to data on the number and geographical distribution of agricultural undertakings and the workers employed therein, and to specify the geographical distribution of labour inspectors who in practice discharge their duties in agricultural undertakings.*

*Once again reminding the Government that, when the economic situation of a member State does not allow it to fulfil adequately the requirements of a ratified Convention, it may have recourse to international financial cooperation and the technical assistance of the Office, the Committee requests the Government to provide detailed information on the manner in which effect is given in law and practice to each of the provisions of the Convention and to keep the ILO informed of the difficulties encountered and the measures adopted to resolve them.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Burundi

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee takes note of the little information contained in the Government's report and further clarifications received in the ILO on 4 September 2006.

*Primary duties of labour inspectorates.* In its previous comments the Committee had observed that labour inspectorates' activities focused mainly on dispute resolution issues, instead of activities aiming at the enforcement function provided for by *Article 3(1) of the Convention*. Its appreciation was based on the reports on 2000 and 2001 first-quarter labour inspection activities, showing also the performing of a huge amount of administrative tasks. The Committee notes that five out of the nine inspectors are entrusted with collective dispute resolution issues, only three others dealing with control of conditions of work, though all of them have participated in a seminar organized by the Programme for promoting social dialogue in African French-speaking countries (PRÓDIAF) on proceedings relating to labour dispute resolution, during the first quarter of 2006. This information confirms that labour inspection continues to be taken off its main role to be put on labour dispute resolution missions.

According to the Government, the absence of a special status, the lack of means of transport, of qualifications and of technical equipment seem to have led to a lack of confidence from the employers towards labour inspectors.

The Committee once again stresses that it is necessary for labour inspectors to focus on the enforcement of legal provisions on labour conditions and protection of workers while engaged in their work (*Article 3(1)*) and that any further duties entrusted to them should not interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality which are necessary in their relations with employers and workers (*paragraph 2*). It also recalls the Government's obligation of the competent authority to take measures to make available to labour inspectors the necessary means, such as transport facilities where no appropriate public transport facilities exist and reimbursement of any travelling and incidental expenses which may be necessary for the performance of their duties (*Article 11*). It expresses the hope that appropriate financial support will soon be granted through international cooperation to this end. *The Committee would be grateful if the Government would indicate any steps taken and any progress achieved in this regard and communicate in the nearest future any available report on labour inspection activities in industrial and commercial workplaces, concerning the application of legal provisions on conditions of work and protection of workers.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Cameroon

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes the Government's report and its replies to the comments made by the General Confederation of Labour – Liberty of Cameroon (CGT–Liberté) in 2007 and 2008 and by the General Union of Workers of Cameroon (UGTC) in October 2008 concerning various shortcomings of the labour inspection system in relation to the requirements of the Convention.

*Article 3(1)(a) and (b) of the Convention. Duties of labour inspectors.* Based on the information contained in the annual inspection report for 2008, the Committee notes that, instead of ensuring the presence of labour inspectors at the workplace with a view to enforcing the legal provisions relating to conditions of work and the protection of workers, most of the working time of labour inspectors is devoted to resolving labour disputes through conciliation activities. In such conditions, these activities are clearly detrimental to the discharge of their primary duties as defined in *Article 3(1)* of the Convention. The Committee is bound to draw the Government's attention to *paragraph 2* of the same Article which stipulates that any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. Furthermore, Paragraph 8 of the Labour Inspection Recommendation, 1947 (No. 81), specifically advises against entrusting inspectors with the duty to act as conciliator or arbitrator in proceedings concerning labour disputes. In a previous report (2004), the Government had justified the allocation of these duties to inspectors by a need to relieve the pressure on the courts. However, the Committee considers

that the volume of work created by these duties results in a disproportionate mobilization of the labour inspectorate's resources to the detriment of its activities relating to enforcement, advice and improvement of the legislation referred to in the Convention. Given that labour disputes are often caused by a lack of understanding of the legal provisions or failure to comply with them, inspectors can make a major contribution to reducing labour disputes through educational activities and, if necessary, repressive action. ***The Committee therefore requests the Government to indicate the measures taken to ensure that the conciliation or mediation duties undertaken by labour inspectors in the event of a labour dispute do not interfere with the discharge of their primary duties and to provide information on any progress made in that regard, as well as any relevant document.***

With regard to the specific matter of the supervisory powers of labour inspectors, raised by the CGT–Liberté, the Committee notes that, according to the Government, this matter should be examined in the context of the overall revision of the Labour Code under way. ***The Committee requests the Government to provide information on the progress made with regard to the draft reform of the Labour Code, including in particular the developments affecting the nature and scope of the powers of labour inspectors in relation to Articles 12, 13 and 17 of the Convention. It would be grateful if the Government would provide a copy of any relevant draft or final text.***

***Articles 6, 9 and 10. Labour inspection staff (composition, status and conditions of service).*** According to the Government, the inspection staff is composed of 106 inspectors (77 men and 29 women). ***Noting with interest that the National School of Administration and Magistracy (ENAM) reopened in 2006, the Committee requests the Government to provide information on the developments relating to the number and qualifications of labour inspectors during the period covered by the next report, including their geographical distribution.***

The Committee understands, based on the information contained in the Government's report received in 2008, that the remuneration of labour inspectors was increased by 15 per cent under Decree No. 2008/099 of 7 March 2009 applicable to both civilian and military staff, with retroactive effect from 1 April 2008. In response to the allegation made by the CGT–Liberté that the remuneration, working conditions and benefits of other administrators graduating from the ENAM are more favourable than those granted to labour inspectors, the Government emphasizes in its communication received in 2009 that “the Head of State has raised the salaries of public servants, including labour inspectors, in full fairness and without discrimination”. ***Noting that the annual inspection report for 2008 mentions various categories of inspection staff (inspectors, controllers, assistant controllers, clerks, contract public servants, decision-makers and other staff), the Committee requests the Government to indicate those who have the status of labour inspector under section 105 of the Labour Code and to provide further information on the status and conditions of service of each category of staff carrying out inspection activities.***

***Article 11. Means of action of inspectors.*** In reply to the point raised by the UGTC concerning the lack of means of action (computer equipment and means of transport) of the labour inspectorate, the Government pointed out in a communication sent to the ILO dated 5 December 2007 that, under the three-year budgetary programme for the period 2008–10, departmental labour offices were to be equipped with rolling stock. ***The Committee requests the Government to provide further information on the developments relating to the number of vehicles in the labour inspectorate's fleet, to ensure, in any case and if necessary with the help of international financial cooperation, that labour inspectors are provided with the means essential for the performance of their duties (computerized office equipment, transport facilities, consumables etc.) and to keep the Office informed of any progress made in that regard.***

***Article 5(b). Collaboration between labour inspection officials and the social partners.*** In reply to the UGTC's allegations concerning the lack of collaboration between the labour inspectorate and the social partners, the Government indicated in its 2008 report that such collaboration took place at both the national level within the National Labour Advisory Commission, the National Occupational Safety and Health Commission and the Synergy Committee and at the regional level within the decentralized services through inspections by labour inspectors, occupational safety and health committees, committees organizing labour day celebrations and various commissions. ***Drawing the Government's attention to the guidance provided in Part II of Recommendation No. 81 on the types of collaboration possible between the labour inspectorate and organizations of employers and workers, the Committee would be grateful if the Government would provide details, as well as any documents available, on the content of the collaboration that takes place within or with the above bodies taking into account the objective of the Convention.***

***Articles 20 and 21. Annual report of the labour inspectorate.*** The Committee notes with ***interest*** that, following efforts lasting many years, a report on the work of the labour inspectorate for 2008 has been provided and contains information and statistics on inspections by branch of activity, industrial accidents, the workplaces and workers covered and the violations noted and penalties imposed. However, it notes that the Government once again expresses a need for technical assistance from the ILO to overcome various practical obstacles (inconsistent compliance with periodic reporting obligations across the various bodies and shortcomings in the methods of collecting and processing data) to the preparation of an annual report in accordance with the provisions of ***Articles 20 and 21.***

Further to its general observation of 2009, the Committee also notes with ***interest*** the Government's indication that studies have been launched with a view to creating a register of workplaces liable to inspection. It emphasizes the importance of creating and regularly updating a register (containing, in accordance with ***paragraph (c) of Article 21,*** information on the workplaces liable to inspection and the number of workers employed therein) to assess the rate of coverage of the inspectorate in relation to its area of competence and determine measures to improve it. ***The Committee***

trusts that the technical assistance from the Office requested by the Government for the purposes of preparing and publishing an annual inspection report as required by the Convention will therefore also concern the measures to be implemented to create and then update a register of workplaces. It would be grateful if the Government would keep the ILO informed of the steps taken in that regard, including the implementation of inter-institutional cooperation, as well as any difficulties encountered.

Finally, noting in the magazine of the Ministry of Labour and Social Security (MTSS) dated 1 January 2010 that the number of diseases included on the list of occupational diseases covered under the social security system has increased from 44 to 49 under Order No. 051/MINTSS/SG/DSST, the Committee requests the Government to ensure that the labour inspectorate is informed of cases of occupational disease, so that the relevant information is also included in the abovementioned annual report, in accordance with paragraph (g) of Article 21.

## Cape Verde

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)

*Article 10 of the Convention. Structure and human and material sources of the labour inspectorate.* The Committee notes that, according to the Government, the labour inspection system is to be strengthened by the opening of a third branch, located on Sal, to cover the islands of Sal and Boa Vista. The inspectorate staff is composed of seven labour inspectors. The Committee notes with *interest* that they have received special training, particularly in the area of civil construction, and that their numbers should shortly be increased by a further 13 inspectors, five of whom are already in initial training. Furthermore, the acquisition of a third vehicle in 2010 should facilitate visits to the establishments and workplaces liable to inspection.

However, in the absence of any information on inspection activities and their results, the Committee is not in a position to ascertain the extent to which the Convention is applied. It reminds the Government that the effectiveness of labour inspection depends largely on the commitment of the public authorities to the effective implementation of measures to attract and retain a sufficient number of qualified and motivated staff (General Survey of 2006, paragraph 173), but also on the availability of the resources inspectors need in order to perform their duties (General Survey of 2006, paragraph 238). *The Committee requests the Government to continue to provide information on developments in the size and qualifications of the labour inspectorate staff, the resources and transport facilities made available to them and also on progress in the project to open up a third branch of the labour inspectorate, and on the practical impact of the structural and material measures implemented to strengthen the inspection system.*

*The Government is asked to provide information on the specific impact that the training of inspectors has had on the construction sector in terms of reducing the number of industrial accidents and instances of occupational disease.*

*Article 3(2). Additional duties of labour inspectors.* The Government states that the Labour Code adopted in 2007 makes no change to the duties of labour inspection and does not expressly assign conciliation and mediation duties to labour inspectors. However, the Committee notes that, in accordance with section 387(1) of the Labour Code, in the event of a dispute between an employer and a worker, the labour inspectorate attempts conciliation between the parties. The Committee points out that, under Paragraph 8 of the Labour Inspection Recommendation, 1947 (No. 81), the functions of labour inspectors should not include that of acting as conciliator or arbitrator in labour disputes, and emphasizes that the primary role of labour inspection is to ensure observance of the legal provisions governing working conditions and the protection of workers while engaged in their work, and that, under the terms of *Article 3(2)* of the Convention, any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. *The Committee requests the Government to indicate the measures taken to ensure that any conciliation or mediation duties undertaken by labour inspectors in the event of a dispute between an employer and a worker do not interfere with the discharge of their primary duties. In support of its reply, the Government is asked to provide information showing the ratio of conciliation and mediation activities to the duties of inspection and of informing workers and employers, during the period covered by the next report.*

*Article 14. Notification of cases of occupational disease.* The Committee notes that pursuant to section 7(2) of Decree No. 90/97 of 31 December 1997, labour inspectors are notified of industrial accidents involving leave from work of more than three days but that, contrary to *Article 14* of the Convention, they are not informed of cases of occupational disease. In replying in its previous report to comments made by the Commercial, Industrial and Agricultural Association of Barlavento (ACIAB) to the effect that cases of occupational disease should, like industrial accidents, be notified to the labour inspectorate, the Government indicated in its previous report that the legislation would be supplemented to this end in the context of the adoption of the new Labour Code. However, according to the information supplied in its latest report, there has been no change in the rules on the notification of industrial accidents and cases of occupational disease to the labour inspectorate, but that the matter is under examination. *The Committee asks the Government to ensure that legislative or regulatory measures are taken promptly to ensure that, in accordance with Article 14, information on cases of occupational disease, like that on industrial accidents, is sent to the labour inspectorate. The Government is asked to report on this matter, providing any relevant documents.*

*Article 15(a). Professional secrecy.* The Committee notes that an amendment is being prepared to the provisions binding labour inspectors to professional secrecy both while they are serving and after they have left the service. ***It requests the Government to state in its next report whether the planned amendment has been adopted and, if so, to provide a copy of it. If not, the Government is asked to take measures promptly to secure such an amendment and to keep the Office informed.***

*Articles 20 and 21. Publication and communication to the ILO of an annual report.* The Committee once again notes that, despite the Government's undertaking to ensure that an annual inspection report is published shortly, no such report has been received by the Office. ***The Committee invites the Government to refer, in this connection, to paragraphs 320–328 of its General Survey of 2006 on labour inspection, and asks the Government to take the necessary steps to produce such a report, to seek technical assistance from the Office if necessary, and to provide information on any progress made or any difficulties encountered.***

## Central African Republic

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Scope of the ILO/ADMITRA project for the modernization of the labour administration and inspectorate.* With reference to its previous comments focusing on the inadequacy of labour inspectors' conditions of work, particularly the lack of reimbursement of their travelling expenses, the Committee notes that the Government has not supplied the information requested on the measures taken to seek, in the context of bilateral or international financial cooperation, the funds needed to improve the practical situation of the labour inspectorate. In response to this specific request from the Committee, the Government refers to the launching of the ILO/ADMITRA project. However, the Committee observes that the objective of this project, which covers seven French-speaking African countries, is not to assist in the search for the resources required for the functioning of labour administration structures, but to provide technical support for governments, mainly in the following three areas:

1. Initial and further training for managers and employees in the administration and the labour inspectorate.
2. Modernization of labour tools and organizational methods.
3. Strengthening cooperation between the structures comprising the labour administration system (labour, employment, social security, vocational training), on the one hand, and between the labour administration and other administrations operating in related areas (justice, finance, health, etc.), on the other.

With reference to its general observation of 2007 inviting member States which have ratified Conventions on labour inspection to take measures enabling effective cooperation between the labour inspection system and the judicial authorities, the Committee notes with interest that an official from the Directorate-General of Labour and a member of the labour tribunal participated in the subregional workshop on the relations between the labour administration and the labour courts, held in the context of the above project from 8 to 10 May 2008 in Dakar. ***While noting that cooperation between the labour administration and the judicial system was already advocated in an ILO technical memorandum of 2004 to the Government concerning the reinforcement of labour administration, the Committee hopes that the information provided at this workshop and the fruitful exchanges it produced between participants representing the countries of the subregion will give rise to action and that information on the implementation of the recommended measures will soon be sent to the Office.***

*Deficiencies in the labour inspection system. Need for urgent financial and organizational measures for improvements relating to the inspection of conditions of work.* The Committee notes that, although the labour legislation referred to by the Government under each of the Articles of the Convention may appear to a large extent compatible with the requirements of the Convention, its first report to the ILO on the application of the Labour Administration Convention, 1978 (No. 150), shows that the operation of labour inspection suffers from serious deficiencies. The Government states that the Directorate of Labour and Social Security – which is responsible for the enforcement of labour legislation though its labour inspection structures – does not have its own budget line and the special status of officials and employees of the labour administration was repealed by Act No. 99/016 of 19 July 1999 issuing the general public service regulations. Moreover, no labour administrator has been recruited since. This information is a cause for concern. It seems to imply that, for nearly ten years, labour inspectors have no longer enjoyed the guarantees provided for by *Article 6 of the Convention* with regard to conditions of service. Furthermore, information available to the ILO shows that successive measures have been adopted to reduce the salaries of all officials pursuant to the financial legislation in force in recent years. As regards the conditions for the performance of their duties, the Committee notes that there has been no improvement, as inspectors are still obliged to pay for their travelling expenses “out of their own pockets”, the expression used by the Government itself. Even though, in legal terms, no enterprise is exempt from inspection, inspection visits are rare and inspection reports non-existent, as indicated by the Government in its report on the application of Convention No. 150. Inspectors are therefore far removed from the establishments liable to inspection and their role remains restricted to the amicable resolution of disputes, which is however considered to be a subsidiary role by the Government.

The Committee reiterates that the technical memorandum of 2004, which recommended speeding up the process for the adoption of the new Labour Code and the decrees necessary for its implementation, also provided for thorough restructuring with technical support from the ILO for strengthening the capacities of all labour administration staff, particularly labour inspectors, in cooperation with the ILO and the African Regional Centre for Labour Administration (CRADAT). The memorandum also considered that it was necessary to draw up files on enterprises backed up by statistical documentation made available to the inspectorate so that inspection staff could enter the required information. It also recommended that inspection methods should be defined for labour inspectors using standardized documentation so as to facilitate and ensure uniformity of investigation techniques, and in particular to gather all information likely to be of interest to all labour administration bodies. The specialization of certain employees in a number of areas and the ongoing redeployment of other employees were considered necessary to cope with rapid change in the world of work and with the emergence of certain epidemics in workplaces. The establishment of a database referring in particular to industrial accidents and cases of occupational disease was also highly recommended.



*Noting that the new Labour Code has not yet been adopted, but that it is planned to include provisions establishing heavier penalties for persons obstructing inspectors in the performance of their duties, the Committee can only encourage such an initiative and hope that the definitive text will soon be adopted.*

*The Committee also notes the Government's announcement of the preparation of draft conditions of service for labour inspectors and hopes that information on progress made on this draft will soon be sent to the Office.* However, it considers that such legislative measures can only have an impact in practice if inspectors can ensure the effective discharge of all the duties defined by *Article 3* of the Convention by inspecting the workplaces under their supervision as often as is necessary to ensure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. However, such coverage cannot be ensured if workplaces liable to inspection have not been identified by the inspection services. The allocation of resources to this end is essential, with funding being sought not only from national financial authorities, but also through international cooperation. The above memorandum, together with up to date information on the actual situation and the difficulties facing labour inspection, might constitute effective arguments in this respect.

*The Committee therefore urges the Government to promote, in accordance with Article 5(a), effective cooperation between the labour inspectorate and other competent government bodies (including the tax authorities and social insurance funds) for drawing up a list of workplaces liable to inspection, with an entry in a register indicating at least their geographical location, the branch of activity, the number and categories of workers employed there, and also disaggregation of the latter information by gender.*

The availability of a register of enterprises that is regularly updated should allow the central inspection authority to fix priorities for action to ensure, as a minimum, the protection of the most vulnerable workers or those most exposed to occupational hazards and to defend its requirements in human, material and logistical resources on the basis of relevant data from national and international financial authorities, so that an adequate budget can be allocated to them, in so far as national conditions permit. A programme of inspections could be drawn up according to the available resources for each labour inspection structure, and periodic reports on inspections, as provided for by *Article 19*, could be sent to the central authority for the production of the annual report required by *Articles 20 and 21*. Such a report would inform the social partners, the other government bodies concerned and the ILO supervisory bodies of the progress made and the shortcomings of the labour inspection system so they can provide their opinions for its improvements.

*The Committee hopes that the Government will be able to provide information in its next report on specific measures taken to reinforce the resources, organization and working of the labour inspection system. It trusts that, in the first place, it will be able to provide information on targeted measures for promoting effective cooperation between the inspection services and other government services or public and private institutions for the purpose of the application of the Convention, particularly for the establishment of a register of workplaces liable to inspection under the present Convention (Article 2, paragraphs 1 and 10(a)(i) and (ii)), and on measures taken to increase the number of men and women labour inspectors and to reinforce their training during employment (Articles 7 and 10), particularly within the labour section of the National School of Administration and Magistracy, the establishment of which has been announced by the Government.*

*The Committee hopes that the Government will not fail to indicate the steps taken at the national level and in the framework of international financial cooperation to obtain resources for these purposes, and also the results thereof.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Chad

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

Further to its previous comments, the Committee once again notes with *concern* that the information sent by the Government is the same as that already received in April 2005 and 2006, and that the reports on the work of the inspectorate and the local inspection offices announced time and again in the Government's reports as being attached have still not been sent. Consequently, while noting that between 2005 and 2009 the number of labour inspectors rose from 15 to 23, the Committee is bound to draw the Government's attention once again to the commitments it made when it ratified the Convention, and accordingly to urge it to provide the Office with up to date information on the legislative and practical measures taken or envisaged to apply the Convention, and on any difficulties encountered.

*Legislation. The Committee once again asks the Government to take steps for the adoption of texts giving effect to the provisions of the Labour Code on the powers and duties of labour inspectors and controllers and for the enactment of the draft decree issuing regulations governing labour inspectors and controllers to which the Government has been referring for many years. Please report any progress made in this regard.*

*Article 10 of the Convention. Increasing the numbers and qualifications of the labour inspectorate. The Committee requests the Government to specify the context in which the number of labour inspectors was increased and to indicate whether measures have been taken or are envisaged for the training of the staff of the inspectorate, either to update their skills or to give them further training to enable them to perform their duties effectively. Please describe any such measures and indicate their impact in terms of the achievement of the objectives of labour inspection.*

*Articles 11 and 16. Material resources and transport facilities made available to labour inspectors for the performance of their duties. Noting the information contained in an earlier report about possible financial support in the context of international cooperation, the Committee would be grateful if the Government would provide information on any developments in this matter in recent years and on any progress made in providing the labour inspection services with material resources for their work, particularly transport facilities, so that they are able to implement workplace inspection programmes. If the Government has been unable to obtain financial support, the Committee asks it to indicate the obstacles encountered and the measures envisaged for this purpose.*

*Articles 20 and 21. Publication and communication to the International Labour Office of an annual report on labour inspection activities. Further to its previous comments, the Committee once again urges the Government to take the necessary steps to ensure that the central labour inspection authority publishes and sends to the ILO an annual report, in*

*accordance with these provisions of the Convention and with section 469 of the Labour Code, and to provide information in this respect.*

*While aware of the financial difficulties that are preventing the strict application of the relevant provisions of the Convention, the Committee requests the Government to provide all the information and documentation that is currently available on the legislation covered by the Convention (Articles 2, 3(1)(a) and 21(a)) and on the work of the inspectorate and the results achieved (Article 21(c)–(g)), to enable the Committee to assess the situation and provide useful recommendations for the progressive application of the requirements of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## China

### **Labour Administration Convention, 1978 (No. 150) (ratification: 2002)**

The Committee takes note of the Government's report which was received on 8 September 2009, as well as the documentation annexed thereto. It notes with *interest* the adoption of several Acts relevant to the functioning of the labour administration system, notably, the Labour Contract Act and the Employment Promotion Act in 2007, as well as the Labour Dispute Mediation and Arbitration Act in 2008.

*Article 5 of the Convention. Consultation, cooperation and negotiation between the public authorities and organizations of employers and workers.* The Committee notes with *interest* that according to the Government, the National Tripartite Conference on Coordination of Labour Relations has played a crucial role in the process of labour legislation, especially in developing the Labour Contract Act, the Employment Promotion Act and the Labour Dispute Mediation and Arbitration Act. At the same time, there has been extensive involvement of the tripartite partners in the formulation of employment policies and regulations as well as their enforcement, especially the implementation of the Labour Contract Act by establishing and improving the collective bargaining system, facilitating payment of wage arrears, and conducting activities for building harmonious labour relations. Since 1 June 2007, the National Tripartite Conference had held two sessions focusing, among other things, on the establishment and improvement of the collective consultation system and devising solutions to delayed wage payment.

The Committee notes from the Government's report that at the 13th Session (December 2008) of the National Tripartite Conference on Coordination of Labour Relations a decision was taken to modify this tripartite mechanism by specifying its composition, functions, agenda for coordination, working principles and meeting system. The Committee notes that according to the documentation provided by the Government, these functions will include among other things the establishment and improvement of a working system of labour relations and the promotion of: local-level tripartite labour relations coordination mechanisms; labour contracts; collective contracts; democratic management systems; and labour dispute settlement mechanisms; within this framework, subjects for coordination shall include "the promotion and improvement of the labour contract system and the system of collective contract" as well as the "prevention and settlement of labour disputes" and the "establishment of unions and federations of enterprises". According to the Government, at present, more than 10,000 organizations within the tripartite mechanism have been set up at various levels across the country. *The Committee would be grateful if the Government would continue to provide information on the activities of the National Tripartite Conference and their impact, including in relation to the promotion of collective contracts, the establishment of local-level tripartite labour relations coordination mechanisms and the creation of labour dispute settlement mechanisms.*

The Committee also notes with *interest* from the Government's report that, to address the impact of the financial and economic crisis on the country, the three parties of the National Tripartite Conference jointly issued on 23 January 2009, the *Guiding Opinions on Addressing the Current Economic Situation and Stabilizing Labour Relations* (HRSS[2009]18), which encourages and promotes consultations and negotiations on adjustment of wages, elastic working hours, on-the-job training and other measures to stabilize employment and minimize job cuts. In this context, the National Tripartite Conference has undertaken to continue to play a central role in promoting the "Rainbow Project" for the all-out implementation of the collective contract system and to intensify the coordination of labour relations including through the promotion of negotiation mechanisms at enterprise level as an institutional guarantee that binds together workers and enterprises to help them share the risks, overcome difficulties and grow together. The National Tripartite Conference has moreover undertaken to address the issues of layoffs and non-payment of wages through among other things, the extension of the system of wage guarantee funds, the establishment of early warning mechanisms and the creation of a labour relations emergency response mechanism (Minutes of the 13th Session of the National Tripartite Conference and text of the *Guiding Opinions on Addressing the Current Economic Situation and Stabilizing Labour Relations*). *The Committee would be grateful if the Government would provide further information on the activities carried out for the implementation of the Guiding Opinions on Addressing the Current Economic Situation and Stabilizing Labour Relations and specify the impact of these activities in devising responses to the current economic situation and promoting stability in labour relations.*

The Committee is raising other points in a request addressed directly to the Government.

## Hong Kong Special Administrative Region

### ***Labour Inspection Convention, 1947 (No. 81) (notification: 1997)***

The Committee notes the annual report of the Labour Department for 2008 which contains detailed information and figures on labour inspection activities and results.

*Articles 3 and 17 of the Convention. Additional functions entrusted to labour inspectors.* The Committee's previous comments concerned the need to ensure that labour inspectors are no longer involved in joint operations which, by granting the police and immigration authorities access to workplaces, allow them to arrest workers on the grounds of their illegal residence situation.

The Committee notes the Government's response to the effect that the primary duty of the labour inspectors in the Hong Kong SAR has been and will continue to be the enforcement of legislative provisions relating to the conditions of work and protection of workers; the number of joint operations between labour inspectors, the police and the immigration department was relatively small compared to the total number of workplace inspections for 2008 and 2009: 186 and 217 joint operations compared to 132,525 and 139,718 inspections in 2008 and 2009 respectively. The Committee notes from the 2008 Labour Department Annual Report, however, that in addition to the collaboration of the labour inspectors in joint operations, most workplace inspections (131,835 out of 132,525 in 2008) include a control of employees' proof of identity and employee records to deter irregular employment. It also notes that there is no information in the Annual Report on the results of the workplace inspections or the joint operations in terms of possible arrests and imprisonment of foreign workers who did not possess the necessary residence authorization. According to the Government, the participation of labour inspectors in enforcement actions against irregular employment serves to safeguard the rights and benefits of all workers, given that undocumented workers are often provided with less favourable working conditions due to their vulnerable status, and their recruitment could therefore lead to a generalized lowering of terms and conditions of work if not combated. The principal role of labour inspectors in the joint operations is to collect sufficient evidence on the irregular employment activities for the ultimate purpose of securing the successful prosecution of the unscrupulous employers. Labour inspectors have no power of arrest; the arrest of the undocumented workers and their employers during joint operations and the subsequent investigation for the suspected offences of irregular employment are carried out by the police force or the immigration department.

The Committee recalls that the role of the labour inspectorate, pursuant to the provisions of the Convention, is in principle to monitor not the legality of the employment relationship but the conditions in which the work is performed. In paragraph 77 of its General Survey of 2006 on labour inspection, the Committee recalled that neither Convention No. 81 nor the Labour Inspection (Agriculture) Convention, 1969 (No. 129), contain any provision suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status. In paragraph 161 of the abovementioned General Survey, the Committee observed that, in view of the growing numbers of foreign and migrant workers in many countries, the labour inspectorate is often asked to cooperate with the immigration authorities and that such cooperation should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions. In this respect, it should be emphasized that the expression "while engaged in their work" used in *Article 3(1)(a)*, of the Convention indicates that the protection afforded by the labour inspection must be provided to all workers for the period of their employment relationship; in order to remain in conformity with the purpose of their duties, the action taken by inspectors should enable the implementation of legal proceedings against employers guilty of contraventions, entailing not only the imposition of adequate penalties in accordance with the various categories of contraventions, but also the requirement to pay any outstanding sums owed to the workers concerned for the actual duration of their period of employment. The Committee considers that the financial consequences (fines and settlement of outstanding wages) resulting from the actions of the labour inspectorate, can constitute an effective deterrent against the employment of persons in an irregular situation with regard to labour legislation. In any case, a role for the labour inspectorate consisting of assisting the police and immigration authorities to target workers suspected of being "illegal" is in total contradiction with the protective function entrusted to labour inspectors by the Convention.

***The Committee therefore once again urges the Government to take the necessary measures as soon as possible to ensure that labour inspectors are no longer involved in joint operations which, by granting the police and immigration authorities access to workplaces, allows them to arrest workers on the grounds of their irregular residence situation. The Government is also asked to ensure that the collaboration of labour inspection officers with the said authorities is limited to legal proceedings against employers found to be in violation of the legal provisions relating to conditions of work, and the protection of workers while engaged in their work, and to inform the ILO of the action taken to this end and the results achieved.***

### ***Labour Administration Convention, 1978 (No. 150) (notification: 1997)***

The Committee notes the Government's report, which was received on 1 September 2009 and contains detailed information on the application of the Convention.

*Article 6 of the Convention. Functions of competent bodies within the system of labour administration.* The Committee notes with *interest*, the adoption of the Construction Workers' Registration Ordinance, Chapter 583, which

aims at ensuring that all workers in the construction industry are registered with the Construction Workers' Registration Authority, on condition that they possess, among other things, a certificate of attendance of training courses relative to construction work. The employment of unregistered workers is prohibited and power is given to authorized officers of the Registration Authority to verify the application of the Ordinance in construction sites and quarries.

The Committee also notes with *interest* the adoption of the Construction Industry Council (CIC) Ordinance, Chapter 587. The CIC is a participatory body composed of public officers, as well as representatives of employers, trade unions, professionals of the construction industry, contractors, subcontractors, materials suppliers, training institutes, or academic or research institutions, etc. The CIC aims at promoting good practices in the construction industry in relation to dispute resolution, environmental protection, multi-layer subcontracting, occupational safety and health, procurement methods, project management and supervision, sustainable construction and other areas conducive to improving construction quality. It is empowered to carry out research, recommend standards for application in the construction industry, promulgate codes of conduct for personnel and good practice in the construction industry, investigate complaints concerning any code of conduct, etc. It is also responsible for providing training of skilled/semi-skilled workers in the construction industry, conduct certification tests for operations of construction plants and trade tests for skilled/semi-skilled workers of various principal construction trades. It finally aims at enhancing the cohesiveness of the construction industry by promoting harmonious labour relations and the observance of statutory requirements relating to employment, as well as facilitating communication among various sectors of the industry.

*The Committee requests the Government to indicate in its next report the results obtained through the practical implementation of the two Ordinances on the construction industry, especially in terms of the training and employment of construction workers and the protection of their safety and health.*

*In accordance with Part IV of the report form, the Committee would also be grateful if the Government would communicate extracts of any reports or other periodic information provided by the principal labour administration services. Please also give information on any practical difficulties encountered in the application of the Convention.*

## **Macau Special Administrative Region**

### ***Labour Administration Convention, 1978 (No. 150) (notification: 2003)***

*Functioning of the labour administration system in practice.* The Committee notes the Government's detailed report received by the ILO in September 2009. It notes, in particular, with *interest*: (i) the attached detailed reports for 2003–07 containing information on the numerous activities carried out by the different subsidiary organs of the Department of Labour and Employment, especially its Labour Inspection Division; and (ii) the information that a constant auto-evaluation of the efficiency of service of the Department of Labour and Employment is made based on the assessment of citizens and contained in the activity reports abovementioned.

The Committee further notes that Decree No. 52/98/M has been repealed by Decree No 24/2004 which provides for the organization and operation of the Department of Labour and Employment and its six subsidiary organs, respectively (research and information technology division, labour inspection division, occupational safety and health division, employment division, vocational training division and administration and finance division). In addition, the career of public servants is now governed by Law No. 14/2009 on the career of public servants. *The Committee requests the Government to provide regular information on any legal or practical developments in relation to the requirements under the present Convention, especially to keep communicating extracts of any reports or other periodic information (Part IV of the report form) reflecting the nature and volume of the activities of the Department of Labour and Employment.*

## **Colombia**

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)***

The Committee notes the Government's report and the various documents attached or subsequently sent to the ILO. The Committee further notes the joint comments on the application of the Convention by the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), transmitted to the Government on 6 September 2010, reiterating partly their previous comments and those previously made by other trade unions.

*Adoption of a new approach to labour inspection and implementation of corresponding measures.* The Government refers in its report to the implementation of a number of measures taken or envisaged in the framework of the USAID–Midas (More Investment for Alternative Sustainable Development) programme to establish a comprehensive and coherent approach of labour inspection (*Sistema Integral de Inspeccion de Trabajo* (SIIT)). These measures include: (i) the increase of preventive visits promoting so-called improvement agreements; (ii) the consolidation of data through the establishment of Excel registers at district level and the implementation and design of an information system on national level through financial and technical cooperation with the Canadian Government; (iii) the risk assessment to identify high-risk areas based on these databases at the national and local levels; (iv) the organizational restructuring of the Ministry for Social Protection (MPS), including the establishments of two new municipal labour inspection offices (EL

Bagre and Jagua de Ibirico) in the directorates of Antioquia and Cesar; (v) the appropriate adaptations within the structures of the labour inspectorates (including the establishment of new working groups), the reassignment of functions of labour inspectors; (vi) the strengthening of the number of labour inspection and technical staff and their geographical distribution; (vii) the provision of additional office space; (viii) the purchase of additional technical equipment (computers, etc.); (ix) the envisaged involvement of representatives of different sectors and public and private institutions; as well as (x) the simplification of administrative procedures and the improvement of the academic profile of labour inspectors with a view to improving the effectiveness of service. The Committee notes that the Government refers to a national inspection plan focusing on the health-care sector. It also notes the increased inspections in associated work cooperatives (CTAs) and the information that the risk-assessment in the framework of the SIIT should allow inspections to be focused on high-risk sectors.

For their part, as concerns the implementation of the recently adopted measures, the CUT and CTC deplore the absence of appropriate consultations with trade unions. In relation to the new preventive approach, they observe that: (i) an increasing number of inspectors are appointed on a provisional basis, have no career prospects, are not provided with adequate and regular training and their competences are not evaluated in the course of service; (ii) labour inspectors are entrusted with a multiplicity of additional tasks; (iii) the labour inspection staff is insufficient (despite recent recruitments) in view of the number of workplaces liable to inspection; (iv) the number of inspections is low, especially in high-risk sectors, such as coal mines; (v) complaint procedures are slow; (vi) the collaboration of technical experts in occupational safety and health is not adequate; (vii) the resources allocated to the labour inspectorate, office equipment and transport facilities are scarce and the reimbursement of travel costs is inadequate and lengthy; (viii) cooperation between labour inspection services and other governmental services or public or private institutions does not operate in practice, particularly between labour inspectors and employers and workers and between the labour inspectorate and the judicial authorities; (ix) labour inspectors are not empowered to initiate judicial, or in particular penal procedures in case of violations of labour rights; (x) the labour inspectorate is informed only of cases of grave or mortal accidents; and (xi) the annual report merely contains information on the number of inspection visits and sanctions imposed. Further, according to the trade unions, the mandate of the labour inspectorate should be extended to cover commercial establishments (particularly as the number of informal workplaces in this sector has increased), and the exclusion of Part II of the Convention (commercial establishments) from its ratification should be lifted accordingly.

*Article 3(1)(b). Implementation of a preventive approach to labour inspection.* The Committee notes that the SIIT particularly recommends the adoption of a preventive approach to labour inspection based on risk assessment in order to identify high-risk sectors and aimed at promoting so-called “improvement agreements” between employers and workers on the occasion of preventive inspections. The Committee notes the information on the number of preventive inspections and of improvement agreements concluded in 2008 and 2009, as well as the organization of various information sessions, the publication and distribution of information material and press coverage. The Committee notes, however, that no information is provided by the Government on the measures taken or envisaged to strengthen the mechanism for notification to the labour inspectorate of industrial accidents and cases of occupational disease with a view to achieving the objectives of the preventive approach. According to the CUT and CTC, preventive inspection visits: (i) are only carried out in the formal sector; (ii) are subject to previous authorization by employers which in most cases is not granted; (iii) in the case of the detection of violations of labour law, labour inspectors are not able to impose sanctions or initiate investigations; (iv) a written commitment by an employer to remedy defects is non-binding; and (v) remedial activities of employers are merely followed-up by telephone due to the heavy workload of labour inspectors (although in theory follow-up visits have to be carried out after six months).

*Articles 3(2), 10 and 16. Multiplicity of tasks entrusted to labour inspectors. Human resources in relation to the workplaces liable to inspection.* The Committee notes the restructuring of the Ministry for Social Protection (MPS) and the reassignment of functions entrusted to labour inspectors in the General Labour Inspection Directorate (GLID) and its local offices by Decree No. 1293 (amending Decree No. 205 of 2003), as well as the corresponding assignment of functions by resolution No. 2605 of 2009 to the newly created working groups in the GLID and in its local offices. The Committee notes that, under the terms of the above provisions, labour inspectors are still entrusted with too many additional tasks, including conciliation of individual and collective labour disputes. According to the CUT and CTC: (i) Decree No. 1293, which enumerates the functions of the labour inspectorate at the national and local levels, and entrusts further new functions to labour inspectors; (ii) resolution No. 2605 of 2009 confines itself to redistributing functions; and (iii) in practice, labour inspectors are also required, in addition to the heavy workload imposed by law, to assume secretarial tasks due to the lack of clerical staff. The Committee requests the Government to refer to paragraph 69 of its 2006 General Survey on labour inspection in this regard and emphasizes once again that the primary duties of labour inspectors are complex and require time, resources, training and considerable freedom of action and movement and that any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. With reference to the conciliation of labour disputes, the Committee also requests the Government to refer to Paragraph 8 of the Labour Inspection Recommendation, 1947 (No. 81), in accordance with which the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.

*Articles 5(a) and (b) and 17. Cooperation with government services and the judicial authorities and collaboration with employers and workers.* The CUT and CTC continue to deplore the lack of cooperation between labour inspectors and other government services and the lack of collaboration with employers and workers. With regard to cooperation with other government services, they point out that no cooperation exists between the Superintendence of Economic Solidarity and the National Directorate for the Prevention of Accidents despite a relevant cooperation agreement. The Committee notes in this regard the brief indication by the Government that cooperation with representatives of different sectors and public and private institutions is envisaged under the SIIT.

With regard to collaboration with employers, workers and their respective organizations, the Government refers to the conclusion of 219 improvement agreements in 2008 and 238 in 2009 between employers and workers during preventive inspections in different sectors.

The trade unions call for the involvement of the most representative unions in the design, implementation and evaluation of the system of preventive inspections, collaboration with judicial authorities and the establishment of a register of judicial decisions, as well as the conclusion of cooperation agreements between the various government services.

*Article 11. Material working conditions and transport facilities necessary for labour inspectors.* The CTC and CUT continue to deplore a lack of material resources allocated to the labour inspectorates and the lack of necessary equipment, such as computers, Internet access, filing cabinets, equipment for technical investigations and adequate transport facilities. In this regard, the trade unions point out that travel expenses of labour inspectors are only reimbursed up to an amount of 4,000 pesos, that the procedure of reimbursement is very slow and that higher or unexpected costs have to be borne by labour inspectors themselves. In addition, the unions allege that in practice, travel expenses are not reimbursed when inspections are carried out without prior notice and the authorization of the director of the local directorate, which can take up to one week or more despite the emergency of certain situations.

*Associated work cooperatives (CTAs).* The Committee noted in its previous comment that both trade unions and the Government had reported the existence of fraudulent strategies in CTAs to circumvent the obligations arising out of a salaried employment relationship. In this regard, the Committee notes with *interest* that Act No. 1233 of 2008 establishes the obligation of associated work cooperatives and pre-cooperatives to make contributions to the Colombian Institute for Family Welfare (ICBF), the National Apprenticeship Service (SENA) and family benefit funds. It further notes with *interest* that this Act explicitly prohibits such cooperatives and pre-cooperatives from acting as employment mediation enterprises or from providing temporary labour, and provides in the case of violation for the withdrawal of the legal personality of the CTA. The Government mentions in addition the intensification of inspections in cooperatives (1,632 inspections and 1,022 investigations in 2009) to control the evasion of social security contributions, the exercise of their approved activity and to detect cooperatives acting as employment mediation enterprises or providing temporary labour, contrary to the law. However, according to the CUT and CTC, inspections in CTAs are not effective, for inspections are only carried out at the registered offices of the CTA, merely resulting in the control of documents, while for the control of the prohibition of employment mediation, inspectors would also have to control other workplaces. The Committee finally notes that the trade unions request information on the violations of legal provisions that have led to the imposition of fines or the withdrawal of the legal personalities of CTAs.

***The Committee asks the Government to submit any comments it deems relevant in response to the observations made by the CUT and CTC and to provide information on the progress made through the implementation of the programme to establish a comprehensive and coherent approach of labour inspection (Sistema Integral de Inspeccion de Trabajo (SIIT)) in the establishment and operation of a labour inspection system consistent with the principles laid down in the Convention, and the guidance provided in the accompanying Recommendation No. 81.***

***It requests the Government to provide information in particular on the measures adopted to secure effective cooperation between the labour inspection services and the other public or private institutions and bodies engaged in similar work, including judicial bodies (Article 5(a)); the measures for effective collaboration between labour inspectors and employers and workers (Article 5(b) and Part II of Recommendation No. 81); the status of the current labour inspection staff and their conditions of service (Article 6); the strengthening of initial training and subsequent training during employment for inspectors, including on risk assessment (Article 7(3)); the determination of the number of labour inspectors in relation to the number of workplaces liable to inspection, and the association of qualified technical experts and specialists (Articles 9 and 10); the reimbursement of inspectors' professional travel expenses and the granting of advances for that purpose (conditions, amount, time required for reimbursement, etc.) (Article 11(1)(b) and (2)); the application in practice of the right of free entry, without previous authorization, to workplaces (Article 12(1)(a)); the application in practice of the power to make or have made orders requiring measures to remedy situations harming the safety and health of the workers (Article 13); the measures taken to improve the mechanism of notification to the labour inspectorate of industrial accidents and cases of occupational disease (Article 14); the available means for the performance of planned inspections and inspections made in consequence of the receipt of a complaint, with a view to covering as many workplaces as possible while taking into account priority sectors (Articles 11 and 16); the role of labour inspectors in legal proceedings against employers in breach of the labour law, including in CTAs (Article 17); the dissuasive nature of the sanctions applied (Article 18); and the reinforcement of the reporting obligation of labour inspectors and local inspection offices with a view to the***

*publication by the central authority of an annual report (Article 19); and the issue of the eventual extension of the scope of labour inspection to commercial workplaces (Article 22 and Part II of the Convention).*

In addition, noting that the Government did not reply to the requests under the following points, the Committee is bound to repeat the relevant comments which read as follows.

The Committee draws the Government's attention to paragraph 133 of its General Survey of 2006 on labour inspection concerning the meaning and scope of *Article 3, paragraph 1(c)*, of the Convention, which provides that labour inspectors shall bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. In the Committee's view, the deterioration in the working conditions of a large number of workers, many of whom are women, would be ample reason for entrusting to inspectors the task of conducting an inquiry into the employment relationships that exist between those giving instructions or receiving goods and services produced by the CTAs and the workers of the CTAs. Any defects or abuse affecting these workers could thus be identified and improvements introduced in the legislation on conditions of work and the protection of workers in the performance of their work. ***The Committee hopes that labour inspectors will shortly be entrusted with such an investigation to enable the law to keep pace with new situations in the world of work such as the relationship in which CTAs are subordinate to the enterprises for which they produce goods and services outside any form of work contract. The Government is asked to provide information, together with copies of any texts giving effect to Article 3, paragraph 1(c), of the Convention.***

***The Committee also asks the Government to inform the ILO of its views on the unions' proposals on this matter.***

*Principle of the confidentiality of the source of Article 15(c). Complaints.* The Committee notes once again that the Government has not sent the information requested on the existence of a legal basis ensuring that labour inspectors comply with the principle of the confidentiality of the source of complaints. ***It once again urges the Government to take steps rapidly to supplement the legislation to ensure the confidentiality of complaints so as to protect workers from reprisals, to keep the ILO informed and to provide any relevant laws or bills.***

*Annual inspection report. Articles 20 and 21.* The Committee once again draws the Government's attention to the obligation on the central inspection authority to publish and communicate to the ILO, in accordance with *Article 20* of the Convention, an annual report on the work of the inspection services containing the information required by *clauses (a) to (g) of Article 21*. ***The Committee firmly hopes that, with the international cooperation currently under way to reinforce the labour inspectorate, the Government will not fail to take the necessary steps to ensure that full effect is given to these Articles of the Convention. It would be grateful if the Government would in any event provide information on all developments in this area, including any problems encountered.***

***[The Government is asked to reply in detail to the present comments in 2011.]***

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1976)***

The Committee notes the joint communication by the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) of comments on the application of the Convention, on 30 August 2010, transmitted to the Government on 6 September 2010.

The Committee draws the Government's attention to its observation under the Labour Inspection Convention, 1947 (No. 81), as it concerns issues also related to the application of this Convention, and to the following points as concerns more specifically labour inspection in agriculture.

*Inadequacy of structures, means and logistics of the labour inspection service in agriculture.* Following the comments of the CUT in 2007, which related to the ineffectiveness of the labour inspection system in agriculture due to the inappropriate geographical distribution of offices and lack of resources, the Committee notes that the new observations of the CUT and CTC still raise the same issue and attribute such weakness to the absence of specific arrangements for labour inspection in agriculture. In addition to the observations raised with regard to the Convention, No. 81, the trade unions deplore: (i) the location in urban areas of the generally competent territorial directorates and the lack of subordinate municipal offices in rural areas; (ii) the absence of labour inspectors specifically qualified in agriculture and the lack of specific training of labour inspectors in agriculture; (iii) the lack of technical and logistical means and of transport facilities to attain agricultural enterprises in areas of difficult access; (iv) the lack of preventive control of agricultural establishments, activities, production procedures and use of new products and substances; and (v) the insufficiency of inspection visits (control and prevention) in agriculture. The Committee notes that, while the Government refers to the establishment of the additional territorial directorate Orinoquia-Amazonia, it does not respond to the questions previously raised by the Committee as regards measures to strengthen the labour inspection system in agriculture (budget allocated, specific training provided, association of labour inspectors in the preventive control of agricultural establishments, etc.).

***The Committee urges the Government to take the necessary measures to strengthen the structures and means of action available to labour inspectors in charge of agricultural enterprises (accessibility of offices, human resources and material resources, training, taking into account the specific needs in agriculture, etc.) and to keep the ILO informed of such measures and their results.***

*Article 6(1)(a) and (c) and (3), of the Convention. Working conditions and role of labour inspectors with regard to associated work cooperatives (CTAs).* The Committee has previously pointed out, with reference to paragraph 133 of its General Survey of 2006 on labour inspection, that the precarious working conditions of a large number of workers in CTAs, which were acknowledged by the Government in its report, would largely justify entrusting labour inspectors with carrying out a survey on the actual working relations between those giving instructions or receiving goods and services produced by the CTAs, and the workers in the CTAs. While observing that the Government did not provide any relevant

information, the Committee notes with *interest* with reference to its observations under Convention No. 81, the adoption of Law No. 1233 of 2008 which establishes the obligation of cooperatives and pre-cooperatives for contributions to the Colombian Institute for Family Welfare (ICBF), to the National Apprenticeship Service (SENA) and to family benefit funds.

Regarding, more particularly, the conditions of workers working in CTAs producing sugar canes, it notes that, according to the Government, following a big strike by sugar cane harvesters who had been recruited through CTAs from the department of Valle del Cauca, which had paralyzed the whole sugar cane production in the region from 14 July to 15 September 2008, agreements were concluded by CTAs with several refineries, granting, for example increased wages, more equipment and work clothes, loans without interest for one year, support with the family benefit fund for the financing of social plans, education allowances for workers and their families, etc. *The Committee requests the Government to indicate whether it is envisaged to entrust labour inspectors with carrying out a survey on the actual working relations between those giving instructions or receiving goods and services produced by the CTAs and the workers in the CTAs, (Article 6(1)(c) of the Convention. It further requests the Government to indicate the role of labour inspectors as regards the control of legal obligations of cooperatives in the agricultural sector and to provide information on the cooperation between the labour inspectorate and the superintendence of economic solidarity and other special superintendences in the framework of the implementation of circular No. 001 of 2009, which the Government referred to in this regard but did not transmit to the ILO.*

The Committee is raising other points in a request addressed directly to the Government.

## Comoros

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

According to the information sent by the Government, a special appropriation for labour inspection will not be introduced in the budget until after the meetings to prepare the budget for the 2009 financial year. The Committee nonetheless notes that the labour administration has embarked on a diagnosis of the labour inspection services with a view to determining their budget and its inclusions in the 2009 national budget. *It asks the Government to provide information on the results of this evaluation as soon as they are available.*

The Committee notes that the Government has submitted a request for the inclusion in the Decent Work Country Programme, currently under preparation, of an application for technical assistance to gradually train enough labour inspectors to cover the entire territory. ILO support has also been sought to train two labour inspectors at the National School of Administration (ENA) of Madagascar. *The Committee requests the Government to keep the Office informed of results of these steps. It trusts that it will take all necessary steps to obtain, particularly in the context of the future DWCP, support and assistance from the ILO for the development of an efficient labour inspection service.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Congo

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1999)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 11 of the Convention. Working conditions of labour inspectors.* The Committee notes that the staff of the labour inspectorate has been strengthened during the period since the report sent by the Government in 2004. However, it notes that no measures have been taken to improve the working conditions of inspectors and that they do not benefit from the transport facilities necessary for the discharge of their duties, nor the full reimbursement of their travelling and incidental expenses. *The Government is requested to take the necessary measures to ensure that effect is given to the provisions of the above Article of the Convention and to provide information in its next report on any progress achieved in this respect, on the difficulties encountered and the solutions envisaged to overcome them.*

*Articles 19, 20 and 21. Reporting obligations on the inspection activities.* With reference to its previous comments concerning information relating to the application in practice of the legal provisions giving effect to the Convention, the Committee notes that, contrary to the Government's indication in its report received in 2004, no regional inspection report has been provided to the ILO. Furthermore, no annual report, as required by *Articles 20 and 21* of the Convention, has been transmitted to the ILO. The Committee does not therefore have available the information that is essential on the operation of the labour inspection system in practice to allow it to monitor developments and provide support to the Government for its improvement in relation to the requirements of the Convention. The material and logistical situation described by the Government gives grounds for fearing, despite legislation that is in conformity on many points with the provisions of the Convention, that there is a significant gap between the extent of the needs for the supervision of conditions of work and the level of coverage that the inspection services are able to ensure. *The Committee hopes that, so that it can fulfil its responsibilities, the Government will provide in its next report all the information available allowing it to assess the level of application of the Convention more than a decade after its ratification. This information should cover, among other matters: (i) the geographical distribution of the public officials responsible for inspection functions as defined in Article 3(1) of the Convention (the schedule announced by the Government in its report was not attached); (ii) the geographical distribution of workplaces liable to inspection or, at the least, those for which the Government considers that the conditions of work require specific protection from the labour inspection services and the judiciary on the basis of the violations reported by the labour inspectorate; (iii) the frequency,*



*content and number of participants at the training courses provided for labour inspectors during their career; (iv) the level of remuneration and conditions for career progression in relation to other public officials with comparable responsibilities; (v) the proportion of the national budget allocated to the public labour inspection services; (vi) a description of the cases in which inspectors travel to enterprises, the procedure followed and the transport facilities that they use for this purpose, the activities that they carry out and their outcome; and (vii) the proportion of supervisory activities carried out by inspectors in relation to their conciliation duties.*

*The Government is also requested to indicate the nature of the obstacles or difficulties (of a financial, structural, political or other nature) encountered in the implementation in practice of its legislation respecting labour inspection and to describe the measures adopted or envisaged to resolve them (for example, seeking international financial cooperation, inter-institutional cooperation within the country, collaboration with the social partners; the adoption of specific conditions of service for labour inspectors, rationalization of the way in which the resources of the labour administration are used).*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1986)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

With reference to its previous comments, the Committee takes note of the Government's report. It notes Decree No. 2003-219 of 21 August 2003 to organize the Ministry of Labour, Employment and Social Security, and Decree No. 2000-29 of 17 March 2000 on the composition of the National Technical Committee on occupational safety and health and occupational risk prevention.

1. *Financial obstacles to the implementation of the Convention.* The Committee notes that, although financial constraints have prevented adoption of special regulations for the management and staff of the labour administration and any meetings of the abovementioned Technical Committee, the Government welcomes the benefits drawn from the technical seminars organized with support from the ILO and the African Regional Centre for Labour Administration (CRADAT), and would like this type of training to be continued.

2. *Organization and working of the administration system.* The Committee would be grateful if the Government would provide further information on the current working of the labour administration system; provide a copy of the Decree setting out the powers of the new Ministry; indicate the number, types and terms of reference of any tripartite consultative bodies reporting to the Ministry; describe the bodies comprising the Ministry both at central level and in external departments; indicate any other bodies accountable to the Ministry; provide copies of any legal texts, reports or other documents pertaining to the composition, terms of reference and working of the bodies comprising the labour administration system (*Articles 1, 4, 5 and 6*).

The Government is requested also to provide information on the composition of the Technical Advisory Committee on international labour standards and all the matters on which consultations were held in the Technical Committee (*Article 8*).

3. *Financial resources for meeting the obligations of the Convention.* Noting with *concern* that the working of the labour administration is still severely affected by a lack of resources and that, despite technical assistance from the ILO, no new resources have been assigned to it, the Committee requests the Government to consider seeking further financial assistance through international cooperation with a view gradually to covering the human, material and logistical resources the labour administration needs in order to carry out its functions, as defined in *Article 6*. It would be grateful if the Government would keep the Office informed of any steps taken to this end and on any measures taken or envisaged to apply the provisions of the Convention in law and in practice, and to provide copies of any relevant texts.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## **Costa Rica**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

The Committee notes that the Government was requested by the ILO to send copies of the comments by the Confederation of the Movement of Costarican Workers (CMTC), the Central General de Trabajadores (CGT) and the Central Social Juanito Mora Porras, which it indicated as enclosed to its report. It notes that, in September 2010, the Government communicated additional information to its report as well as other documents, but not the abovementioned organizations' comments.

The Committee equally notes the communication by the Rerum Novarum Workers' Confederation (CTRN) to the ILO of comments on the application of the Convention. The ILO transmitted the latter to the Government on 17 September 2010.

*The Government is requested to communicate, without delay, the trade unions' observations referred to in its report to allow their examination together with the Government's report and the CTRN comments, as well as any comments the Government might wish to submit on the points raised in these observations.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)**

The Committee notes that the Government was requested by the ILO to send copies of the comments by the Confederation of the Movement of Costarican Workers (CMTC), the General Confederation of Workers (CGT) and the Central Social Juanito Mora Porras, which it indicated as enclosed to its report. It notes that, in September 2010, the

Government communicated additional information to its report as well as other documents, but not the abovementioned organizations' comments.

The Committee equally notes the communication by the Rerum Novarum Workers' Confederation (CTRN) to the ILO of comments on the application of the Convention. The ILO transmitted the latter to the Government on 17 September 2010.

*The Government is requested to communicate, without delay, the trade unions' observations referred to in its report to allow their examination together with the Government's report and the CTRN comments, as well as any comments the Government might wish to submit on the points raised in these observations.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Côte d'Ivoire

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1987)**

*Articles 7 and 10 of the Convention. Suitable training for labour inspectors.* The Committee notes with *interest* the content of the training provided for labour inspectors both as initial training and on-the-job training, and the Government's information regarding further training for labour inspectors so as to match their skills to the realities of the world of work. The Committee notes, however, that the Government does not, as the Committee asked in its previous comments, specify the number and status of participants or the impact of such training on the volume and quality of inspection activities. *The Committee requests the Government to provide in its future reports detailed information on the various types of training provided for labour inspectors (purpose, participation, frequency, duration) and the impact of the training on inspection activities (volume and quality) and on relations between labour inspectors and employers or their organizations and between labour inspectors and workers or their organizations.*

*Article 11. Material resources of labour inspectors.* The Committee notes the information sent by the Government to the effect that the lack of resources is the greatest obstacle to the efficient running of the inspection system. It also notes that the Government intends to seek international financial cooperation to reinforce the means of action of labour inspectors (computers, internet connection, transport facilities, etc.). *The Committee requests the Government to indicate the steps taken to this end and the results obtained.*

*Articles 16 and 21(c). Register of industrial and commercial workplaces liable to inspection with a view to scheduling inspection visits.* The Committee notes, in connection with its general observation of 2009 on the need for the labour inspection service to have statistics of the industrial and commercial establishments liable to inspection and the workers they employ, that because cooperation between institutions failed, it has not been possible to draw up a register of establishments. The Government indicates that the institutions that keep data refuse to forward them to the labour inspectorate. However, pending the establishment of a nation-wide database to be set up by the National Institute of Statistics, instructions have been given to all branches of the labour inspectorate to compile a list of the workplaces under their responsibility that make requests to the labour inspectorate. The list is to be appended to the annual report drawn up by each branch and sent to the central inspection authority. The Government has also said that it needs technical assistance from the Office in compiling a register of workplaces. The Committee notes with *interest* the Government's efforts gradually to draw up a chart of establishments liable to labour inspection and hopes that it will nonetheless be able to take steps at the earliest possible date to set up and maintain cooperation between institutions, which is essential to the establishment of a reliable register of workplaces. *The Committee asks the Government to keep the ILO informed of progress made in compiling information on workplaces liable to inspection and the workers they employ, and to send any relevant documents (circulars or instructions, list of workplaces, payrolls, etc.).*

*Nevertheless, the Government is also asked to take measures to establish and maintain cooperation between all public and/or private bodies and institutions holding relevant data so that a reliable register of workplaces liable to inspection can be established and serve as a basis for assessing the operation of the inspection system and determining the measures to be taken to improve it.*

*Articles 20 and 21. Further to its previous comments and in connection with the process referred to by the Government to draw up a chart of workplaces liable to inspection, the Committee asks the Government to ensure that the central inspection authority publishes and communicates to the ILO as soon as possible an annual report containing all the information available on the subjects listed at Article 21.*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1987)**

The Committee notes with *regret* that the Government's report makes no reference to any progress on the matters raised in its previous comments.

*Articles 14 and 15 of the Convention. Material resources essential to the performance of labour inspection duties.* According to the Government, the lack of progress in applying the Convention is due to the inadequate material resources available to the labour inspectorate, and in particular the absence of suitable transport facilities for visits to agricultural undertakings in remote rural areas. The Committee reminds the Government that in ratifying the Convention, it undertook

to adopt the necessary measures to apply the Convention in law and in practice. Since transport facilities are essential to the performance of inspection duties in agricultural undertakings, it is up to the Government to do its utmost to provide such facilities for the inspection services working in rural areas with no public transport. ***The Committee requests the Government to take all necessary measures (under the national budget and, if necessary, by seeking international financial cooperation) to provide labour inspectors visiting agricultural undertakings with the means of action and the vehicles and/or transport facilities they need to perform their duties, in accordance with the abovementioned provisions of the Convention. The Government is asked to keep the Office informed of any such measures and of progress made in the period covered by its next report.***

*Article 9. Training a sufficient number of suitably qualified labour inspection staff for the agricultural sector, particularly in the area of the safety and health risks facing agricultural workers.* In its previous observation the Committee stressed the need to train sufficient numbers of qualified inspection staff particularly in the area of the occupational safety and health risks facing agricultural workers. The Government indicates that the duties of the inspectorate are comprehensive in scope, so the training provided for labour inspectors is multi-sectoral. Every inspector is therefore expected to work in all sectors of activity. In the Government's view, an inspection system organized in this way is on no account at odds with the Convention. The Committee is bound to point out that although the Convention does not require a specific body of inspectors to be created solely for the agricultural sector, it does provide, in *Article 9(3)*, that labour inspectors in agriculture shall be adequately trained for the performance of their duties. Furthermore, measures must be taken to give them appropriate further training in the course of their employment. Accordingly, even where the coverage of a labour inspectorate is comprehensive, specific training is necessary for inspectors who work or who will work in the agricultural sector. There are activities specific to the agricultural sector – for example those involving the use of pesticides and other chemicals – for which technical knowledge must be acquired. ***The Committee draws the Government's attention to Paragraphs 4–7 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), on the minimum qualifications needed by labour inspectors called upon to work in the agricultural sector, and again urges it to take the necessary steps to ensure that inspectors who work or will be called upon to work in agricultural undertakings receive suitable training, and to provide information on these measures and their results.***

*Articles 3, 14, 16, 18, 21, 25, 26 and 27. Inspection work in agricultural undertakings and the requirement to submit reports.* Further to its previous comments and to its general observation of 2009, the Committee notes the Government's acknowledgement that in a country which is essentially agricultural, statistics on agricultural undertakings and the workers they employ are an absolute necessity. It notes that, unfortunately, an attempt to record the workplaces liable to inspection was unsuccessful. Noting that the Government has expressed a need for ILO technical assistance in compiling a register of agricultural undertakings, the Committee can only commend the Government on its initiation of such an operation and points out that it is essential to examine why it did not succeed and to look for other approaches. ***The Committee requests the Government to provide full information and any documentation relevant to the measures set in motion to compile a chart of agricultural undertakings (instructions, circulars, forms, inspection reports, etc.), together with a detailed explanation of why the project was not completed.***

***The Committee requests the Government to take decisive steps to promote cooperation between the institutions and public and semi-public bodies that have data relevant to the labour inspectorate with a view to gradually recording agricultural undertakings, as a first step listing at least plantations and other intensive farming enterprises (national, multi-national or combined), and to provide information on these measures and the results obtained during the period covered by the next report on the application of this Convention.***

***Lastly, the Committee requests the Government to ensure that pending the establishment, with ILO technical assistance, of a register of agricultural undertakings, the central inspection authority publishes and sends to the ILO at the earliest possible date and on an annual basis, all available information on inspection activities and their outcome (applicable legislation, inspection staff involved, number of undertakings and workers covered, control of legislation, raising awareness of occupational risks, warnings, penalties imposed and actually applied, etc.) in agricultural undertakings in the period covered by the next report.***

## Cuba

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1954)**

*Article 12(1) and (2) of the Convention. Restrictions on the freedom of action of labour inspectors in relation to the inspection of workplaces.* In its previous comment, the Committee noted that the Regulations on the System of National Labour Inspection of 2007 maintain the requirement of the communication to the employer of a written inspection order specifying the purpose of any inspection (sections 11 and 12), which is contrary to *Article 12(1) and (2)*. In its report, the Government refers to section 10 of the Regulations, which provides that information on inspections, as a general rule, is not communicated to the entities to be inspected before starting to carry out the inspection visit. It also reports that labour inspectors may, after having presented their identity papers and handed in the order for inspection, enter at any time of the day or night any establishment subject to inspection. While taking due note of section 10 of Resolution No. 20/2007 referred to by the Government, according to which in general the inspections are not notified in advance to the bodies concerned or the body they depend on in case of unexpected inspections, the Committee notes with **concern** that labour

inspectors are still required, once at the workplace, to present to the employer not only proper credentials as provided by *Article 12(1)*, but also, an order for inspection, which is in total contradiction with the Convention, as it makes it impossible to guarantee the confidentiality relating to the complaints and their authors (*Article 15(c)*).

The Committee also draws the Government's attention once again to *Article 12(2)*, pursuant to which labour inspectors should be even authorized to refrain from notifying the employer or his representative of their presence on the occasion of an inspection if they consider that such a notification may be prejudicial to the performance of their duties.

***Referring the Government to its previous request on this issue, the Committee once again requests the Government to take measures rapidly to bring the legislation into full conformity with the provisions of Article 12 in connection with Article 15(c) and keep the ILO duly informed of the progress made.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2011.]***

## Democratic Republic of the Congo

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1968)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that notwithstanding the difficult times the country is going through, the General Labour Inspectorate has managed to produce a report for 2007 on the work of the services under its control containing detailed information and statistics on the subjects listed at *Article 21 of the Convention* for four of the country's 11 provinces. ***It hopes that the central authority will pursue its efforts to gather and analyse data and information on the work of the inspectorate so that the annual report will gradually cover the entire country.***

*Articles 4, 5, 7, 10, 11, 20 and 21. Decentralized administration and the labour inspectorate.* In its previous comments, the Committee took note of the provisions of the Constitution in force since 18 February 2006 providing that with the decentralization of the administration, the central authority would still have sole responsibility for the national public service, the public finances of the Republic and the labour legislation. These provisions being general in nature, the Committee was unable to assess their scope as compared to that of the provisions determining the responsibilities of the provincial authorities. While emphasizing the importance of the social and economic role played by the labour inspectorate, it reminded the Government of the need to ensure that labour inspectors have a status and conditions of service that take due account of the importance and the specific nature of their duties, including remuneration scales based on criteria related to personal merit. To enable it to keep track of the situation, the Committee asked the Government to indicate how powers were distributed between the central authority and the provincial authorities in terms of the organization and functioning of the labour inspectorate and the appointment of labour inspection staff, and for budgetary decisions on the distribution of the resources needed to carry out this function of the public labour administration. In its report, the Government indicates that it has submitted a Bill on decentralization to Parliament, but states that it is unable to provide the information requested. The Committee notes, however, that Decree No. 08/06 of 26 March 2008 establishes a National Council (CNDM) to implement and monitor the decentralization process in the Democratic Republic of the Congo. It notes that section 12(4) of the Decree provides for a technical unit to assist with decentralization, with responsibility for monitoring the transfer of the financial and human resources allocated to the areas that are of the exclusive competence of the provinces and for the functions of the decentralized territorial entities. Pursuant to Act No. 07/009 of 31 December 2007 establishing the state budget for the 2008 financial year, the Government has undertaken to re-establish state authority over the entire national territory and to back it up with a stringent reform of the public administration with a view to improving the qualitative and quantitative performance of public officials. ***The Committee would be grateful if the Government would indicate precisely whether, by virtue of the Constitution, labour inspection is considered to be an integral part of the national public service, and asks it to provide a copy of any text or document that would enable the Committee to assess the manner in which effect is given throughout the national territory to the provisions of Articles 4, 5, 7, 10, 11, 20 and 21 of the Convention.***

*Articles 3(2), 6 and 15(a). Integrity, independence and impartiality of labour inspectors.* In its previous comments the Committee noted, in connection with allegations by the Confederation of Trade Unions of Congo (CSC) of corruption among labour inspectors, that the Government had provided no information on the fact that some inspectors have a second occupation and on the lack of transport facilities. However, it notes the Government's commitment to restructuring the inspection services so as to make them operational and ensure that labour inspectors enjoy a status and conditions of service commensurate with their responsibilities, thereby removing them from any improper external influence, such as might result from a subordinate position in parallel job. ***The Committee would be grateful if the Government would provide details as to the possibility for labour inspectors to have a second job and the conditions governing such a possibility. The Government is also asked to indicate how it applies in law and in practice its undertaking to improve the status and conditions of service of labour inspectors, and to provide copies of any relevant legislation or document.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### ***Labour Administration Convention, 1978 (No. 150) (ratification: 1987)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Re-establishment of the exercise of the right to organize.* The Committee notes that the work of the National Labour Council in 2004 gave rise to the adoption, among other regulatory texts on workers' right of representation, of Ministerial Order No. 12/CAB/MIN/TPS/VTB/053/2004 of 12 October 2004 lifting the suspension of trade union elections in enterprises and establishments of all types. ***The Committee would be grateful if the Government would provide information on the impact of this Order on industrial relations.***

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Djibouti

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes the Government's report received at the ILO on 29 May 2008. It also notes Act No. 75/AN/00/4e to organize the Ministry of Employment and National Solidarity, the organizational chart of the Ministry and the summary table of statistics on the work of the labour inspection services and social legislation in the period 2003–07 and the constitutional provisions providing that international standards and commitments prevail over national provisions.

In its previous comments, the Committee referred to comments made by the General Union of Djibouti Workers (UGTD) in 2007 calling for an urgent review of the labour inspection system and the strengthening of its resources. In the absence of any recent statistics on the working of the labour inspectorate, the Committee also asked the Government to report in as much detail as possible on the following matters: (i) the supervision of working conditions and the protection of workers in enterprises in export processing zones excluded from the scope of the new Labour Code by section 1 of the Code; (ii) the impact of the conciliation work carried out by labour inspectors on the volume and quality of their inspection duties (*Article 3(2) of the Convention*); (iii) human resources and means of action of the labour inspectorate in relation to the requirement of *Article 16* that workplaces shall be visited as often and as thoroughly as necessary; and (iv) the need to give effect to *Articles 20 and 21* concerning the requirement that the central inspection authority shall publish and communicate to the ILO an annual general report on the work of the inspection services.

On the basis of the information sent by the Government, the Committee wishes to draw attention to the following points.

*Articles 1 and 2 of the Convention. Supervision of working conditions and protection of workers in industrial and commercial establishments in export processing zones.* The Committee noted in its previous comments that, under section 1 of the Labour Code, the Code applies throughout the national territory except in export processing zones (EPZs) which are governed by special legislation. According to the Government, not only are the EPZs beyond the competence of the labour inspectorate but the legislation applying to them, which has prompted objections in the country, grants excessive privileges to employers at the expense of the workers. The Government explains that supervision of the enterprises allowed to operate in EPZs is the responsibility of the ports and EPZs authorities, which also issue visas for foreign workers and deal with any disputes regarding the election of staff delegates in the zones. The Committee notes, however, that pursuant to section 31 of the EPZ Code issued by Act No. 53/AN/04 of 17 May 2004, "the Djibouti Labour Code governs labour relations in the export processing zones", and that the legislation on EPZs available at the ILO contains no provisions on this subject. ***The Government is asked to indicate whether section 31 of the EPZ Code has been repealed and if so, to provide the relevant text, and in any event to provide copies of the texts governing the working conditions and protection of the workers occupied in establishments in the EPZs together with the legal provisions respecting their enforcement.***

*Articles 3(1)(a) and (b), and 17. Need to ensure a balance between the enforcement and advisory functions of labour inspection.* According to the Government, the work of inspection services pertaining to labour legislation focuses largely on persuasion and information. The Committee nonetheless notes that the national legislation contains, as the Convention requires, a whole set of legal provisions that also enable inspectors to prosecute those who are in breach of the law on working conditions. In paragraph 279 of its General Survey of 2006 on labour inspection, the Committee pointed out in this connection that although advice and information can only encourage compliance with legal provisions, it should nonetheless be accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted. In keeping with its assertion that no labour legislation, however developed it may be, can exist for long without an effective labour inspection system, the Government should ensure that the inspection system is able to make use of all means of action available to it under the law to attain its objectives. A balance between the advisory and enforcement roles of the inspection services would, without doubt, contribute to reducing the number and scale of labour disputes. ***The Committee accordingly asks the Government to take the appropriate steps to ensure that, where necessary, inspectors exercise in practice the authority conferred by Article 17 of the Convention, to which section 196 of the Labour Code gives effect, themselves to initiate legal action before the competent jurisdiction against those who breach labour laws and regulations, on the basis of the provisions of Title IX of the Code which defines offences and establishes the penalties applying to them.***

*Article 3(2). Accumulation of tasks assigned to labour inspectors and its impact on the volume and quality of their inspection duties.* In its observations of 2007, the UGTD expressed the view that in future the duties of the inspectorate should encompass conciliation and prevention. The Committee drew the Government's attention in this connection to *Article 3(2)*, which places restrictions on the additional duties that may be required of labour inspectors, and asked the Government to send the Office information on the manner in which observance of this provision is ensured. The Government acknowledges that workplace inspection has its shortcomings. Furthermore, the data the Government provided on the work of the inspectorate in the area of occupational safety and health are slight in comparison with those pertaining to the settlement of individual and collective labour disputes. The Government nonetheless hopes that in future, the labour inspection service will be able to conduct three visits a week. The Committee notes this information with **concern**, observing that it bears out the UGTD's assertion that the labour inspection system needs to be reviewed and strengthened so that it can perform its duties fully. It furthermore regrets that it has not been informed of the number of workplaces subject to inspection and is therefore unable to assess the extent to which the needs for inspection are covered. Observing that the time and energy that labour inspectors spend in attempting to settle collective labour disputes interfere with the performance of their primary duties, the Committee suggests, in paragraph 74 of its General Survey mentioned above, that conciliation or mediation in collective labour disputes be entrusted to a specialized body or officials. It notes in this connection that section 181 of the new Labour Code in fact provides for the establishment of an arbitration council to hear collective labour disputes that conciliation has failed to settle. It notes, however, that the Council will hear the dispute only after the labour inspector or labour director has attempted conciliation and referred the matter to it within eight full days (section 180 of the Code). ***The Committee reminds the Government of the specific warning in Paragraph 8 of Recommendation No. 81 that "the functions of labour inspectors should not include that of acting as conciliator or arbitrator***

*in proceedings concerning labour disputes” and it urges the Government to envisage taking steps to relieve inspectors of their role as preliminary conciliators in labour disputes. It would be grateful if the Government would also take measures to ensure, as required by Article 16 of the Convention, that the strength of the inspectorate is sufficient to cover the workplaces liable to inspection and send the Office information with as much supporting documentation as possible on all progress made in this matter and on any difficulties encountered.*

*Articles 10, 11 and 16. Reinforcement of the labour inspection system.* The Committee notes that in order to reinforce the labour inspection system, the Government plans to create four new sections of the inspectorate, two in the capital and two in the interior of the country, and to take advantage of technical support from the ILO Subregional Office in Addis Ababa to organize a training course for labour controllers and the single labour inspector at the ILO International Training Centre in Turin. It also notes that the Government is examining possibilities for cooperation between the labour inspectorate and the competent medical and technical institutions, and that a tripartite workshop on Convention No. 81 was to be organized by the ILO subregional office in 2008. *The Committee hopes that the Government will not fail to keep the ILO informed of any developments relative to any of these matters.*

*Further to its previous comments, the Committee once again asks the Government to provide the most recent data available on the number and geographical distribution of the workplaces liable to inspection (including mines and quarries), the number of workers employed therein and the transport facilities available to the labour inspector and labour controllers for duty travel.*

Such information is essential to the central inspection authority in evaluating the human and material resources needed in order to attain the objectives of labour inspection and hence to estimating the funding of the inspectorate in the national budget.

*Articles 20 and 21. Publication, communication and content of the annual inspection report.* While taking note of the table of statistics attached to the Government’s report on the work of the inspection services, the Committee observes that it covers a period of five years and that, in terms of activities and results, it is not sufficiently specific or relevant to be of use in evaluating the operation and efficiency of the labour inspection system. *The Committee is therefore once again bound to ask the Government to take the necessary measures for the publication of an annual inspection report, as provided in section 192 of the Labour Code, within the time limits prescribed in Article 20 and containing the information required by Article 21. Emphasizing that such a report is an essential tool in evaluating the efficiency of the inspection system and in identifying the resources required for its improvement, in particular through appropriate budgetary estimates, the Committee requests the Government to pay due attention to the indications in Part IV of the Labour Inspection Recommendation, 1947 (No. 81) as to the level of detail that would be appropriate in the information required by clauses (a) to (g) of Article 21 of the Convention. It recalls that it may request ILO technical assistance for this purpose.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Dominica**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that the Government’s report received in March 2009 contains no information in reply to its direct request formulated in 2007 and repeated in 2008. It notes that, despite the reminder sent to it by the ILO in May 2009, the Government has not supplied the required information.

*Given that for many years the Government has not supplied a detailed report on the manner in which effect is given in law and in practice to the Convention and that the most recent annual report on the work of the labour inspectorate transmitted to the ILO concerns 1996, the Committee would be grateful if the Government would take all the necessary steps to ensure that the next report pursuant to article 22 of the ILO Constitution contains the level of detail required by the report form. It requests the Government to ensure that the information available on each of the subjects listed in Article 21 are included in its report pending the publication of the next annual report on the work of the labour inspectorate.*

*Articles 3, 6, 10, 12, 13, 15, 17 and 19 of the Convention. Duties, status, numbers, rights, obligations and powers of labour inspectors.* In reply to the Committee’s previous comments, the Government indicates that the staff of the Labour Department consists of four officials, namely the Labour Commissioner, his deputy, and two agents. According to the Government, these officials perform all the duties allocated by the Labour Department. Although they possess the necessary qualifications for providing high-quality advice to employers and workers, the staff of the Labour Department are, however, insufficient in number and also faced with a lack of equipment aggravated by the austerity measures imposed by the International Monetary Fund, making it difficult to undertake advisory activities. Nevertheless, the Government expresses the hope that recommendations resulting from a study of the situation undertaken by a former ILO expert may be implemented. The Committee, however, notes that a copy of the report on this study has not been transmitted to the ILO, despite a written request dated 19 March 2007.

In reply to the Committee’s requests concerning the way in which it is ensured that labour inspectors abide by the code of ethics relevant to their duties, as defined by *Article 15(a), (b) and (c)* of the Convention, the Government has supplied information on the legal provisions concerning the general obligations of all officials. The Committee would like to emphasize that these provisions are insufficient in relation to the requirements of the Convention. There has to be the strictest possible observance of ethical principles by inspectors to counterbalance the extensive powers and prerogatives which, in accordance with the Convention, have to be accorded exclusively to labour inspection officials in the performance of their duties. *The Committee would be grateful if the Government would refer to its General Survey of 2006 on labour inspection with regard to: (i) the prohibition on labour inspectors to have “any direct or indirect interest” in enterprises liable to inspection (paragraph 227); (ii) the scope of the obligation of professional secrecy (paragraphs 229–232); and (iii) the obligation of confidentiality with respect to the source of any complaint and the connection that may exist between an inspection visit and a complaint (paragraphs 235–237). The Committee requests the Government to take steps to ensure that the legislation is supplemented in the light of these clarifications with regard to the duties and obligations of labour inspection officials. It further requests the Government to keep the Office informed of all progress in this respect and to send copies of any relevant draft or final texts.*

*Necessity for adequate penalties. Article 18.* The Committee notes the Government's statement that the amount of fines which can be imposed on persons who contravene the legislation enforceable by the labour inspection officials has not been revised since 1990 and section 32 of the Act on labour standards provides that anyone contravening the provisions of sections 28 and 29 (concerning the powers and prerogatives of labour inspectors) is liable to a fine, the amount of which is fixed at 75 dollars and multiplied by the number of days for which the contravention continues. However, the Committee notes that section 13 of the Act of 1983 on occupational safety (Chapter 90:08) provides that the amount of the fine applicable for a violation of its provisions is 5,000 dollars, with the possible addition of imprisonment for one year. ***The Committee would be grateful if the Government would clarify whether the staff responsible for monitoring enforcement of the Act on occupational safety are the same as the staff of the Labour Department, who are also responsible for monitoring the legislation concerning other conditions of work and protection of workers, and to supply a list of the provisions establishing penalties for violations of the provisions relating to conditions of work and the protection of workers and the contraventions to which they apply. The Committee also requests the Government to send a copy of any document describing specific cases of convictions of employers involving the imposition of a fine and/or imprisonment.***

***In addition, the Committee requests the Government to provide a copy of the study carried out in 2007 on the situation of the labour administration system, together with information on the follow-up measures taken by the Government in relation to the recommendations contained in the study.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Ecuador

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1975)***

The Committee takes note of the brief reports sent by the Government, received on 8 September 2009 and 19 October 2010, and the information on occupational safety and health inspection activities. It also notes with *interest* the reports produced in the context of bilateral cooperation with the Ministry of Labour and Immigration of Spain on the one hand, and on the other, the Ministry of Labour of Argentina in November 2008 on the operation of the labour inspection system in the country, which contain recommendations for improvement.

*Article 3(1)(b) of the Convention. Educational activities conducted by the labour inspectorate.* The Committee notes the various training courses on rights at work and on safety and health run for workers, employers, representatives of trade unions and chambers of commerce and technical specialists, which involved visits to plantations and workplaces, and the compilation of a handbook of all existing labour standards subject to supervision by the labour inspectorate. Furthermore, it notes with *interest* the "SIUDEL" website ([www.derechosdeltrabajo.net](http://www.derechosdeltrabajo.net)) provided by the Government which contains a lot of information on labour law, illustrated to make it readily accessible to persons with limited reading ability or poor sight.

*Evaluation of the labour inspection system.* The Committee notes that the Government provides no information replying to the matters raised in the previous comments concerning the need to supplement the labour legislation in order to strengthen the labour inspection system, and the action taken on the recommendations of the ILO/FORSAT multilateral technical cooperation project, and the Pilot Inspection Plan for Guayaquil produced in the context of this project, which ended in April 2007. The Government merely indicates that action will be taken on the recommendations made in the context of the abovementioned bilateral technical cooperation and on the Committee of Experts' observations, in the course of the process to reform the labour inspection system now under way.

The Committee observes that the recent diagnosis of the situation and the resulting recommendations largely reflect the findings of the report evaluating the ILO/FORSAT multilateral technical cooperation project of 2005 as concerns the situation of labour inspection in Quito, Guayaquil and Cuenca, namely: the absence of a national labour authority; insufficient human resources and material means; the absence of a body of rules governing the structure, organization, duties and functions of the labour inspection system, the status, powers and obligations of inspectors, and the absence of legal provisions defining offences against the legislation on working conditions and the protection of workers and setting penalties therefor; the absence of any planning and scheduling of inspection visits, and inadequate oversight of occupational safety and health obligations. Attention was also drawn to shortcomings such as the lack of a central labour inspection authority, the disparities between regional and provincial bodies, the absence of any regional safety and health bodies other than the Regional Directorate in Quito, a lack of cooperation between the inspectors of the Ecuadorian Social Security Institute (IESS) and labour inspectors, and overlap in the duties performed by the various categories of inspectors (inspector-controllers, IESS inspectors, inspectors responsible for supervising various projects, labour inspectors, child labour inspectors, only the last two of these categories having public servant status).

The Committee observes that the improvement – noted in its previous comments – in the system of labour registers resulting from the ILO/FORSAT multilateral technical cooperation project enabled the Government of Argentina to make a recommendation for the establishment of an integrated national system for labour statistics to include the various administrative registers, and for reactivation of the Special Committee on Labour Statistics.

To remedy the disadvantages of having several categories of labour inspectors of varying status and of creating a single category of general "integrales" inspectors, the Government states that pursuant to *mandato constituyente* No. 008, there is to be an integrated labour inspectorate and the administrative, operational and financial organization of the Ministry of Labour and Employment is to be strengthened.

Further to its observation of 2008, the Committee asks the Government once again to take measures to bring the legislation into line with the Convention as regards: determining the workplaces covered (Articles 2 and 23); the functions and organization of the system (Articles 3, 4, 5 and 9); the status and conditions of service of inspection staff (Article 6), its training (Article 7), eligibility of both sexes (Article 8), prerogatives and powers (Articles 12, 13 and 17), ethical (Article 15) and functional (Articles 16 and 19) obligations; the publication of an annual inspection report (Articles 20 and 21). The Government is also asked to supplement the legislation with provisions defining offences enforceable by labour inspectors and setting penalties therefor. Please also send information on any progress made and copies of any texts adopted for the abovementioned purposes.

The Government is again asked to provide the information that is now available thanks to the system for recording labour data such as the number, activities and geographical distribution of the industrial and commercial establishments that are under the supervision of the labour inspectorate; the number and categories of workers employed therein (men, women, young workers in particular) and any other information necessary for an evaluation by the competent authority of the labour inspectorate's needs in human resources, material means and transport facilities, and to determining priorities for action in the light of Ecuador's economic circumstances.

The Committee is raising other points in a request addressed directly to the Government.

## El Salvador

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)

*International cooperation and ILO technical assistance.* The Committee notes with *interest* that a labour inspection reform has been undertaken as a result of recommendations made following a diagnosis that the Office carried out as part of regional cooperation project RLA/07/04M/USA for the strengthening of labour administration systems.

The Committee notes with *interest*: (a) the adoption of the General Act on the Prevention of Risks in the Workplace (LPRT) issued by Decree No. 254 of 21 January 2010, published in the *Official Journal* of 5 May 2010; (b) the current revision of the Act on the Organization and Running of the Labour and Social Welfare Sector (LOFT); (c) the current preparation of a code of ethics for labour inspectors; (d) the restructuring of the labour inspectorate involving the merger, within the Directorate General of Inspection, of the two bodies responsible for the supervision of conditions of work in general and occupational safety and health; and (e) a pilot project to standardize labour inspection procedures in these areas, scheduled for implementation between July 2010 and February 2011.

The Committee notes with *interest* that the LPRT meets the Convention's requirements on the following points: (i) establishment of an obligation to notify the labour inspectorate within 72 hours of any industrial accident and, immediately and without delay, of any serious or lethal accident (*Article 14 of the Convention*); (ii) classification of offences (minor, serious, very serious) and establishment of penalties calculated on the basis of the minimum wage for the various categories of offence (*Article 18*); and (iii) establishment of an occupational safety and health committee (composed of workers' and employers' representatives) in enterprises employing 15 or more workers and enterprises engaging in activities of a kind requiring such a body (*Article 5 of the Convention* and Part II of the Labour Inspection Recommendation, 1947 (No. 81). **The Committee would be grateful if the Government would take the necessary steps to ensure that the legislation is likewise brought into conformity with Article 14 of the Convention as concerns notification to the labour inspectorate of cases of occupational disease. It asks the Government to keep the Office informed of developments in this matter, to provide a copy of any texts adopted and to send a detailed description, with supporting documentation, of the procedures for declaring relevant industrial accidents and cases of occupational disease and notifying them to the labour inspectorate.**

According to the Government, besides the progress consisting in the establishment, in the LPRT, of sanctions that are proportionate to the nature and seriousness of the offence (*Article 18*), the revision of the LOFT should likewise bring the legislation into line with the Convention as requested by the Committee by: (i) giving labour inspectors public official status and assuring them of stability of employment, as well as career prospects (category I inspectors, category II inspectors, supervisors) (*Article 6*); (ii) providing for the recruitment of labour inspectors by competition (*Article 7*); (iii) empowering inspectors to enter at any hour of the day or night workplaces liable to inspection (*Article 12(1)(a)*); (iv) abolishing the requirement for the employer, the workers or their representatives to be present during the inspection (*Article 12(c)(i)*); and (v) allowing labour inspectors the discretion to give warning and advice to offenders before envisaging the initiation of proceedings (*Article 17(2)*). **The Committee requests the Government to take all necessary steps to bring the law and practice into line with the abovementioned provisions and with Article 12(2), which allows inspectors not to notify the employer or his representative of their presence if they consider that such notification may be prejudicial to the performance of their duties.**

**In addition, the Committee requests the Government to ensure both in law and in practice that labour inspectors are not assigned any further duties – for example tasks relating to dispute settlement – that are liable to interfere with or obstruct the effective discharge of their primary duties (Article 3(2) and Part III of Recommendation No. 81).**



*The Government is requested to keep the ILO informed of any progress in the above areas and to provide copies of any texts or relevant documents, including a copy of the code of ethics referred to in the Government's report on the application of the Labour Inspection (Agriculture) Convention, 1969 (No. 129).*

*Articles 20 and 21 of the Convention. Publication and communication to the ILO of an annual inspection report.* The Committee notes the information sent by the Government including on the number of labour inspectors, the number of workplaces visited between 2006 and 2009, the number of offences reported during the same period and the penalties imposed. It reminds the Government that such information, along with data on the other subjects set forth in *Article 21*, should be published in the form of an annual report a copy of which should be sent to the ILO. *The Committee requests the Government once again to ensure that the central labour inspection authority publishes and sends to the Office within the deadline set in Article 20, an annual report containing the information required by Article 21(a)–(g).*

*Labour inspection and child labour.* The Committee notes that according to the Government, the supervision of child labour is an integral part of the inspections carried out in all economic sectors. *The Committee again asks the Government to send detailed information on the supervision of the application of the legal provisions on child labour in industrial and commercial establishments, and to ensure that such information is included regularly, and separately, in the annual inspection report.*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1995)**

The Committee refers the Government to its comments on the application of the Labour Inspection Convention, 1947 (No. 81), and takes note of the information supplied by the Government in its report in response to the Committee's previous comments. It wishes to draw the Government's attention to the following points:

*Articles 9(3), 11, 14 and 15 of the Convention. Human and material resources for labour inspection in agriculture.* The Committee notes that according to the Government, the number and geographical distribution of the vehicles available to the labour inspection services performing duties in agricultural undertakings have not changed since the last report. It observes that the Government gives no criteria for such distribution. As regards the training needs of inspectors responsible for the agricultural sector, the Committee notes that the Government is committed to providing specific training. *The Committee again requests the Government to send its assessment of how far the transport resources and facilities for labour inspectors meet the specific needs that arise because agricultural enterprises are geographically remote and scattered.*

*It requests the Government to provide detailed information on the frequency, content and duration of, and the number of participants in, the specific training organized for labour inspectors working in the agricultural sector, for the period covered by the next report.*

*Furthermore, it again requests the Government to take steps to ensure that labour inspectors in the agricultural sector can count on cooperation from properly qualified experts and technicians (doctors, chemists, safety engineers) in solving problems that demand technical knowledge beyond the scope of inspectors' qualifications, and to keep the ILO informed on this matter.*

*Physical safety of labour inspectors in visits to agricultural undertakings. Further to its previous request on this matter, and noting the Government's reply that labour inspectors may call upon law enforcement officers in the event of danger, the Committee would be grateful if the Government would provide information on incidents in which the safety of inspectors has been ensured thanks to police intervention, and to describe the procedure followed.*

*Articles 6(1)(b) and 13. Collaboration between officials of the labour inspectorate in agriculture and employers and workers or their organizations. Further to its previous request and noting that the Higher Labour Council (forum for cooperation between officials of the labour inspectorate and employers and workers or their organizations) has still not been informed of matters relating to labour inspection in agriculture, the Committee again asks the Government to indicate whether measures have been taken or are envisaged to expand the duties of the Higher Labour Council to enable it to issue advice for improving working conditions and living conditions in agricultural undertakings, particularly in plantations and other intensive farming enterprises. If so, it would be grateful if the Government would provide information on the topics dealt with and the outcome of the Council's proceedings.*

## **France**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1950)**

The Committee notes the Government's reply to its previous comments. It notes with *interest* that, following repeated requests from the Committee, the Government is planning to take measures to have separate information on inspection work and its results supplied in its future reports and in the annual labour inspection report in relation to French Guyana, Guadeloupe, Martinique, Réunion and St Pierre and Miquelon, which are now treated as metropolitan France for the purposes of the ILO Constitution pursuant to the registration of a declaration to this effect dated 31 August 2009.

With reference to its 2004 observation, the Committee notes with *satisfaction* the publication in February 2010, after validation by the National Council of Labour Inspection, of a collective work on "Principles of Deontology for Labour

Inspection” the preparation of which had been initiated in 2004 under the direction of the Central Support and Coordination Mission for the External Labour and Employment Services (MICAPCOR) and had continued with ILO technical support. The working group which elaborated this tool was mainly composed of representatives of the labour inspection at various levels, as well as other structures of the Ministry of Labour. The ILO and the National Centre of Scientific Research (CNRS) were also represented. The Committee notes with *interest* the statement made in the book’s preface by the Minister of Labour, Social Relations, Family, Solidarity and Cities, that “deontology reinforces the coherent action of the labour inspection agents at all hierarchical levels ... as it protects the citizens themselves from the risks of arbitrariness”. The Committee also notes that, according to the Minister, “the principle of independence of labour inspection does not signify only a right for the agents concerned, but also a guarantee for the citizens who are able to benefit from an organized public service which is not subject to any undue external influence”.

The Committee also notes the comments from the Single National Union – Work, Employment, Training – Professional Integration (SNU–TEF(FSU)) received at the International Labour Office on 6 July 2010, concerning the involvement of labour inspectors in joint operations to combat illegal work pursuant to “Inter-ministerial Circular No. NOR-IMIM1000102NC of 2 June 2010 to combat illegal work concerning foreign nationals – implementation of joint operations in 2010”. The circular provides for reinforcement of the inter-institutional cooperation measures to combat illegal work on which the Committee commented previously. On 15 November 2010 the Government sent information to the Office concerning the matters raised by the SNU–TEF(FSU).

The Committee also notes a communication of 29 June 2010 from the Inter-Union Association (CGT–SUD–UNSA), expressing concern at the establishment of a labour inspection office on the premises of the Porto Vecchio (Corsica) Chamber of Trades because of the implications for the principle of independence that ought to govern the performance of inspection duties and the principle that access to inspectorate premises should be ensured for employees. The Committee notes the Government’s replies to the points raised.

*Articles 3(1) and (2), 5(a), 6, 12, 15(c) and 17 of the Convention. Further duties entrusted to labour inspectors. Mobilization of resources and incompatibility of inspection methods and the objectives pursued.* In its replies to the Committee’s previous comments on the involvement of labour inspectors in operations carried out in workplaces jointly with officials whose job is to implement the policy to combat illegal immigration, the Government indicates that the allegations of the SNU–TEF(FSU) consist in a conflation of press articles, communications from trade unions and the relevant legislation. The Committee points out that it had undertaken a thorough analysis of the legislation and had found that the joint operations to combat illegal work by foreign workers in irregular status were not in accordance with the provisions of the Convention, and stressed the need for measures to remedy the situation and to enable labour inspectors to carry out their functions as defined by the Convention. The Committee observes that the Government has, on the contrary, adopted the circular of 2 June 2010.

The Committee notes that the circulars of 20 December 2006 and 7 July 2007 focus on preserving and respecting the professional identities in determining the role to be played by each administration in the joint operations to combat illegal work. This implies that labour inspectors should keep the responsibility of enforcing the legal provisions on working conditions and the protection of workers, namely sections L.341-6-2, L.8258-1 and L.8252-2 of the Labour Code, which treat unlawfully employed foreign workers in the same way as lawfully employed workers in terms of the obligations incumbent on employers under labour regulations (pay, allowances, severance compensation). The circumstances and results of the joint operations show that the labour inspectors’ cooperation in many cases has the exact opposite effect and ends up exposing workers to a procedure of removal from France and the attendant withdrawal de facto of any right of challenge against the employers who broke the law by hiring them. This is established by Circular No. NOR-IMIM0800047C of 24 December 2008 and the abovementioned circular of 2 June 2010 concerning the results of the joint operations conducted in 2007 (out of 992 persons in an unlawful situation, 295 were expelled) and in 2009 (out of 1,116 workers taken in for questioning, 680 were issued with prefectural expulsion orders and 159 were actually expelled). The Committee notes the terms of the circular of 24 December 2008 according to which, even before a joint operation is launched, “it is important that all steps be taken at each of the levels involved (internal security service, prefectural aliens offices) to ensure that, where foreigners in an unlawful situation are apprehended, this leads to effective removal”. The Committee *regrets* that the circular of 2 June 2010 reproduces word for word these provisions which may negatively impact on “preserving and respecting” the professional identity of labour inspectors. The circular also emphasizes the logistical arrangements to be made upstream, such as pre-reservation in administrative detention centres when an operation is likely to lead to multiple arrests. The Committee notes that although this circular prescribes measures to ensure speedy procedures for the prosecution of offending employers, it contains no reference to the provisions of sections L8258-1 and L8252-2 of the Labour Code, which safeguard the rights of foreign workers in an irregular situation who are victims of the offence of illegal employment. The Committee recalls that, under both the Convention and the national legislation, labour inspectors are to use their powers of injunction to get employers to fulfil their obligations towards workers. It also notes that the circulars make no reference to the rights of the workers affected by joint operations. This may lead to the denial of the right of these workers to apply to the labour courts and give rise to discrimination against them.

The Committee notes that in its report, in connection with this aspect of the offending circulars, the Government mentions Directive 2009/52/EC of the European Parliament and of the European Council of 18 June 2009, which provides

that member States must ensure the availability of effective procedures allowing workers in an irregular situation who have been returned, to introduce a claim seeking their entitlements or to enforce a judgement to that effect. In replying to the comments of the SNU-TEF(FSU), the Government specifies that the bill to transpose the European Directive makes the French Immigration and Integration Office (OFII) responsible for recovering and conveying to foreign nationals who have been illegally employed any amounts outstanding from their occupational activity. Since the bill has not been adopted, the Committee can only hope that it will become law shortly so as to strengthen those provisions of the legislation that already afford protection and non-discriminatory treatment to the foreign workers concerned (workers in the construction and public workers (BTP) sector, the hotels, café and restaurants (HCR) sector, the agricultural sector and the apparel sector).

According to the Government, labour inspectors are called on to cooperate in the joint operations in the interest of creating synergy between supervisory bodies responsible for the same type of offence defined in the Labour Code, and such cooperation is therefore fully consistent with *Article 5* of the Convention. As to the impact of this activity on other inspection functions, the Government states that violation reports relating to the employment of foreigners with no work permit account for less than 4 per cent of all violation reports. The Committee notes that the Government does not provide any information on the level of the penalties imposed on employers, in order to enable it to assess how dissuasive they are. The Committee recalls that the aim of the cooperation referred to in *Article 5(a)* is to strengthen the means available to inspectors to enforce the legal provisions on working conditions and the protection of workers (*Articles 2 and 3(1)*), and that according to *Article 12(1)(c)(i)*, labour inspectors should be empowered to carry out examinations alone or in the presence of witnesses (implied appointed freely by them). The Committee considers that they are not in a position to exercise this prerogative in joint operations, and their freedom to enter workplaces (with no need for a court authorization or an order from the public prosecutor) is used for purposes that are contrary to their functions.

The Committee is also of the view that the association of the police in labour inspection is not conducive to the relationship of trust needed to create the climate of confidence that is essential to enlisting the cooperation of employers and workers with labour inspectors. It must be possible for inspectors to be feared for their authority to report offences, and at the same time to be respected and approachable as preventers and advisers.

***The Committee therefore once again asks the Government to provide information so that it can assess the manner in which it is ensured, in accordance with section L.341-6-1 of the Labour Code, that foreign workers in an irregular status benefit from the same protection by the labour inspectorate as other workers, and to provide in so far as possible relevant statistics (number of complaints filed and convictions of employers to regularize their situation with regard to the workers' rights, as well as the status of procedures for the enforcement of such decisions).***

***The Committee also, once again, urges the Government to take measures to ensure that the powers of inspectors to enter workplaces liable to inspection are not misused for the implementation of joint operations to combat illegal immigration.***

***The Committee also requests the Government to take measures to ensure that labour inspectors are notified of cases of immigrants in an irregular status, who are apprehended outside a workplace and are engaged in a labour relationship covered by the Convention.***

The Committee notes the creation on 1 December 2008 in *French Guiana* of a service to combat illegal work (SLTI). It notes with **concern** that despite the small size of the inspection staff (4.5 for the whole department), two of its members (one inspector and one controller) and an administrative secretary are assigned on a full-time basis to implement the local policy to combat illegal work formulated by the Select Committee to Combat Illegal Work (CORELTI) and the provision of secretariat services for CORELTI, whose membership comprises the police, gendarmerie, customs and fiscal authorities.

Although the Government asserts that the SLTI's work in combating illegal work is focused on the inspection duties defined in the Labour Code, the figures supplied are insufficient to show what proportion of supervisory duties (547 inspection visits) accounted for enforcement of the legal provisions on working conditions and the protection of workers: the information that there were 28 decisions to close down sites, 295 written observations and 36 violation reports does not allow a distinction to be drawn between action linked to the reporting of offences of illegal employment and action linked to the reporting of offences against the provisions covered by the Convention. ***The Committee accordingly asks the Government to take the necessary steps to enable all the labour inspection staff of French Guyana to carry out their inspection functions that relate to enforcement of the legal provisions on conditions of work and the protection of workers while engaged in their work. It would be grateful if, in support of the relevant information, the Government would provide detailed statistics of the activities of the labour inspectorate in the department.***

*Article 10. Strength and composition of the labour inspectorate staff in relation to development functions and the complexity of the legislation.* The Committee notes with **interest** that between 2006 and 2009, 452 student inspectors were promoted and 923 probationary controllers were trained. It also notes that of the 60 posts for labour inspectors and the 100 posts for labour controllers created in 2009, most are controller posts.

*Articles 5(a) and 7(3). Effective cooperation between the inspection services and other government services and public or private institutions, and training for inspectors in the prevention of occupational risks.* The Committee refers to its previous comments concerning *Réunion* in which it asked the Government to provide information on the measures

taken or envisaged to reduce the frequency of industrial accidents and instances of occupational disease, particularly in work noted as having a high risk potential. The Committee notes in this connection that in September 2007 ten inspectors received training in the field of chemical risks and that pursuant to a partnership agreement signed in 2005, the Directorate of Labour, Employment and Vocational Training (DTEFP) of Réunion belongs to a prevention network (whose membership includes the National Agency for the Improvement of Working Conditions – ANACT –, the General Fund for social security, the occupational health services). Furthermore, it notes with *interest* that improving occupational safety and health, particularly in the construction and public works sector and in the area of chemical risks, was one of the main objectives set for the labour inspectorate for 2008 and that a regional occupational health plan has been in preparation since October 2007.

***The Committee requests the Government to continue to provide information on progress made by virtue of cooperation between the abovementioned players in the area of occupational risk prevention and the labour inspection sections of Réunion. In particular, the Government is asked to provide information on the training that labour inspectors received in the area of occupational safety and health, on progress in the regional occupational health project and the missions and activities conducted by labour inspectors in this connection and their impact on the frequency of industrial accidents and occurrences of occupational disease.***

*Articles 6, 11 and 15(c). Independence of labour inspectors, accessibility of their premises to all concerned.* With regard to the concern expressed by the Inter-Union Association (CGT–SUD–UNSA) that the labour inspectorate has its office on the premises of the Chamber of Trade of Porto Vecchio (Corsica), the Committee notes that according to the above organization, the premises are so designed that fear of being seen by their employers could dissuade workers from going to the labour inspectorate. The Government, for its part, states that the establishment of a labour inspection section in Porto Vecchio is recent and that it was because there were no other options that the inspectorate was housed in the premises of the Chamber of Trades, which is a public establishment. The Government adds that the questions raised about this location are being thoroughly investigated by the Directorate General of Labour, and a decision will be taken when inquiries are completed. ***The Committee would be grateful if the Government would provide information on the results of the abovementioned investigation, and asks it in any event to take the necessary steps to ensure that labour inspectors are independent of any improper external influences and that workers are able to enter the Porto Vecchio section freely.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)***

With reference to its 2004 observation, the Committee notes with *satisfaction* the publication in February 2010, after validation by the National Council of Labour Inspection, of a collective work on “Principles of Deontology for Labour Inspection” the preparation of which had been initiated in 2004 under the direction of the Central Support and Coordination Mission for the External Labour and Employment Services (MICAPCOR) and had continued with ILO technical support. The working group which elaborated this tool was mainly composed of representatives of the labour inspection at various levels, as well as other structures of the Ministry of Labour. The ILO and the National Centre of Scientific Research (CNRS) were also represented. The Committee notes with *interest* the statement made in the book’s preface by the Minister of Labour, social relations, family, solidarity and cities, that “deontology reinforces the coherent action of the labour inspection agents at all hierarchical levels ... as it protects the citizens themselves from the risks of arbitrariness”. The Committee also notes that according to the Minister, “the principle of independence of labour inspection does not signify only a right for the agents concerned, but also a guarantee for the citizens who are able to benefit from an organized public service which is not subject to any undue external influence”.

*Article 6(3) of the Convention. Duties additional to the supervision of working conditions and the protection of workers. Involvement of the labour inspectorate in combating illegal work.* The Committee notes that a series of communications from the Single National Union-work, employment, training and professional integration SNU-TEF (FSU), including one received at the ILO on 6 July 2010 about the involvement of labour inspectors in joint operations to combat illegal work pursuant to the interministerial circular of 2 June 2010 No. NOR IMIM1000102NC concerning the combat as it affects foreign nationals, concern the application of the Convention. Furthermore, it notes the information sent by the Government in reply to the Committee’s previous comments and to the matters raised by the abovementioned organization regarding the circular, the provisions of which likewise concern workers with no residence permit employed in agricultural undertakings. ***The Committee accordingly asks the Government to refer to its observation under the Labour Inspection Convention, 1947 (No. 81), and asks it to take the measures requested and to provide, in so far as it concerns the application of this Convention, relevant information on the reshaping of interinstitutional cooperation on the policy to combat the illegal employment of foreigners without residence permits and the role of labour inspectors in agricultural undertakings.***

*Article 7(3). Integration of the system of labour inspection in agriculture into a common labour inspection system.* The Committee notes that the process to merge labour inspectorates (agriculture, maritime, transport, labour) has been speeded up since 1 January 2009. It notes that one of the Recommendations made as a result of the merger experiment

conducted in two departments, was to maintain or create an inspection sector for agriculture in each department. According to the Government, the number of visits to agriculture undertakings should be maintained.

The Committee notes, however, that according to section R8122-9 of the Labour Code, one section in each department is responsible for supervision of agricultural occupations unless an order or the ministers responsible for agriculture and labour provides otherwise. The Government states that such an order was issued on 23 July 2009 allowing a waiver from the obligation to create or maintain an agriculture section in 14 departments (Alpes de Hautes Provence, Hautes-Aples, Ariège, Corse-du-Sud, Creuse, Haute-Loire, Lozère, Nièvre, Hautes-Pyrénées, Territoire de Belfor, Val d'Oise, Guyane, Martinique, La Réunion.).

The report on the activities of labour inspection in agriculture shows that the total number of interventions in the sector dropped in 2008 to 23,368, as compared to 24,342 previously. A drop was noted in particular in the regions where the departments exempted from the obligation are located (Rhône-Alpes: -130 inventions, Pays de la Loire: -126 interventions). No information has been provided on non-metropolitan territories (overseas departments and St Pierre and Miquelon). ***The Committee requests the Government to provide information on the measures taken to ensure that interventions in agricultural undertakings are maintained at a level at least equal to that prevailing prior to the merger, particularly in departments where an agricultural inspection section has not been maintained or created. The Government is asked to include figures showing the activities of the labour inspectorate for the period covered by the next report, including figures for the overseas regions covered by the Convention. The Committee furthermore asks the Government to indicate the measures taken to ensure that the labour inspection services remain visible and accessible to employers and workers in the agriculture sector, particularly in departments where an agricultural section of the inspectorate has not been maintained or set up.***

*Articles 11 and 19. Associating experts in the work of labour inspection in agriculture.* In its previous observation concerning *Guadeloupe*, the Committee requested the Government to provide details of the reasons underlying the enquiries into the use of pesticides in banana plantations. It notes that according to the Government, there were 61 interventions in *Guadeloupe*, of which 54 were controls. Furthermore, nine controls targeted sales outlets for phytosanitary products. It does not, however, indicate either the reasons for the enquiries into pesticides, or the results of the enquiries or the content of the 97 observations on safety and health to which the Government refers. ***The Committee requests the Government to send in its next report the results of the enquiries and research conducted on the use of pesticides. The Government is also asked to specify the measures taken for the safety and health of all workers particularly for the purpose of eliminating all risks to the safety and health of workers in banana plantations.***

*Article 19. Occupational accidents and cases of occupational disease.* The Committee notes with ***interest*** the campaigns carried out in *Réunion* to alert farmers to phytosanitary risks, and the controls carried out in the use of phytosanitary products in the overseas territories. The Government refers to the particular risk facing agriculture workers in *Réunion* but also all workers in the overseas territories, which are wet zones, where exposure to leptospirosis is high. The Committee notes that occupational accidents and cases of occupational disease are clearly under reported in *Guyana*. ***The Government is asked to provide information on:***

- ***the impact of the information campaigns and controls carried out on the use of phytosanitary products in the agricultural undertakings of the overseas departments covered by the Convention;***
- ***the measures taken to alert employers, workers and members of health professions to the need to observe procedures for reporting occupational accidents and cases of occupational disease;***
- ***the follow up to the controls of sales outlets for phytosanitary products.***

***The Government is also asked to take specific measures for preventing the risk of leptospirosis infection for agricultural workers and to provide information on these measures and on the activities of the labour inspectorate in this area.***

The Committee is raising other points in a request addressed directly to the Government.

## Gabon

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)**

*Articles 3(1)(a), 20 and 21 of the Convention. Labour inspection activities and reporting obligations on these activities for the purpose of assessment of the level of application of the Convention.* Following its previous comments, the Committee notes the scarce information provided by the Government according to which no violations of articles 227, 228 and 249 of the Labour Code have been detected by labour inspectors, no judicial decision has been issued in this area and no acts involving any resistance or obstruction of the labour inspectors in the course of their duties has been reported. With reference to child labour and the measures implemented for the control of the relevant legal provisions, the Government declares to spare no effort to combat this phenomenon and refers in this regard to a number of more or less recent legal texts.

The Committee notes however that, contrary to the indication in the Government's report, the annual report of the General Workforce and Labour Directorate has not been communicated to the ILO and no annual report as prescribed by

Articles 20 and 21 of the Convention has been received. The Committee therefore cannot assess the functioning of labour inspection systems as regards the provisions of the Convention, and is bound to repeat its previous observation in this respect.

*Articles 20 and 21. Annual report on the work of the inspection services.* In reference to the Government's commitment to do its utmost to attenuate the difficulties in applying the Convention, the Committee once again emphasizes that in order to do this, measures must be taken to centralize the information required under *Article 21* with a view to preparing an annual labour inspection report, the main purpose of which is to serve as a basis for the periodical assessment by the central inspection authority of the adequacy of the available resources in relation to needs and, consequently, to determine priority areas of action. The Committee once again reminds the Government of the possibility of requesting technical assistance from the ILO, as well as international financial aid, with a view to establishing the material and institutional conditions necessary for the publication of such a report. In its 2004 direct request, the Committee urged the Government to make the necessary efforts to implement measures designed to enable the central inspection authority to discharge its obligation in this respect and pointed out that the annual inspection report should be as detailed as possible and contain precise information on human, logistical, practical or other difficulties explaining deficiencies in the services. ***Since the Government has not reported any progress in this area, the Committee requests that it quickly takes the necessary measures and keeps the Office duly informed in this respect.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comment in 2011.]***

## Germany

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1973)**

*Article 6(1)(b) of the Convention. Preventive measures targeting types of recurrent occupational disease and industrial accidents. Prevention of occupational accidents.* The Committee notes with **interest** the preventive measures targeting most of the more frequent occupational diseases. Besides intensive advice provided for the purpose of reducing the risks of all occupational diseases, these information campaigns focus on respiratory diseases and diseases transmissible from animals to humans. The Committee notes in particular: (i) the implementation of a system of information (*Schwarz-Weiß-Systeme*) on hygiene prescriptions to prevent outside pathogenic agents from entering buildings and facilities housing animals; (ii) incentives to employers to use the new tests for rapid evaluation of the quantity of allergenic factors in cattle sheds and to provide respiratory protection equipment to persons affected whose work necessarily brings them into contact with animals; and (iii) campaigns targeting skin diseases, for the periods 2007–08 and 2008–12. The Committee also notes with **interest** that one of the occupational safety objectives for the period 2008–12 is to reduce the number and seriousness of musculoskeletal disorders, and that prevention of spinal lesions is an objective for the period 2013–14.

*Prevention of occupational accidents.* The Committee notes, in connection with the 2008–12 objective of reducing the number and seriousness of occupational accidents, that the National Federation of the fund for the insurance and prevention of occupational accidents and diseases in agriculture (*Spitzenverband der landwirtschaftlichen Berufsgenossenschaften*) is now responsible, pursuant to section 143e of SGB VII (Social Code), for recording occupational accidents (number and seriousness) in detail and for devising, from the database, special preventive measures to apply in the agricultural sector.

***The Committee would be grateful if the Government would continue to provide information on any developments in the policy for the prevention of occupational risks specific to agricultural work, and on the impact of the measures implemented.***

## Ghana

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the Government's report covering the period ending in September 2008 and the attached statistical data on the number of inspections conducted in 2007 and the first quarter of 2008, and of workers covered by these inspections.

*Article 12, paragraph 1(a), of the Convention. Right of labour inspectors to enter freely workplaces liable to inspection.* In its previous comments, the Committee pointed out that section 124(1)(a) of the 2003 Labour Act, which limits the timing of workplace inspections to "working hours", is not compatible with *Article 12(1)(a)* of the Convention. It notes the Government's indication that the above provision of the Labour Act is sufficient to uncover clandestine moves by employers. Referring to its General Survey of 2006 on labour inspection (paragraphs 268–271), the Committee wishes to recall that the conditions for the exercise of the right of free entry to workplaces laid down by the Convention are intended to allow inspectors to carry out inspections, where necessary and possible, to enforce the application of legal provisions relating to conditions of work. The protection of workers and the technical requirements of inspection should be the primordial criteria for determining the appropriate timing of visits, for example to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections requiring machinery or production processes to be stopped. It should be for the inspector to decide whether a visit is reasonable and inspections should only be carried out at night or outside working hours where this is warranted. ***The Committee once again requests the Government to take the necessary measures to***

**remove the restriction on the right of labour inspectors to enter freely workplaces from section 124(1)(a) of the Labour Act of 2003 and to keep the ILO informed.**

*Article 3, paragraph 1, and Articles 17 and 18. Inspection duties. Enforcement of legal provisions relating to the conditions of work and the protection of workers. Legal proceedings and provision of adequate penalties for violation of legislation.* In its previous report, the Government indicated that it wishes to encourage compliance with legal provisions through the promotion of a social partnership attentive to the mutual interests of employers and workers, rather than through legal proceedings against employers who have committed a violation. The Committee requested the Government to provide practical information on any mechanisms established to that effect and to specify the role of labour inspectors in this regard. It notes that, in its report of 2008, the Government only reaffirms that it wishes to promote partnership and compromise between employers and workers. The report provides no information on the findings of the labour inspectors during the visits that they conducted in workplaces throughout the country in 2007, nor on any actions undertaken following such inspections. The Committee would like to draw the Government's attention to paragraph 280 of its General Survey, in which it emphasizes that, even if the credibility of any inspectorate depends to a large extent on its ability to advise employers and workers on the most effective means of complying with the legal provisions within its remit, it also depends on the existence and implementation of a sufficiently dissuasive enforcement mechanism, the functions of enforcement and advice being inseparable in practice.

***The Committee requests the Government to take appropriate measures to ensure that legal provisions relating to the conditions of work and the protection of workers are effectively enforced through legal proceedings where necessary. It further requests the Government to provide information on the violations reported by labour inspectors and the fines imposed to employers in accordance with section 38 of the Labour Regulations adopted in 2007, during the reporting period, and to specify the value of a "penalty unit" and the manner in which such value may be revised to remain dissuasive in the event of monetary inflation. The Government is also requested to indicate the measures taken to ensure that such penalties were effectively enforced.***

*Articles 19, 20 and 21. Periodical reports and annual report on the work of the labour inspection services.* While noting the information on the number of inspections carried out in 2007 and during the first quarter of 2008, the Committee emphasizes that, by virtue of the ratification of the Convention, the Government undertook to ensure that practical measures would be taken to centralize information required under *Article 21*, with a view to preparing an annual labour inspection report, the main purpose of which is to serve as a basis for the periodical assessment by the central inspection authority of the adequacy of the available resources in relation to needs and, consequently, to determine priority areas of action. ***The Committee requests the Government take measures rapidly to establish the conditions in which the central labour inspection authority can collect data on the activities of the services under its control with a view to publish an annual report on the work of the inspection system containing information on the following subjects:***

- (a) relevant laws and regulations;***
- (b) staff of the labour inspection services (including the number, geographical location and distribution of inspectors by gender and by category);***
- (c) statistics of workplaces liable to inspection (number and geographical distribution) and the number of workers employed therein (men, women, young persons);***
- (d) statistics of inspection visits (unannounced, scheduled and follow-up visits, visits following a complaint, etc.);***
- (e) statistics of violations and penalties imposed (number of violations reported, legal provisions concerned, types of sanctions imposed, etc.);***
- (f) statistics of industrial accidents (number of fatal and non-fatal accidents); and***
- (g) statistics of cases of occupational disease (number and causes by industry and occupation).***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1986)**

*Reporting obligations relating to the application of the Convention.* The Committee notes that the Government's report for the period 2005–09 is virtually identical with the Government's last report, except the additional information on training of labour administration staff. The Committee further notes the scarce information as to the renaming of the former Ministry of Manpower Development and Employment to the Ministry of Employment and Social welfare with the same structure and functions. In addition, the committee notes the adoption of Legislative Instrument LI 1833 of 31 July 2007, Part II, which gives effect to Section IV of the Labour Act, 2003 and provides for, among other things, the possibility to link jobseekers and employers through private employment agencies, whose conditions of establishment are regulated by section 3 of the new instrument. ***The Committee urges the Government to provide the ILO with detailed and up-to-date information on the application in law and in practice of each Article of the Convention, according to the requests in the report form of the Convention, to enable the Committee to fully appreciate the effect given of the requirements contained therein.***

In its 2009 comments under the Labour Inspection Convention, 1947 (No. 81), and the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee noted the recent developments in the Labour Department and the Department of Factories and Inspectorate of the abovementioned Ministry, namely the development of human resources, an ongoing needs assessment and organizational rearrangement and the enhanced commitment of the Government to enable the departmental staff to undertake some of the training courses run by the ILO–ARLAC (African Regional Labour Administration Centre). ***The Committee asks the Government to provide further details on the training activities carried out during the period covered by its next report and, if applicable, to keep the ILO informed of any difficulties encountered.***

*The Committee asks the Government to provide, if applicable, and as requested under Part III of the report form, information on judiciary decisions involving questions of principle relating to the application of the Convention and supply the text of these decisions.*

*In connection to Part IV of the report form, the Committee would be grateful if the Government would also provide any reports, extracts of reports or other periodic information concerning the work of the principal labour administration services, for instance, the Ministry of Employment and Social welfare, the Public Employment Centres, the Tripartite National Labour Commission, the National Employment Council, the National Labour Market Authority, the Management Development and Productivity Institute or the National Advisory Committee on Labour, or any other national or local bodies involved in the formulation and implementation of labour policies or programmes.*

## Greece

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy. It notes in particular that the GSEE refers to the lack of human, material and budgetary resources needed to enhance the operational capability of the labour inspectorate (SEPE) in the framework of the sweeping changes introduced in industrial relations legislation.

The Committee will examine the comments by the GSEE along with the Government's reply thereto, as well as the Government's report which was received on 8 November 2010, at its next session.

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1985)**

The Committee takes note of the Government's report received on 18 November 2009 concerning developments which had taken place until 31 May 2009 (notably the reorganization of the employment services of the Manpower Employment Organization (OAED) through the creation of 121 one-stop-shops at local level (Act No. 3144/2003, Act No. 3518/2006 and Ministerial Decision No. 80030/2007), as well as the reorganization of the Labour Inspectorate (SEPE) (Act No. 3762/O.G.75A/15.05.2009).

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy.

The Committee notes in this regard that the abovementioned measures involve drastic wage cuts in the public sector including parastatal agencies and enterprises, freezes in the recruitment of public servants for the year 2010 and restrictions in this regard for the years 2011–13, as well as commitments to reduce the number of public employees, and introduce reforms in human resource management in the public administration (Act No. 3833/2010 on the "Protection of the national economy – Emergency measures to tackle the fiscal crisis" and updated report on the Memorandum of Understanding and the Memorandum of Economic and Financial Policy published on 6 August 2010).

The Committee will examine the comments by the GSEE along with the Government's reply thereto, and the Government's report at its next session. *The Committee would be grateful if the Government would specify the impact of the public sector reform on the status, material means and resources of the staff of the labour administration with regard to the requirements established in Article 10 of the Convention.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Guatemala

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)**

The Committee notes the information supplied by the Government in response to its previous comments, and the documents attached to the report. It also notes the communication of 30 August 2010 from the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) on the application of the Convention, sent by the ILO to the Government on 15 September 2010. *The Committee will examine the Government's report at its session of November–December 2011 together with any comments the Government may wish to make in reply to the matters raised by the MSICG.*

*[The Government is asked to reply in detail to the present comments in 2011.]*



## **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 1994)

The Committee notes the information supplied by the Government in response to its previous comments, and the documents attached to the report. It also notes the communication of 30 August 2010 from the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) for the defence of workers' rights on the application of the Convention, sent by the ILO to the Government on 15 September 2010. *The Committee will examine the Government's report at its session of November–December 2011 together with any comments the Government may wish to make in reply to the matters raised by the MSICG.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## **Labour Statistics Convention, 1985 (No. 160) (ratification: 1993)**

The Committee notes the Government's report received on 21 September 2009 and the documentation attached. It also notes the observations by the representatives of seven confederations and workers' organizations, the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) dated 28 August 2009, stating that the Government did not inform them of its report and that the application of the Convention is partial and outdated.

The Committee notes the indication by the MSICG that the Movement has called on the President of the Republic for the executive authorities, through the National Statistical Institute and with support from the Technical Institute for Training and Productivity (INTECAP) and the Agricultural Sciences and Technology Institute (ICTA), to produce statistics related to workers and employers on a biennial (semester) basis, as from October 2009; taking into consideration the latest ILO standards and workers' recommendations. According to the MSICG, this process has not yet been implemented. *The Committee requests the Government to transmit any comment it deems relevant with regard to the above.*

The Committee is raising other points in a request addressed directly to the Government.

## **Guinea**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes the Government's report received in June 2006 and observes that, despite the Office's reminder of 20 June 2006, the annual inspection report which was due to be sent has not been received by the ILO. While noting the information on the legal provisions giving effect in law to the Convention, the Committee would point out that the Government has not supplied the information called for in its previous observation regarding the practical functioning of the labour inspection system. It is therefore bound to repeat the same observation:

*Resources of the labour inspectorate.* The Committee notes with *concern* that the information provided by the Government in its report for the period ending June 2005 reveals that the labour inspectorate suffers from a persistent shortage of resources. It notes, in particular, that retired labour inspectors are no longer being replaced and that the inspection services as a whole suffer from a lack of computer equipment and transport facilities. It notes, moreover, that labour inspectors have not received any training since 2000. *The Committee hopes that the Government will soon be in a position to furnish the labour inspectorate with the resources it needs to operate effectively, in particular in order to ensure that the number of labour inspectors is sufficient (Article 10 of the Convention), that they are furnished with the material means and transport facilities necessary for the performance of their duties (Article 11) and that they receive adequate training for the performance of their duties (Article 7(3)). The Government is requested to transmit information on any progress made in this regard in its next report.*

*Publication of an annual report.* The Committee notes that no annual inspection report has been transmitted since that covering the period of 15 October 1994 to 15 October 1995. *Referring to its previous requests, it once again requests the Government to take any appropriate measures with a view to the fulfilment by the central inspection authority of its obligation to publish and transmit to the International Labour Office an annual report in accordance with Articles 20 and 21 of the Convention.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## **Guyana**

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 1971)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Obligation to report pursuant to article 22 of the ILO Constitution.* The Committee notes the communication by the Government, in reply to its previous request, of the circulars (notices) of 18 March 2005 designating the authorities which must

be notified of occupational accidents and cases of occupational disease, in relation to *Article 19 of the Convention*. It also notes the communication of the annual report for 2004 from the Industrial Relations Department of the Ministry of Labour, containing brief information on labour inspection activities in the agricultural sector. However, the Committee notes that no detailed report on the application of the Convention has been sent for more than ten years. ***The Committee therefore requests the Government to supply, in its next report under article 22 of the ILO Constitution, all the information required by each part of the Convention report form.***

*Articles 26 and 27 of the Convention. Objectives and content of the annual report on the work of the labour inspectorate.* The Committee notes that, despite the high number of strikes in sugar plantations and agriculture in 2004 and their socio-economic impact (227 strikes resulting in the loss of 82,880 workdays and wages amounting to 129,061,000 dollars) the labour inspectorate only performed six inspections for the whole sector. The Committee considers that these figures testify both to poor conditions of work and lack of vigilance on the part of the inspection authorities responsible for monitoring conditions of work in agricultural undertakings. In any event, they call for the adoption of measures to curb the deterioration of the social climate, particularly by means of inspection activities and initiatives to provide employers and workers with information. However, the Committee notes that the Government has not supplied any information indicating that such measures have been taken or are envisaged. It also notes that the content of the report does not allow any assessment to be made of the level of coverage of the labour inspection system in relation to worker protection requirements in the sector, these needs not being defined, particularly with regard to occupational safety and health. The significant lack of statistics relating to inspection visits (*Article 27(d)*) and violations (*clause (e)*) and the total lack of information regarding the laws and regulations giving effect to the provisions of the Convention (*clause (a)*), the number of staff of the labour inspection service (*clause (b)*), the number of agricultural undertakings liable to inspection and the number of persons working therein (*clause (c)*), and also the lack of statistics with respect to penalties imposed (*clause (e)*), occupational accidents, including their causes (*clause (f)*) and occupational diseases, including their causes (*clause (g)*), make it impossible for the Committee to perform its role of monitoring the practical application of the Convention. The Committee reminds the Government that the requirement to publish an annual report on inspection activities and send it to the ILO serves an important purpose at both the national and international level. It is an essential tool for evaluating the operation of the labour inspection system and for making improvements to it, with the participation of employers and workers and their respective organizations (*Articles 26 and 27*). ***The Committee invites the Government to refer to paragraphs 320–328 of its 2006 General Survey on labour inspection and requests it to take the necessary measures, if need be with technical assistance from the Office, to enable the central labour inspection authority to include all the information required by each of clauses (a) to (g) of Article 27 in the annual report on its work.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Haiti

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

In earlier comments the Committee referred to an observation of 2002 by the Trade Union Federation of Haiti (CSH) asserting that the national legislation was satisfactory in terms of conformity with the Convention, but that the political will to apply it was lacking. In 2005, the Committee noted that the Government had announced a series of measures to re-establish inspection services throughout the country and had undertaken to send a detailed report of the application of the Convention. The Committee notes, however, that the Government's report received in August 2008 contains only very general information on the work of the labour inspectorate showing that, although measures have been taken since September 2004 to reinforce the inspection services, in particular by appointing labour inspectors in the departments (with no indication of their number, much remains to be done to make the inspection services fully operational. The Government refers to a lack of resources indicating that it is virtually impossible for labour inspectors to carry out regular and routine visits and that they intervene in the workplace on a stopgap basis at the request of workers or employers to deal with specific problems and provide legal advice on the labour legislation. The Committee further notes that, according to the Government, the inspection system suffers from a lack of training and support in the field for technical management staff.

*Measures needed for the establishment and operation of a labour inspection system.* The Committee is aware of the difficulties facing the Government and the efforts that are needed to create the necessary conditions for applying the Convention and enabling the labour inspection system to perform effectively its primary duty, as set out in *Article 3, paragraph 1, of the Convention*, namely enforcing the legal provisions relating to conditions of work and the protection of workers while engaged in their work. It nonetheless reminds the Government that for this task to be fulfilled, it must be possible for workplaces to be visited as often and as thoroughly as necessary, in accordance with *Article 16* and for inspectors to make visits with or without notice and not only at the request of the workers or employers. ***In this connection, the Committee draws the Government's attention to the need to take steps to change the wording of section 411 of the Labour Code by deleting the expression "as necessary" in the first indent. Article 3, paragraph 1(b), of the Convention provides that supplying technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions is an ongoing function of the labour inspection system. The Committee also recalls that Paragraphs 6 and 7 of Recommendation No. 81 provide guidance on the methods that labour inspection staff might adopt to ensure that this duty is performed regularly and systematically.***

With regard to the training needs of inspection staff, the Committee would like to point out that training should address not only methods and procedures for performing duties (inspections, advice on labour legislation, etc.), but also inspectors' prerogatives (right to enter workplaces, authority to make or have made orders, establishing reports, etc.) and their obligations (probity, observance of confidentiality, etc.), as laid down in *Articles 3, 12, 13 and 15* of the Convention. The credibility of inspectors in relation to employers and workers and, hence, the effectiveness of the inspection system as a whole, are contingent on the exercise of these powers and the observance of these obligations.

***So that it can assess as accurately as possible the extent to which the Convention is applied, the Committee again asks the Government to provide in its next report detailed information on the application of the Convention in practice and on difficulties encountered. In particular, it would be grateful for details of any collaboration that exists with other government***

*services and employers' and workers' organizations and the arrangements for such collaboration (Article 5), the status and conditions of service of inspectors (Article 6), measures taken for the training of inspectors at the time of recruitment and in the course of their employment (Article 7), inspection staff and the material and logistical resources at their disposal (Articles 8, 10 and 11), the exercise in practice by inspectors of the prerogatives set in Articles 12 and 13, the procedure for notifying work accidents and occupational diseases (Article 14), the coverage of inspection visits (Article 16) and the penalties imposed and enforced (Article 18). The Government is also asked to provide available statistics on the subjects set out in Article 21. So that it can assess the needs of the inspection services and set priorities taking into account the available human and material resources, the Committee encourages the Government to compile and maintain a record of industrial and commercial workplaces liable to inspection (number, activity, size and geographical location) and the workers employed therein (numbers and categories).*

All the above information should enable the central inspection authority to identify the system's strengths and weaknesses, assess its needs and submit a budget estimate for consideration by the competent authorities. *Noting the request for technical assistance made by the Government, the Committee hopes that on the basis of this information it will be able to specify the purpose of its request and seek international financial aid as well in order to obtain the funds it needs to build the capacity of the labour inspection system.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Honduras

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)**

The Committee notes that the information supplied by the Government in its report is much the same as that in the report covering the previous period. The Committee nonetheless notes with *interest* the document published by the Ministry of Labour and Social Security on the system for electronic follow-up of inspection visits implemented in the context of the *Centroamérica Cumple y Gana* cooperation project, and the operational inspection plan for 2009.

The Committee notes that on 4 October 2010 the Office received a communication from the Honduran National Business Council (COHEP) on the application of the Convention and that the communication was forwarded to the Government on 18 October 2010.

The Committee notes with *regret* that, contrary to the intention stated in its report, the Government has provided neither the copies of periodical reports by the regional inspection units (*Article 19 of the Convention*), nor the annual inspection report for 2009 (*Articles 20 and 21*). *The Committee points out that information on the practical application of the Convention is essential to an assessment of the running of the inspection system and hence the extent to which the Convention is applied, and requests the Government to ensure that the abovementioned reports are sent as soon as possible so that they can be examined together with the report received on 27 August 2010, the points raised by COHEP in its comments on the application of the Convention, and any observations the Government may wish to submit in reply.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Hungary

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 3, paragraph 1(a) and (b), of the Convention. Preventive measures in the area of occupational safety and health.* The Committee notes the measures taken to improve levels of occupational safety and health, namely: (a) the unification of competence for inspections relating to occupational safety and health and general working conditions (Decree No. 295/2006 establishing the legal and institutional conditions for the uniform supervision of health and safety by regional inspectorates); (b) the reinforcement of inspections (inspections outside regular hours, inspections focusing on sectors in which employees are exposed to serious hazards, inspections in the priority sectors of agriculture, construction and processing industries); (c) more severe sanctions; (d) the publication of lists of employers which have violated health and safety regulations as a deterrent on the Ministry's web site; and (e) the introduction of the "Partnership for Safe Employment" initiative. The latter initiative is intended to improve occupational safety and health, enhance the social responsibility of employers and disseminate good practices. This initiative consists of a voluntary commitment to compliance with the regulations respecting health, safety and labour conditions and this takes the form of a written agreement entitling employers to use the label "Safety Employment Partner" at their events and in the provision of their services. A list of employers which have signed the agreement is published on the web site of the labour inspectorate. These employers are provided with regular information on labour law provisions by the Government. Any violation of the respective requirements involves the risk of losing the right to use the label.

*The Committee would be grateful if the Government would continue to provide information on any further measures adopted with a view to promoting a culture of good safety and health conditions in all workplaces and their impact.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## India

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)**

The Committee notes the information supplied by the Government in its report, including detailed statistical data. It also notes the comments by the Associated Chambers of Commerce and Industry of India (ASSOCHAM) and the All India Manufacturers' Organisation (AIMO) which were forwarded with the Government's report.

#### **Articles 2, 3, 10, 11, 12(1)(a) and 16 of the Convention**

1. *Coverage and functioning of the labour inspection system.* The Committee recalls its previous comments according to which one of the priorities with regard to labour set by the National Common Minimum Programme (NCMP), adopted in 2004 by the Government, was the re-examination of labour laws to reduce labour inspectors' power ("Inspector Raj"). According to a communication by the Centre of Indian Trade Unions (CITU), internal directives had been issued in most states in the name of "Ending Inspector Raj", so that no labour inspection was to be carried out; the lack of labour inspection and monitoring by the Labour Department, even in many factories in the national capital territory of Delhi and industrial areas, such as Mayapuri and Patparganj, was resulting in frequent violations of minimum wage legislation and a lack of safety measures leading to frequent accidents.

The Committee notes the Government's reply according to which the Ministry of Labour and Employment is considering the re-examination of labour laws in order to ensure a hassle-free industrial environment and reduce unnecessary interference of inspecting staff; however, this does not mean that there will be lack of monitoring of the application of labour laws and internal instructions in most states preventing inspections. The Ministry has also taken steps to make the system of inspection mostly complaint driven.

The Government adds that "Ending Inspector Raj" has not been a thriving concept" in the Chief Labour Commissioner's (Central) Organisation (CLC(C)), entrusted with the task of maintaining industrial relations, enforcement of labour laws and verification of trade union membership in the Central Sphere. Therefore, in the Central Sphere, workplaces liable for labour inspections are actually inspected. The Committee takes note of the detailed statistical information provided in this regard in the Government's report. ***The Committee would be grateful if the Government would continue to provide statistics on the labour inspection activities of the CLC(C) and their results.***

With regard to the inspection system outside the central sphere, the Committee notes that the aim of reducing "Inspector Raj" in the framework of the NCMP is to avoid a proliferation of inspections in the same enterprise, including labour inspections, and once again emphasizes that any measure taken to limit the number of labour inspections is a restriction incompatible with the main objective of labour inspection, which is the protection of workers, and is contrary to *Article 16* of the Convention which provides that workplaces or enterprises liable to labour inspection should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. A complaint driven system aimed at reducing "unnecessary interference of inspecting staff" is also incompatible with *Article 15(c)* for, as a consequence, it makes it impossible for labour inspectors to respect the requirement of confidentiality relating to complaints (source and fact that an inspection visit is made as a result of a complaint).

With regard to its previous comments on the unequal coverage of the labour inspection system from one state to another in terms of workers and workplaces, the Committee notes that the Government reiterates its previous statement to the effect that measures will be taken to collect information on the coverage of workplaces and workers liable to inspection throughout the country. ***The Committee would be grateful if the Government would communicate to the ILO as quickly as possible comprehensive statistical information on labour inspection staff and activities (visits, advice, enforcement) by state. It also trusts that the Government will take the necessary measures, in the light of the information collected, so that any imbalances in the coverage of workplaces and workers liable to inspection from one state to the other are redressed.***

2. *Exemptions of certain sectors from labour inspection and introduction of self-certification schemes.* In its previous comments, the Committee, following observations made by the CITU and the Bharatiya Mazdoor Sangh (BMS) on internal directives which prevent workplace inspections in special economic zones (SEZs) and in the information technology (IT) and IT-enabled service sectors (ITES), noted that, in fact, very few inspections had been carried out in these sectors and requested the Government to indicate the applicable legal provisions and to supply relevant detailed statistical data. The Committee also noted comments made by the CITU and the BMS with regard to the self-certification scheme implemented since 2008, in particular as to the absence of any mechanism for the verification by the labour inspectorate of information supplied through this procedure, and had requested information on the performance of this system in practice.

The Government replied in its previous and latest reports that there are no separate labour laws for SEZs and that the implementation of labour laws in SEZs is ensured through the respective machineries of the central or state governments, as appropriate, subject to certain dispensations provided to SEZ units such as the delegation of powers to the development commissioner under the Industrial Disputes Act, 1947 and the declaration of the SEZs as public utility services under the Industrial Disputes Act, 1947.

In relation to the IT-ITES sectors, the Government indicates that working conditions are regulated to a large extent by the generally applicable labour laws and the state governments are legally vested with powers to deal with the violation

of labour laws including in the IT sector. However, the Committee notes that in the 2007–08 Annual Report of the Ministry of Labour and Employment, it is indicated that the CLC(C) has advised its subordinate offices in respect of IT software and IT service industries, that “routine and periodic inspections may not be necessary since the employees engaged by these IT industries are usually qualified and, therefore, are in a better position to protect and promote their interests”. Enforcement of labour laws in these establishments is carried out through returns submitted by the employers under various labour laws. In its latest report the Government indicates that this type of enforcement is being continued in IT software and IT service industries.

With regard to the self-certification schemes introduced in April 2008, the Government indicates that in the context of the preparation of the 11th Five-Year Plan (2007–12), the Planning Commission set up a Working Group on Labour Laws and Other Labour Regulations which made the following recommendation on the self-certification system: “Since inspections are becoming complaint driven, the problems of “Inspector Raj” may not be as formidable as it is made out to be. The system of inspections cannot be eliminated, as it would compromise with the interests of workers, especially those who are vulnerable. Hence it would be more pragmatic to promote transparency by resorting to self-certification system and placing employee-related information obtained through this method in the website”. As a result, since 1 April 2008, those employing up to 40 persons are required to give only a self-certificate regarding compliance, while those employing 40 or more persons submit a self-certificate duly certified by a chartered accountant. According to the Government, this has been introduced to minimize routine inspections of complying employers. In this regard, the Committee would like to draw the Government’s attention to the fact that, in general, the risk of non-application of labour legislation is not less significant in establishments employing a small number of workers than in larger enterprises. The Committee also notes that a new inspection policy has been introduced since 1 April 2008, placing emphasis on inspection of newly covered units, defaulters and those not submitting self-certification with a view to concentrating on improving compliance. According to the Government the information previously requested by the Committee on the functioning of this system is still being collected and will be furnished on receipt.

***Recalling once again that under Article 16, workplaces shall be inspected as often and as thoroughly as is necessary, the Committee urges the Government to adopt measures to ensure the full implementation of this provision by ensuring notably that the issuing of any dispensation and the introduction of a self-certification system does not affect the effectiveness of the labour inspection system and especially the frequency and thoroughness of inspection visits. In particular:***

- ***The Committee requests the Government to specify the dispensations provided to EPZ and SEZ units and the extent to which they have an impact on labour inspection; it would also be grateful if the Government would furnish detailed statistical information on the: enterprises and workers in EPZs and SEZs; labour inspectors who oversee them; inspections carried out; offences reported; penalties imposed; and industrial accidents and cases of occupational disease reported.***
- ***The Committee requests the Government to forward examples of returns submitted on the application of labour laws in the IT and ITES sector and to describe the process through which such returns are submitted and verified by the labour inspectors.***
- ***The Committee requests the Government to supply information on the impact of the self-certification system introduced on 1 April 2008, notably on the frequency and effectiveness of inspection visits, to indicate the sectors in which self-certification is most prominent and to describe the arrangements made for the verification of information supplied by employers in self-certification schemes, the handling of any disputes and the action taken with regard to violations that are identified.***

3. ***Free access of labour inspectors to workplaces.*** The Committee recalls that the CITU had previously indicated that in the State of Haryana no labour inspection could be carried out without the prior authorization of the Secretary of Labour which was never given. Moreover, the lack of inspections in factories had led to the failure to implement basic labour laws on minimum wages and violations of freedom of association. The Government does not provide a specific reply to these allegations and is confined to reiterating previously provided information on the future amendment of section 9 of the Factories Act (Powers of Inspectors) and section 4 of the Dock Workers (Safety, Health and Welfare) Act which will establish explicitly the right of inspectors to enter workplaces freely. According to the Government, these amendments are included in the next batch. ***Recalling that, in accordance with Article 12(1)(a) of the Convention, labour inspectors shall be empowered to enter freely workplaces liable to inspection, the Committee requests the Government to take the necessary measures aimed at amending section 9 of the Factories Act (Powers of Inspectors) and section 4 of the Dock Workers (Safety, Health and Welfare) Act without further delay, so that this right is guaranteed. The Government is requested to keep the ILO informed of progress made to this end and to supply a copy of the amended texts once they are adopted.***

***Articles 6 and 15(a). Independence and integrity of labour inspectors.*** The Committee notes that, according to the AIMO, any proposal to give substantial powers to labour inspectors may give rise to a problem of corruption. It also refers to the Government’s indication that steps are taken to make the labour inspection system complaints-driven in order to reduce arbitrariness. The Committee recalls that under *Article 6*, the conditions of service of inspection staff, notably their wages, should be such as to guarantee their independence vis-à-vis improper external influences and that under

*Article 15*, labour inspectors should be prohibited from having any direct or indirect interest in the undertakings under their supervision. These provisions are intended to provide safeguards against improper influences. **The Committee would be grateful if the Government would provide information on the pay scale of labour inspectors by comparison to the remuneration of comparable categories of public officers like tax inspectors. It also requests the Government to forward the text of any code of conduct or similar document applicable to labour inspectors.**

*Article 18. Adequacy of penalties.* The Committee had previously noted the Government's indication that an amendment enhancing the penalties under various provisions of the Factories Act, 1948, was at an advanced stage of enactment and that a proposed amendment was being prepared under the Dock Workers (Safety, Health and Welfare) Act, 1986. In its latest report the Government indicates that the proposal to incorporate the amendments enhancing the penalties under these Acts is still under the active consideration of the Government and that once the amendments are notified, the final text will be sent to the ILO. **With reference to its previous comments, the Committee urges the Government to take all necessary measures to have these amendments adopted without further delay so as to establish penalties that are sufficiently dissuasive to ensure the effective application of the legal provisions relating to conditions of work and the protection of workers, and to furnish copies of the final texts to the ILO.**

The Committee is raising other points in a request addressed directly to the Government.

## Italy

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1985)**

The Committee notes the Government's report received by the ILO in August 2009.

*Articles 6 and 7 of the Convention. Review of national labour policy and extension of the functions of the labour administration system to workers who are not employed persons.* The Committee notes with **interest** that, according to the Government's report, since March 2008, every employer is under the obligation to communicate by electronic means all information relating to the commencement, modification, extension or termination of any employed or self-employed labour relationship, including in the case of contracts for continued and coordinated collaboration, training courses, where the worker is a member of a cooperative, or where the employer is a temporary employment agency (Inter-ministerial Decree of 30 October 2007 respecting compulsory electronic notifications to the competent services by public and private employers and Legislative Decree No. 185/2008 adopting urgent measures of assistance to families, labour, employment and enterprises with a view to redefining the national strategic framework in light of the need to address the crisis, which was converted into law by Act No. 2 of 28 January 2009).

In a comment made on 18 September 2009 concerning the application of the Labour Statistics Convention, 1985 (No. 160), the Italian General Confederation of Labour (CGIL) welcomes the entry into force in March 2008 of this information system. Designed as a compulsory system, in addition to the advantage of providing a more precise knowledge of labour market trends, it also, in contrast with the purely statistical data of the National Institute, provides a picture of the real situation, which is particularly valuable in times of crisis. **Noting the viewpoint of the CGIL that such data should be published and observing that this issue is closely related to Article 6(2)(b) and (c), and Article 7 of the Convention, the Committee would be grateful if the Government would provide the Office with any relevant comments in this respect.**

**The Committee would be grateful if the Government would also provide information on the impact of the new legislation on labour market trends in the specific context of the global economic crisis.**

## Jamaica

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes the detailed information in the Government's report in reply to its previous comments as well as the information on the activities of labour inspectors in the Pay and Conditions of Employment Branch (PCEB) and in the Occupational Safety and Health (OSH) Department of the Ministry of Labour and Social Security. It further notes the detailed information contained in the report of the Ministry of Labour and Social Security (MLSS) for 2008 and 2009.

*Article 18 of the Convention. Increase of penalties.* The Committee notes with **satisfaction** that, through the amendments of the Factories Act (FA) and the Holidays with Pay Act (PA) in 2009, the process of amending the prescribed fines by these Acts has been simplified as this process now merely requires a ministerial order, and that through the amendment of the FA and PA, the penalties for breaches of these laws have significantly increased, involving prison sentences in the case of default of payment (versions of the texts amending the FA: No. 08-2009, and the PA: No. 14-2009, are available at the website of the Houses of Parliament [www.japarliament.gov.jm/index.php?option=com\\_content&view=article&id=334&Itemid=45](http://www.japarliament.gov.jm/index.php?option=com_content&view=article&id=334&Itemid=45)). Among other things, there has been an increase in the fines for the obstruction of labour inspectors in the course of their duty and for failure to notify accidents and occupational diseases up to maximum fines of JMD500,000 and JMD300,000, respectively (see FA). **The Committee would be grateful if the Government would indicate the impact of the increased fines and other penalties on the observance of the amended legal provisions.**

*Articles 3(1) and (2). Preventive activities in the field of occupational safety and health.* The Committee notes with **interest** the Government's indication of the development and implementation by the OSH Department of the MLSS of a Voluntary Compliance Programme (VCP), a programme aimed at raising awareness of employers and workers and at encouraging the improvement of safety and health in all economic sectors. According to the Government, the response to this programme, which was launched in 2007 and comprises two sets of VCPs, namely one in the area of safety and health and one in the area of HIV and AIDS, has been overwhelming with more than 70 enterprises applying, exceeding the original goal of enrolling 50 enterprises in the programme. Participating enterprises are subject to an audit by OSH inspectors based on a set of performance criteria and, provided that they attain a certain score, recommended for a VSP certificate valid for two years. According to the Government, workplaces with excellent safety and health management systems will not only be recognized and promoted as model workplaces, but the VSP coordination and partnership programme which aims to complement the regulatory and enforcement efforts by OSH inspections through the identification of risks and the development of solutions by employers and workers, will also allow for enterprises to be self-regulatory, once the new OSH Act is passed (which, according to the Government, is expected in the near future). ***The Committee would be grateful if the Government would provide further information on the number of participating enterprises, the number of VSP certificates issued, the publication of recognized best OSH practices, the manner and number of inspection visits after the issuance of a VSP certificate and the overall impact of the programme on safety and health conditions in participating enterprises.***

***Please provide further information on the envisaged self-regulatory approach (for example, self-assessment procedure in enterprises and envisaged level of control through OSH inspections in self-regulatory enterprises).***

*Article 13. Powers of labour inspectors to order immediate preventive measures.* The Committee has repeatedly noted the Government's reference to the pending adoption of a new OSH Act, which would extend the power of OSH inspectors to issue prohibition notices (stop orders), where the safety and health of workers may be adversely affected, to all branches of the economy. It notes that the draft of this Act, after minor modifications by the Ministry, is currently being finalized by the Chief Parliamentary Counsel and that the final version of the OSH Bill will be tabled in Parliament in 2011 and enacted in the near future. ***The Committee requests the Government to take appropriate steps to ensure that the legislation is supplemented without delay with regard to the abovementioned powers of labour inspectors and to send a copy of the relevant text.***

*Article 14. Notification of cases of occupational disease.* The Committee notes that, according to the information in the current report of the Government, during the last reporting period, the OSH inspectorate has not been informed of cases of any of the 15 occupational diseases which are recognized in national legislation. In addition to the reasons for the under-reporting previously brought forward (such as: (i) the difficulty of establishing a causal relationship between the disease and the worker's occupation; and (ii) the lack of qualified specialists in occupational medicine), the Government adds that some contemporary diseases, such as the carpal tunnel syndrome, are not recognized by national legislation. The Government indicates that it is therefore currently reviewing the Workmen's Compensation Act and the National Insurance (Prescribed Diseases) Regulations with a view to incorporating the ILO list of occupational diseases into national legislation. The Committee hopes that through the abovementioned increase of the amount of fines for the non-respect of the obligation to notify accidents and occupational diseases, this obligation will be better observed in the future. ***The Committee would be grateful if the Government would indicate the steps taken to adopt the ILO list of occupational diseases and, if so, to provide information on the impact of this measure on the number of notifications of occupational diseases to the OSH inspectorate as well as on the labour inspection activities aimed at identifying sectors with a high level of occurrence of occupational diseases and developing appropriate preventive actions.***

***It once again asks the Government to indicate the measures envisaged to improve the system for the notification of occupational diseases.*** In this context, the Committee again wishes to draw the Government's attention to the ILO code of practice on the recording and notification of occupational accidents and diseases which offers guidance on the collection, recording and notification of reliable data and the effective use of such data for preventive action (available at [www.ilo.org/safework/normative/codes/lang--en/docName--WCMS\\_107800/index.htm](http://www.ilo.org/safework/normative/codes/lang--en/docName--WCMS_107800/index.htm)).

*Articles 20 and 21. Annual report on the work of the labour inspection services.* The Committee notes the information annexed to the Government's report, on the activities of labour inspectors in the PCEB and in the OSH Department of the MLSS. It notes, however, the absence of statistics of violations detected and penalties imposed. As the collection of relevant data is concerned, the Committee would like to refer the Government to paragraph 158 of its General Survey of 2006 and to its general observation of 2007 to recall the necessity for measures aimed at promoting effective cooperation between the labour inspection services and other government services or public institutions responsible for investigating and penalizing infringements with a view to establishing a procedure for the communication of the relevant information, which would enable the central inspection authority to include them in the annual report on its activities. In addition, the Committee recalls that a separate annual report on the work of the inspection services, in accordance with all the requirements contained in *Articles 20 and 21*, has to be established and published by the central inspection authority. ***The Committee requests the Government to ensure that an annual report containing all the data required by Article 21 of the Convention is published by the central authority and a copy sent to the ILO as soon as possible or to indicate the steps taken to this end and, if applicable, the difficulties encountered.***

## Japan

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)**

The Committee takes note of the Government's report received at the ILO on 30 September 2010, the enclosed observation of the Japanese Trade Union Confederation (JTUC-RENGO) dated 2 September 2010 and the response of the Government to this observation. It also notes the observation on the application of the Convention by the National Confederation of Trade Unions (ZENROREN), dated 28 September 2010.

The Committee will examine the Government's report together with the trade union's observations, as well as any other information that the Government might wish to submit to the Office on the points raised, at its next session.

*[The Government is asked to report in detail in 2011.]*

## Jordan

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1969)**

With reference to its previous comments whereby it welcomed a number of positive actions to strengthen the functioning of the labour inspection system, the Committee notes from the Government's report received in August 2010, information on the progress made in the areas mentioned as well as on further developments in other issues.

*Articles 17 and 18 of the Convention. Application of sanctions and incentives in order to ensure the application of the legal provisions covered.* The Committee notes with **satisfaction** that, along with the strengthening of legal proceedings against employers in breach of legal provisions relating to the matters covered by the Convention, blacklists are now published and the enterprises concerned are refused bank guarantees, while undertakings which offer better conditions of work and services to their employees are included in a golden list which helps them obtain bank guarantees. According to the Government, such measures contribute in a significant manner to improvement of migrant workers' conditions of work.

*Articles 5(a) and 21(c). Establishment of a register of workplaces in cooperation with other public bodies.* With reference to its 2009 General Survey, the Committee notes with **interest** the establishment of a comprehensive computerized database of all undertakings liable to inspection. It further notes that a comprehensive survey is currently being undertaken of all undertakings in the Kingdom in collaboration with the Public Statistics Agency and the Social Security Agency.

*Cooperation with other public bodies and institutions to improve the conditions and terms of employment.* The Committee notes the participation of the labour inspectorate in a number of committees such as: the Quadripartite Technical Committee on health, social security, and vocational training; a Committee on the Prevention of Industrial Risks (Amman secretariat for industry, trade, health); the Tourism Committee (inspection of industrial undertakings) and with, among others, the Ministries of Interior and Tourism; the Public Agency for Food, Medicine, and Health; the Joint Security Committee for the inspection of migrant labour with the Ministry of Labour and Public Security; and a National Committee for the Establishment of a Child Labour Framework (with health, education and social development authorities; the International Housing Foundation; and the National Council for Family Affairs).

*Cooperation with the justice system.* The Committee notes with **interest** that cooperation established between the labour inspectorate and the judicial bodies through following up on procedures and sentences handed down with respect to undertakings found in violation is also under way with guidance provided by the decisions of the court of cassation with respect to the interpretation of some legal texts. The Government also indicates that the labour inspectorate is requested by the courts to collaborate by proposing an estimate of compensation for occupational accidents in addition to giving testimony with respect to objections raised against the citations initiated by labour inspectors.

*Articles 7, 9 and 10 of the Convention. Strengthening of the resources of the labour inspectorate.* During 2008–09, the number of labour inspectors has been increased by 75, including 30 specializing in occupational safety and health, while others are lawyers and engineers, which brings their total number to 139 distributed across all regions of the Kingdom. The number of executive staff and support also increased through hiring of computer data clerks and drivers.

A special centre was set up aimed to train and to develop labour inspectors' skills through holding specialized courses in the area of their work, and information on the experiences of other countries in certain areas of labour inspection such as child labour, human trafficking and occupational safety and health standards. The Government mentions several courses on different issues (more than 100 inspectors were trained on handling cases of child labour; 90 inspectors were trained on identifying the manner of handling cases involving victims of trafficking; several courses were held on training inspectors on inspection of working conditions, and the manner of maintaining legal texts, and their application on the ground; courses on international Conventions ratified and computer and English language courses).

Moreover, a special methodology for inspection was adopted by formulating a working manual and operational procedures for the inspection process on which inspectors were trained, including on the manner of using the special forms annexed to the manual. These forms are available to labour inspectors through electronic equipment.



*Article 16. Effectiveness of inspection visits in particular areas.* The Committee notes that repeated visits are carried out in workplaces and accommodation quarters of migrant workers during periodic visits at daytime, and even at night to verify the observance of the working conditions of women. **The Committee would be grateful if the Government would continue providing information on any development in the functioning of the labour inspection system and, in particular, the impact in the field of the abovementioned measures in terms of respect of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, including migrant workers.**

**While noting with interest the communication of the annual report on the labour inspection activities for 2009, the Committee would be grateful if the Government would ensure that such a report is published in the future and that the information and data it contains are broken down, in so far as possible, in the manner indicated in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81).**

*Part IV of the report form of the Convention.* The Committee notes the indication by the Government of difficulties in the application of the Convention of a financial and logistical nature as well as the numbers and qualifications of the labour inspection and support staff. The Committee understands that the Government envisages the strengthening of logistics and material support and provision of rehabilitation programmes and courses in order to raise the capacities of inspectors. It also calls on projects to support inspection staff with the ILO and international organizations competent for labour inspection. **The Committee strongly encourages the Government to undertake measures to these ends and asks it to keep the ILO informed on any progress achieved.**

## Kenya

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1979)**

The Committee takes note of the Government's report received on 2 September 2009.

*Articles 1 and 6(1) of the Convention. Scope of labour inspection: Supervision of conditions of work in agricultural undertakings.* The Committee takes due note of the information provided by the Government pursuant to its previous requests. It notes with **satisfaction** that the scope of the 2007 Labour Institutions Act and the 2007 Occupational Safety and Health (OSH) Act also cover agricultural workers.

The Committee also notes with **interest** that, according to the Government, Legal Notice No. 227/1990 which exempted establishments located in export processing zones (EPZs) from the application of the health and safety legislation, is now null and void and that the provisions of the OSH Act apply to all workplaces, including those in EPZs. **The Committee would be grateful if the Government could indicate in its next report the measures taken to ensure the enforcement of occupational safety and health provisions and the results achieved, including with regard to the prevention of occupational risks linked, inter alia, to the use of agricultural equipment, pesticides and other chemical substances.**

*Articles 14 and 15. Lack of adequate personnel and appropriate means of transport.* The Committee notes once again the indication by the Government that there is still no specific budgetary allocation for labour inspection in agriculture and the Department still suffers from serious staff shortage as no new staff has been engaged since 1994. The budgetary allocation has instead been reduced owing to the prevailing economic slowdown and food crisis being experienced in the country. The Committee notes meanwhile the Government's commitment to take the necessary measures to remedy the situation once the economic situation improves.

The Committee considers that it would be unfortunate if the current context of global economic crisis led to a further deterioration of the conditions of work and the protection of workers through inter alia, a weakening of the entity entrusted with securing the enforcement of legal provisions in a sector of vital importance such as agriculture. The Committee emphasizes that the Global Jobs Pact adopted by the International Labour Conference at its 98th Session (June 2009) makes specific reference to the ILO standards relevant to labour inspection as part of a strategy of exit from the global economic crisis, a strategy aimed at preventing a downward spiral in labour conditions and building the recovery.

The Committee recalls that, according to *Article 14* of the Convention, arrangements should be made to ensure that the number of labour inspectors in agriculture is sufficient to secure the effective discharge of their duties and that such numbers should be determined with due regard for, inter alia, the material means placed at the disposal of the inspectors. Moreover, *Article 15* provides that labour inspectors should be furnished with the transport facilities necessary for the performance of their duties. The Committee cannot emphasize enough the importance of ensuring adequate and appropriate means of action, in particular transport facilities, to labour inspectors, as the mobility of supervisory staff is a prerequisite for labour inspection, especially in agricultural undertakings which are by their nature far from urban centres and, in addition, often spread over large areas lacking public transport facilities.

Finally, with reference to its general observation of 2009, the Committee emphasizes that the absence of data on the number of agricultural undertakings liable to inspection and the number of workers employed therein represents an insurmountable obstacle for any assessment of the rate of coverage by labour inspection services in relation to their scope, as defined in national legislation, and makes it impossible to evaluate the budgetary resources to be allocated to this public function, either for the determination of the appropriate number of labour inspectors or the necessary material resources

and transport facilities for the discharge of their functions (*Articles 14, 15 and 21*) or the provision of specific training (*Article 9*).

***Referring to its 2009 general observation, the Committee once again urges the Government to carry out an objective assessment of the situation by identifying the agricultural undertakings liable to inspection (number, activity, size and location) and the workers engaged therein (number and categories), with a view to enabling an adequate setting of priorities for action and provision of relevant financial resources, in the framework of the national budget and/or a request for international financial assistance to the same end. It requests the Government to indicate in its next report any measures adopted in relation to the above and the results achieved.***

*Articles 25, 26 and 27. Periodical and annual reports.* The Committee notes that no annual report has been received and that, for a number of years, it has been noting with concern the persistent lack of specific data on labour inspection activities in the agricultural sector. The Committee notes from the Government's report that disaggregated data on the activities of the labour inspectorate in agricultural undertakings, including in EPZs, are still not available, primarily due to lack of personnel, and that the Government envisages a formal request to the ILO for technical assistance with a view to improving data collection and management.

While regretting the persistent lack of progress in this area, the Committee notes with *interest* that section 42 of the Labour Institutions Act, 2007, which applies to agriculture, provides that the Commissioner for Labour shall prepare and publish, not later than 30 April each year, an annual report on the activities undertaken in his/her department, the content of which largely corresponds to *Article 27* of the Convention. Furthermore, section 25 of the OSH Act, which also applies to agriculture, provides for the development and maintenance of an effective programme for the collection, compilation and analysis of occupational safety and health statistics covering occupational accidents and diseases, as well as the existence of an accident database where information sent through the DOSHI form is entered.

The Committee emphasizes that disaggregated data on labour inspection activities in the agricultural sector, including in EPZs, can provide national authorities with a regular means of assessing the extent to which the available means match requirements, and constitute an invaluable and regular source of practical information and numerical data that is indispensable for the evaluation of the application of the Convention. The Committee also notes that such data can be reflected either in the general labour inspection annual report or in a separate report.

***The Committee therefore once again urges the Government to take the necessary steps to give effect in practice to sections 42 of the Labour Institutions Act, 2007, and section 25 of the OSH Act, with a view to improving data collection and management and publishing an annual report on the work of the inspection system in agriculture, including in EPZs, either as a separate report or as part of its general annual report. The Committee requests the Government to indicate in its next report the measures taken in this regard.*** It reminds the Government that it may avail itself of ILO technical assistance aimed at establishing the conditions in which the Department of Labour can collect data on the activities of the inspection services under its control.

*Labour inspection and child labour in agriculture.* In response to the Committee's previous comment concerning the measures taken to reduce child labour and the results of these measures, the Government mentions several measures, such as the establishment of a child labour division which acts as liaison between labour inspectors and the National Steering Committee which is the apex body; the development of a child labour policy and a national plan of action that seeks to progressively eliminate worst forms of child labour by 2015; capacity building workshops for inspectors on child labour issues; the development of a child labour monitoring system and data bank on child labour issues; the strengthening of institutional structures that deal with child labour especially in the district and local levels; and the building of partnerships and sharing of information with other government agencies at the district level.

Noting that there is no specific information as to labour inspection activities on child labour in agriculture, the Committee once again recalls, with reference to its general observation of 1999, that labour inspectors can play an important role in: (i) identifying and registering the child workforce in agricultural undertakings; (ii) establishing an educational framework for this population; (iii) identifying specific problems of children and young persons who are exposed to a high risk of accidents and occupational diseases due to the use of complex machines and chemical products; and (iv) finding appropriate solutions to the above. ***Also referring to its 2009 observations under the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), respectively, the Committee once again requests the Government to provide detailed information on the activities of the labour inspectorate concerning child labour in agriculture as well as examples of enforcement activities and the progress achieved.***

## Republic of Korea

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1992)***

The Committee takes note of the Government's report which was received on 7 September 2009.

*Articles 10 and 16 of the Convention. Staff numbers of the labour inspection services and effectiveness of the system.* The Committee takes note of the data provided by the Government in reply to the Committee's request with regard to the number of workplaces liable to inspection and the number of inspections carried out in 2008. According to

the Government, as of 31 December 2007, 1,432,812 workplaces were subject to labour inspection. In 2008, 24,925 workplaces were inspected. The Committee observes that this represents a significant increase in relation to the number of inspections reported for 2006 which amounted to 17,732. Nevertheless, there is still considerable room for improvement in relation to the number of workplaces subject to labour inspection. ***The Committee would be grateful if the Government would continue to provide detailed information on the operation of the inspection system, and in particular to indicate the total number of workplaces liable to inspection and the number of inspections carried out in 2009 and 2010.***

*Article 12(1)(a) and (b). Right of inspectors to enter workplaces freely.* In its previous comments, the Committee had noted that the Work Guideline for Labour Inspectors allowed for the possibility to carry out inspections without prior notice, as an exception to the general rule which is to give prior written notice of the plan of inspection to the employer. The Committee takes note of the clarifications made by the Government in its latest report with regard to the three types of labour inspection established in the law: (i) regular inspection based on the Comprehensive Plan for Workplace Labour Inspection; (ii) occasional inspection in cases where a law or regulation is enacted or revised or there is social demand; and (iii) special inspection where a labour dispute has taken place or is highly likely to take place following non-compliance with working conditions prescribed by labour laws and regulations or where social trouble is caused by failures to make statutory payments. The Committee notes from the Government's report that, pursuant to section 17 of the Work Guideline for Labour Inspectors, an employer should be notified at least ten days before labour inspection is carried out; the Government is considering ways to introduce an inspection system without advance notice in phases depending on the type of inspection (regular, occasional, special inspection).

The Committee observes from the above that, although the possibility of unannounced visits is provided for in the law, it is not applied in practice as long as an inspection system without advance notice has not been introduced. The Committee recalls that *Article 12* of the Convention is intended to ensure that inspectors may carry out inspections at any time, without previous notice, with the necessary freedom for an effective inspection. Unannounced visits enable the inspector to enter the inspected premises without warning the employer, especially to avoid that the employer may be tempted to conceal a violation, by changing the usual conditions of work, preventing a witness from being present or making it impossible to carry out an inspection (see General Survey of 2006 on labour inspection, paragraphs 261–263).

The Committee also observes that it is not clear from the information provided by the Government on the three types of inspection visit, whether inspection visits can take place pursuant to a complaint. It recalls that conducting unannounced visits on a regular basis is especially useful if the visit is carried out in response to a complaint, as it enables inspectors to observe the confidentiality required by *Article 15(c)* of the Convention regarding the purpose of the inspection (General Survey, op. cit., paragraph 263).

***Consequently, the Committee would be grateful if the Government would provide in its next report information on progress made with regard to the adoption of an inspection system without advance notice to supplement the guidelines applicable to inspectors in accordance with the provisions of Article 12(1). The Committee also requests the Government to furnish statistical information on the number of unannounced visits which took place in 2009 and 2010, including the number of visits which took place in response to complaints.***

*Time when inspections are carried out.* The Committee had previously requested the Government to provide information on the time when inspections may be carried out so as to give full effect to each of the provisions of *Article 12(1)*. The Committee notes that, according to the Government, there is no provision in the Labour Standards Act, especially its section 102 on the authority of labour inspections, which may restrict a labour inspector's entry to workplaces at any hour of day or night, and, therefore, inspection can be conducted freely at any hour, if it is deemed necessary. ***The Committee would be grateful if the Government would provide further information in its next report indicating in particular the number and types of inspection visits which were carried out in the night in 2009 and 2010.***

*Articles 20 and 21. Publication and communication to the ILO of an annual inspection report.* In its previous comments, the Committee had requested the Government to provide information on the content of the "White Paper on Labour" published by the Ministry of Labour instead of an annual report and to communicate a copy within the time limits set out in *Article 20*. The Committee notes from the Government's report that the White Paper contains the various policies and projects pursued by the Ministry and related statistics for the year concerned and deals with all the subjects described in *Article 21* of the Convention except for point (b) on the "staff of the labour inspection service". ***The Committee would be grateful if the Government would provide in its next report a summary of the content of the White Paper with regard to Article 21(a) and (c)–(g) of the Convention, as well as the information required under point (b).***

*Articles 5(a) and 21(e). Effective cooperation between the labour inspection services and the justice system.* The Committee notes that, according to the Government, the 2009 White Paper contains information relative to the general observation made by the Committee in 2007, in particular, the number of cases reported to local labour offices and the results of their handling by the inspectorate (administrative settlement, referral to judicial treatment, imposition of a fine, etc.) The Government specifies that the results of the judicial examination are not included in the White Paper as judicial proceedings are concluded only after a decision is taken by the justice system. ***The Committee would be grateful if the Government would indicate in its next report whether a system exists or is contemplated for the recording of judicial decisions so as to enable the labour inspectorate to make use of this information in pursuance of its objectives and to include it in the annual report, as envisaged in Article 21(e) of the Convention. It would also appreciate further***

*information on any measures taken or contemplated to promote effective cooperation between the labour inspection services and the justice system.*

## Latvia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)**

The Committee takes note of the Government's report, which was received on 12 October 2009, and the attached documents.

*Articles 3(1), (2) and 10 of the Convention. Principal labour inspection functions and the strengthening of inspection staff.* The Committee notes from the Government's report and the annual labour inspection reports sent to the ILO (covering 2007 and 2008) that there are two distinct structures within the labour inspection system to deal respectively with labour relations and labour protection. The Committee notes that the officials exercising their functions in both structures are all labour inspectors but the number of those assigned to combating illegal employment has been increased while the number of those assigned to supervising conditions of work has been reduced and a number of vacancies remained for the position of inspector and competitions were under way, as of 1 June 2009. The Committee must recall that, according to *Articles 2 and 3(1)* of the Convention, the labour inspection system should primarily be aimed at ensuring the application of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. Consequently, the control of the legality of employment can only be considered as an additional function entrusted to the labour inspection structures. According to *Article 3(2)* of the Convention, any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of the primary duties defined in *paragraph 1* of the same Article or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

However, the Committee notes that, according to the Government and to the information included in the annual reports for 2007 and 2008, the labour inspectorate mainly focuses on illegal employment as an issue becoming even more pressing in the current conditions of high budget deficit and unemployment in the context of the economic crisis. In 2008, 4,554 inspections aimed at combating illegal employment resulted in the identification of 623 cases of illegal employment, the conclusion of 600 written employment contracts between workers in irregular situations and their employers, and the stoppage of labour relations of a number of shadow workers (1,023). No information is provided concerning the protection of the rights of the latter derived from their employment relationship in connection with the period worked. The Committee cannot emphasize enough the importance of ensuring that the same protection should be provided to all workers by the labour inspection system regardless of the type of the employment relationship. It emphasizes in paragraph 77 of its General Survey of 2006 on labour inspection that the Convention does not contain any provision suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status and that, to be compatible with the objective of labour inspection, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers (wages, leave benefits, overtime and any other related matters).

***The Committee requests the Government to provide information on the structure of the labour inspectorate and the number of positions allocated respectively to the supervision of labour relations and labour conditions, as well as those positions which remain vacant.***

***The Committee also requests the Government to indicate the measures taken or envisaged to ensure that the functions entrusted to the labour inspectorate to combat illegal employment do not interfere with the effective discharge of the primary duties defined by the Convention which are aimed at securing the application of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. If no measures have been taken or envisaged, the Government is requested to take such measures and to keep the ILO duly informed.***

*Articles 3(1) and 21(d) and (e). Labour inspection enforcement activities and relevant statistics.* The Committee notes with **interest** from the annual report of the labour inspection service in 2008, the information concerning its activities centred on the issue of occupational safety and health (OSH), in pursuance of the objective of the implementation of European Union campaigns in the area of OSH (SLIC information and inspection campaign on manual handling of loads, and information campaign on risk assessment), including inspection campaigns in sectors with increased risk of accidents and occupational diseases (in 2008, construction, textiles, and hairdressers and beauty parlours). The Committee observes however that the statistical data provided do not enable the Committee to evaluate the activities carried out in relation to other areas of labour conditions such as wages, working time, leave, child labour and areas of protection of workers such as social security, freedom of association, etc. and the results achieved in terms of legal notices, injunctions, fines, etc. The statistics only refer to violations identified and sanctions applied by the labour inspectorate in relation to so-called "labour protection", without further detail as to the nature, area and seriousness of the legal provisions at issue nor to the nature of the sanctions imposed. ***The Committee would be grateful if the Government would provide detailed statistical data on the labour activities and results achieved with regard to legal provisions relating to conditions of work and the protection of workers while engaged in their work. To be in a position to assess the level of application of the Convention, the Committee would be grateful if the Government would also ensure that, in the future, the labour inspection annual reports include the number of workplaces liable to inspection, the number***

*of inspection visits made, their purpose, the classification of infringements according to the legal provisions to which they relate, and the nature of the penalties imposed (see the Labour Inspection Recommendation, 1947 (No. 81), Paragraph 9(b)(ii), (c)(i), (d)(ii) and (e)(ii)).* The Committee also refers in this regard to its general observation of 2009 on the crucial importance of information on the number of industrial and commercial workplaces liable to inspection and the number of workers employed therein.

*Article 14. Notification of industrial accidents and cases of occupational disease.* In its previous comments, the Committee had noted the adoption of Regulation No. 585 of 9 August 2005 establishing the procedure for the investigation and registration of work accidents, as well as Regulation No. 908 of 6 November 2006 on the procedure for the investigation and registration of cases of occupational diseases and had requested information on the operation of these procedures in practice and their impact on the detection and registration of work accidents and cases of occupational disease. The Committee notes with *interest* that in 2008, for the first time in five years, the number of accidents fell in part thanks to inspection campaigns implemented in high risk sectors which had not been previously inspected, and an active publicity campaign in the media. It also notes with *interest* that, according to the Government, an occupational therapist can request the labour inspection service to prepare an OSH report on the workplace in order to evaluate how the work may have influenced a person and diagnose an occupational disease, even in cases where the indications of an occupational disease are revealed in an employee or a person after termination of the employment relationship. *The Committee would be grateful if the Government would continue to provide information on the operation of the procedures for the investigation and registration of work accidents and cases of occupational disease and, in particular, their impact on the registration of work accidents and cases of occupational disease.*

The Committee is raising other points in a request addressed directly to the Government.

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)**

Referring also to its comments under the Labour Inspection Convention, 1947 (No. 81), the Committee takes note of the Government's report received on 12 October 2009.

*Articles 6(1)(a), 14, 20, 26 and 27 of the Convention.* For many years, the Committee has been regretting the absence in annual reports on the work of the inspection services of specific data on the activities of the labour inspectorate in agriculture, with the exception of statistics of occupational accidents and diseases, which are presented by sector of economic activity. In its previous comments, the Committee observed that the activities of the labour inspectorate in the agricultural sector appeared to be focused on combating illegal employment and not on the conditions of work and the protection of workers while engaged in their work, as required by the Convention.

The Committee notes from the latest annual report provided by the Government that the highest number of accidents for 2008 was in the timber-processing sector, due primarily to lack of experience, insufficient training and professional skills of accident victims, as well as non-use of personal protective equipment and lack of safety appliances. The Committee recalls once again that the specific characteristics of work in the agricultural sector involve specific risks to which workers are exposed (for example, risks related to the handling and use of chemicals and agricultural machinery) and therefore requires specific skills from inspectors acquired through adequate training (*Article 9(3)*) and facilities (*Article 15*), such as transport and other facilities that take account of the distant and remote nature of agricultural undertakings, as well as appropriate equipment for measuring and analysis. Only where relevant training is provided to labour inspectors, can the latter perform the very important preventive function entrusted to them according to *Article 6(1)(b)* of the Convention, namely to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions. In this regard, Paragraph 2 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133) promotes the association of the labour inspectorate in agriculture in training of workers and Paragraph 14 relates to the appropriate means by which Members should promote education campaigns intended to inform the parties concerned, not only of the need to apply strictly the legal provisions but also of the dangers to the life or health of persons working in agricultural undertakings and the most appropriate means of avoiding them. The Committee has noted significant progress with regard to the safety and health of workers in countries where such campaigns were carried out, particularly in forestry work. *The Committee therefore urges the Government to take appropriate measures to ensure that agricultural undertakings liable to inspection are inspected as often and as thoroughly as necessary. Referring to its 2009 general observation under this Convention, it would be grateful if the Government would indicate whether the labour inspection services can base their work on a census of agricultural undertakings liable to inspection and the workers engaged therein so as to be able to plan the activities to be undertaken in the sector and allocate the necessary resources. If this is not the case, the Government is requested to take measures for this purpose and to keep the Office duly informed. Finally, the Committee would be grateful if the Government would ensure that the annual report on the inspection activities in the agricultural sector contains detailed information as requested by Article 27.*

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1993)**

The Committee takes note of the Government's report and the information it contains in relation to the substantial institutional changes which took place in 2007 in the field of professional career services, in particular, the merger of the State Professional Career Choice Agency with the State Employment Agency, the creation of an advisory council at the

State Employment Agency to formulate opinions and proposals to the Minister for Welfare regarding the implementation of employment policies and the adoption of amendments to the Act on Support for Unemployed Persons and Persons Seeking Employment which came into force on 19 July 2007 in order to specify the competence of the various ministries involved in the field of unemployment policy (Ministry of Economics, Ministry of Welfare, Ministry of Education and Science).

*Articles 6 and 10 of the Convention. Impact of austerity measures on labour administration.* The Committee recalls that in its previous comments it had welcomed among other things, the information provided by the Government on the criteria for selecting and remunerating public labour officials and the need to provide them with conditions of service and work which allow them to continue in their posts and improve their skills and qualifications. It had requested the Government to provide information on any change in the functioning of the labour administration system.

The Committee notes that in the context of the current economic crisis and an emergency agreement with the European Commission and the International Monetary Fund (IMF), Latvia has been one of the first European States to introduce austerity measures in 2009. It notes that according to publicly available information, on 9 June 2009 an agreement was reached on the creation of a government-level crisis working group with the involvement of the social partners. On 16 June 2009 the Parliament (*Saeisma*) adopted amendments to the Law on Insurance in Case of Unemployment which came into force on 1 July 2009 in order to increase state support to the unemployed. However, this measure was accompanied by a reduction in social guarantees: among other things, the Parliament adopted on 16 June 2009 the Act on State Pension and State Allowance Disbursement in the period from 2009 to 2012 which drastically reduced old-age pensions and benefits. This Act was subsequently declared unconstitutional by the Latvia Constitutional Court Decision No. 2009-43-01 of 21 December 2009 on the grounds that the measures in question were disproportionate and did not comply with the principle of protection of legitimate expectations. The Committee also notes that on 1 December 2009 the *Saeisma* adopted Latvia's revised budget for 2010, which introduced significant tax increases and reduced government expenditure to 2004 levels. The Committee understands that both the Latvian Free Trade Union Federation (LBAS) and the Employers' Confederation of Latvia have publicly expressed apprehension about the impact of these measures on the competitiveness of Latvian business and on employment levels in times of recession.

*The Committee would be grateful if the Government would provide in its next report an assessment of the impact of the above measures on the application of the Convention, especially Article 6, according to which the competent bodies within the system of labour administration shall be responsible for the preparation, administration and review of a national labour policy, including a national employment policy, by among other things, studying and keeping under review the situation of employed, unemployed and underemployed persons and making services available to employers and workers and their respective organizations.*

*The Committee would also be grateful if the Government would indicate the impact of the above measures in relation to Article 10 of the Convention according to which the staff of the labour administration shall have the status, material means and financial resources necessary for the effective performance of their duties.*

*The Committee finally requests the Government to provide any additional legislative text adopted in the framework of the austerity measures with regard to labour market issues along with an evaluation of its expected impact.*

## Lebanon

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes the Government's report and the attached documents received at the ILO on 28 October 2009.

*Article 3(2) of the Convention. Additional duties entrusted to labour inspectors in connection with union matters.* For many years the Committee has been asking the Government to take steps to limit intervention by labour inspectors in the internal affairs of trade unions and confederations solely to cases of complaints which might be addressed to them by a significant number of members. The issue was raised by the Committee with regard to section 2(c) of Decree No. 3273 of 26 June 2000, under the terms of which the labour inspectorate has the power to monitor vocational organizations and confederations at all levels in order to check whether the latter, in their operations, are exceeding the limits prescribed by law and by their rules of procedure and statutes. The Committee stated in a direct request of 2002 that such powers were tantamount to the right to interfere in the internal affairs of professional organizations. The Government then announced that an amendment to the Labour Code would settle the issue. However, Memorandum No. 35/2 of 12 April 2006 from the Director-General of the Ministry of Labour reproduced the criticized provision using identical wording.

Section 163(3) of the version of the draft Labour Code submitted to the ILO in 2007 for opinion stated that the Labour Inspection and Occupational Safety and Health Department of the Ministry of Labour would be responsible for monitoring the application of laws, decrees and regulations relating to terms and conditions of work and the protection of workers while engaged in their work, including the provisions of ratified international and Arab conventions and, more specifically ... "(3) to conduct inquiries further to complaints relating to trade unions and confederations at all levels".

In its 2009 report, the Government indicates that this provision is contained in section 161(3) of the current version of the draft Labour Code and will have the effect of removing any power from the labour inspectorate to monitor trade

union affairs, as this power would be assigned to the trade union council. It explains that the powers of the labour inspectorate with regard to occupational organizations will therefore be limited to the examination of complaints submitted to it by the latter. Since the current wording of the text in no way lends itself to such an interpretation, it is essential, in order to avoid any ambiguity in this regard, for the drafting to be reviewed in the appropriate way. **Noting that the draft amendments to the Labour Code have been under discussion for more than ten years, the Committee requests the Government, pending the definitive adoption of the Code, to contemplate cancelling, in the forms provided for by law in such matters, the provision of Memorandum No. 35/02 of 12 April 2006 of the Director-General of the Ministry of Labour under the terms of which labour inspectors retain the power to monitor trade union activities. The Committee requests the Government to provide information in its next report on the progress made in this respect.**

The Committee is raising other points in a request addressed directly to the Government.

## Lesotho

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2001)**

The Committee reminds the Government that, by ratifying this Convention, it undertook to take measures to implement it in both law and practice. In view of the worrying information provided in this regard, the Committee draws its attention to the following points.

*Shortcomings of the labour inspection system in relation to Articles 3, 6, 7 and 9–21 of the Convention.* According to the information provided by the Government, although labour inspectors are supposed to carry out routine inspections of workplaces to ensure that the legal provisions concerning working conditions are being respected, the shortage of inspectors, their lack of qualifications and the fact that they perform tasks other than those inherently related to labour inspection constitute significant obstacles to the performance of this duty. Contrary to the information provided in the Government's first report received by the ILO in 2003, according to which inspections were carried out on a routine and proactive basis at least in workplaces and activities at risk, inspections are now carried out only in response to complaints. Furthermore, the number of inspectors has not been increased as planned and while the Directorate of Dispute Prevention and Resolution is not yet operational, it is inspectors who continue to ensure the settlement of disputes and intervene in collective labour disputes. They are also involved in inspection operations organized jointly by the Ministry of Labour and Employment, the Ministry of Trade and Industry, Cooperatives and Marketing and the Ministry of Home Affairs and Public Safety to verify the legality of the situation of foreign employers from the point of view of the right to establish a business.

The Committee notes with **concern** that inspectors are not recruited based on a personal interest in carrying out these duties, but under a system of compulsory placement, which, according to the Government, has an adverse effect on their degree of motivation. Furthermore, the lack of any specific training after they take up their duties, their very low remuneration and the shortage of office equipment and transport facilities mean that inspectors lack the enthusiasm that is essential to the performance of inspection duties and are less likely to remain in their posts. The most experienced inspectors move on in search of better paid jobs. According to the Government, all these conditions explain the fact that the profession is not attractive to the technicians and experts whose collaboration would nonetheless be of benefit to an effective labour inspection service.

With regard to the action taken in response to violations observed, the Committee notes that employers at fault are issued with a formal warning to fulfil their obligations, but that the level of the penalties applicable in the case of a failure to comply is not sufficiently dissuasive. The relevant legal provisions have not been amended since the Labour Code was adopted in 1992, despite a spiralling monetary inflation rate. In any case, the Government has not provided any figures on the administrative or penal action taken in response to the violations observed by inspectors. The Committee is therefore unable to carry out any assessment of the coverage of the labour inspectorate's services or the impact of the inspections carried out in relation to the objective of the Convention. Similarly, the Government has not provided any information allowing the Committee to assess the impact of the collaboration of organizations of workers (through the reporting of violations) and employers (through the encouragement of their members to respect the legislation), mentioned in the report, on the operation of the labour inspectorate.

The Committee notes that the weaknesses of the labour inspection system were already highlighted in an assessment of the labour inspectorate carried out by the ILO in 2005 and that recommendations were made to improve its operation. It notes that these recommendations have for the most part not been implemented but that the Government announces forthcoming amendments of the provisions of the Labour Code concerning the penalties applicable to those responsible for violations and undertakes to invest efforts to establish a computerized labour inspection system.

**The Committee requests the Government to take measures to ensure that labour inspectors quickly resume the primary duties defined in Article 3(1) of the Convention to enable them to carry out routine inspections in the highest possible number of industrial and commercial workplaces liable to inspection (Article 16).** It emphasizes that, for inspectors, routine inspections constitute the safest means of fulfilling their obligation of confidentiality concerning the existence and source of complaints (*Article 15(c)*) and avoiding exposing the workers concerned to the risk of reprisals on the part of the employer.

*The Committee also requests the Government to ensure that labour inspectors receive the necessary training for the effective performance of inspection duties, which consist mainly of enforcing the legal provisions concerning conditions of work and the protection of workers, but also involve providing employers and workers with technical advice and information on the most effective means of complying with these provisions and drawing the attention of the competent authority to any legislative gaps relating to protection at work.*

*The Committee also requests the Government to take measures to ensure the full application in both law and practice of Article 6 concerning the status and conditions of service of inspection staff and Article 7 concerning the criteria and methods for selecting candidates for the profession as well as the training of inspection staff.*

*With regard to the material and logistical means necessary for the establishment and operation of an effective inspection service, the Committee strongly encourages the Government to identify the most urgent needs in this regard and to take measures to find the resources to meet those needs, both at the national level and in the context of international cooperation. The Committee requests the Government to keep the Office informed of any developments in this regard and reminds it of the possibility of seeking technical assistance from the Office to identify the needs concerned as the first phase.*

*Finally, referring to its general observations of 2007 and 2009, the Committee requests the Government to take concrete measures to create a computerized labour inspectorate so that the central inspection authority is able, in accordance with Article 20, to publish and transmit to the ILO an annual inspection report gradually containing all the information required in paragraphs (a) and (g) of Article 21. The Committee reminds the Government that Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), provides useful guidance on the information required on each subject and the ideal level of detail.*

## Libyan Arab Jamahiriya

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)**

*Articles 20 and 21 of the Convention. Annual report on labour inspection activities.* Further to its previous observation, the Committee notes the information provided by the Government concerning the legal texts on the prosecution of reported violations in respect of conditions of work and the protection of workers. However, it notes with *regret* that the Government has still not taken measures to give effect to *Articles 20 and 21* of the Convention, which establish the obligation for the central authority to publish an annual report on the work of the inspection services under its control and to provide a copy of it to the ILO. In these circumstances, the Committee does not have the necessary means to assess the operation of the labour inspection system and to evaluate the extent to which the Convention is applied in law and practice. *Noting the Government's commitment to provide the ILO at the end of 2010 with a report containing the data and statistics covered by Article 21 and observing that such a report has not been provided, the Committee requests the Government to do so in the very near future, and also to ensure that the report is published, and to provide information on the measures adopted for this purpose, the results achieved and the difficulties encountered.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Luxembourg

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes the Government's reports for the periods ending on 30 June 2005 and 30 June 2007, received at the ILO on 21 December 2005 and 26 November 2007, respectively, the annual report of the Inspectorate of Labour and Mines (ITM) for 2005 and the legislation attached. It also notes that the Labour Code, adopted on 31 July 2006, does not change the previous legal provisions on labour law, including those on labour inspection.

*Developments in the labour inspection system.* The Committee notes the process to enhance the efficiency and relevance of the labour inspection system, in particular a bill to reform the ITM currently before the competent parliamentary bodies. *It awaits any developments in this respect and would be grateful if the Government would keep the Office informed.*

*International cooperation in labour inspection.* The Committee notes that the annual report of the ITM contains information on each of the subjects set out in *Article 21 of the Convention*, and also on the ITM's regional activities in the context of the European Union, such as participation in the drafting of new directives on occupational health and safety, and its activities at international level including the organization, in collaboration with the ILO, of a conference on integrated labour inspection systems held from 9 to 11 March 2005 and attended by delegates from some 70 countries. The Committee notes that according to section 6 of the Act on the Posting of Workers, the ITM's purpose is to act as a liaison office for international cooperation with counterpart public administrations in the Member States of the European Union. The synergy thus created will enhance action to prevent industrial accidents and occupational diseases among migrant workers, in the "major region" composed of the founding members of the "old Europe". *The Committee would be grateful if the Government would provide information on the ways and means used to attain this objective, and on the results.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*



## Madagascar

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)***

The Committee notes the Government's report and the documents attached, received on 5 November 2009. It also notes the comments of the Autonomous Trade Union of Labour Inspectors (SAIT), dated 2 February 2010, concerning the application of this Convention and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). These comments were sent to the Government on 6 April 2010 but it has not provided any information on the points raised.

*Articles 6 and 11 of the Convention. Conditions of service and work of labour inspectors.* In its previous reports, the Government mentioned the poor conditions of work of labour inspectors and the lack of equipment and transport facilities owing to the meagre budgetary resources allocated to the labour administration, but the Committee noted in its previous observation that section 235 of the Labour Code provides that the competent authorities are obliged to adopt the necessary measures to provide inspectors with local offices which are suitably equipped in accordance with the requirements of the services and accessible to the persons concerned, and with the transport facilities necessary for the performance of their duties where no suitable public transport facilities exist, and are also obliged to make arrangements to ensure that labour inspectors are reimbursed for any travelling and incidental expenses which may be necessary for the discharge of their duties. The Committee further noted that, under the same text, the implementation of these measures is covered by the state budget. It therefore requested the Government to supply any information, together with any relevant legal, administrative, or financial text, or any document describing the measures taken for the purposes referred to in section 235 of the Labour Code and the impact of these measures on the operation of the labour inspectorate in practice.

However, in its report received in November 2009, the Government indicates that the procedure for the submission to the competent authorities of the draft text on the special conditions applicable to labour inspectors has been suspended due to political instability. The Committee understands that this text is designed to improve the conditions of work of inspectors, including travelling and incidental expenses and hours of work. With regard to the lack of means in relation to the labour inspectorate's operational needs, the Government merely acknowledges that major efforts need to be made and mentions the possibility of the cooperation of other bodies without giving further details. Furthermore, the Government's indications concerning the distribution of labour inspection staff are extremely contradictory in that it states on the one hand that in general, a labour inspection service operates with two labour inspectors, one controller, a secretary and an office junior, but refers on the other hand to a table in the 2009 biannual activity report which indicates that Antananarivo has a single inspection service operating with 53 inspectors, Antsirabe has a service operating with two inspectors, Toliary has a service operating with three inspectors and other regional services operate with one or two inspectors.

According to the SAIT, the Government has taken no steps to make the slightest improvement to the situation of the labour inspectorate, which it describes as wholly inadequate, with dilapidated infrastructure, furniture and other equipment allocated to the services and extremely precarious living and working conditions of labour inspectors and controllers, which are far removed from the concept of decent work, the promotion of which comes within the remit of the labour inspectorate. The SAIT states that labour inspectors are often required to finance the operational needs of the service using their own funds due to the failings of the administration. This includes the provision of office equipment and the funding of travelling costs incurred when visiting workplaces. Furthermore, the political crisis has apparently triggered an upsurge in action designed by those responsible to hinder the operation of the labour inspection services and harass labour inspectors and controllers.

The union indicates that a trade union demonstration was organized on 27 November 2009 as a sign of protest against the politicization of the labour administration and to stress the urgent need to modernize the labour inspectorate in the face of the crisis. According to the SAIT, in response to this demonstration, in which a large number of labour inspectors and controllers participated, the Labour Minister encouraged labour controllers to rise up against labour inspectors and dismissed several labour inspectors who had participated in the demonstration and who occupied senior posts within the Ministry, while transferring a number of other labour inspectors who had until then been working in the capital to posts several hundred kilometres away, with no regard for the inconvenience caused to their families, in particular to their children of school age, or to their trade union duties and imminent retirement.

The SAIT further indicates that, following the invitation it extended in vain to the Minister to engage in dialogue, it decided to report the situation described above to the Office while confirming the commitment of its members to assume their share of the responsibility for the efforts to implement the ILO's Decent Work Agenda.

The Committee notes the following documents attached to the union's comments:

- (1) labour inspectors' communication dated 27 November 2009;
- (2) three individual service notes ordering national directors to hand over their functions;
- (3) four individual decisions concerning the assignment of labour inspectors, two of whom hold trade union office;
- (4) a copy of Decree No. 2004-841 of 31 August 2004 concerning the conditions governing the assignment and transfer of public servants;
- (5) a copy of Decree No. 2006-432 of 27 June 2006 implementing the system of quotas for recruitment competitions in the public service;

- (6) report on the election of the officers of the trade union of labour inspectors dated 25 April 2007 (which includes the names of the public servants who are the subject of the above individual decisions);
- (7) a document containing extracts from Ordinance No. 60-149 concerning the conditions governing the exercise of trade union rights and the defence of the occupational interests of public service employees and public servants; and
- (8) a copy of the SAIT's comments to the ILO dated 4 June 2008 concerning the application of the Convention, which were not received, as a result of which the Committee was unable to examine them, in which the SAIT reports the appalling conditions of service and work of labour inspectors which are discriminatory compared to those enjoyed by other public servants with the same qualifications and similar responsibilities.

The Committee expresses deep *concern* at the situation described not only by the Government but also by the SAIT concerning the severe lack of material means available to the labour inspectorate in relation to the numerous and complex duties that inspectors are required to carry out. Furthermore, this situation seems to be exacerbated by a clear lack of consideration on the part of the authorities towards labour inspection staff and seems to have resulted in a weakening of the public institution of which they form part and the role of which is to enforce the labour legislation. Inspectors are therefore discredited in the eyes of the social partners due not only to the severe lack of means available to them, but also, and above all, to their precarious status compared to the status of other public servants with similar qualifications and responsibilities.

The rare information provided by the Government concerning the operation of the labour inspectorate in practice indicates a clear lack of understanding of the value and socio-economic role of this public institution. The independence of labour inspectors from any change of government and from any undue external influence is one of the key principles laid down in the Conventions concerning labour inspections. The documents provided by the SAIT concerning the dismissal and transfer of labour inspectors to very remote locations in December 2009, which took place in the month following their participation in industrial action by means of an administrative transfer, would seem to confirm the SAIT's opinion that these measures were designed to punish trade union membership or activity.

*The Committee urges the Government to provide detailed information in its next report in reply to the points raised by the SAIT. Furthermore, it requests it to take measures as a matter of urgency to restore normal operations within the labour inspectorate, including ensuring that an investigation using all legal means is carried out to verify the legitimacy of the grounds for the decisions to transfer members of the inspection staff who participated in the industrial action of 27 November 2009 and that any occupational and trade union rights which have been violated are restored.*

*The Committee also requests the Government to keep the ILO duly informed of the process of adopting the draft text relating to the special conditions applicable to labour inspectors and to provide a copy of the draft or final text, as applicable.*

The Committee is raising other points in a request addressed directly to the Government.

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

The Committee notes the Government's report received on 5 November 2009. It draws the Government's attention to its observation under the Labour Inspection Convention, 1947 (No. 81), in which it refers to the comments of the Autonomous Trade Union of Labour Inspectors (SAIT), received by the ILO on 2 February 2010 and sent to the Government on 5 April 2010. These comments, accompanied by supporting documents, mainly concern the worsening conditions of service and work of labour inspectors and controllers and the action taken by the Government against a number of labour inspectors and controllers in response to their participation in industrial action aimed at obtaining conditions of service and work in line with the provisions of the two ratified international Conventions on labour inspection. *Given that the comments of the SAIT concern matters affecting all labour inspectors and controllers, including those performing their duties in agricultural enterprises, the Committee urges the Government to provide information in its next report in reply to the points raised in its observation under Convention No. 81 concerning the application of the provisions of Articles 8 and 15 of this Convention.*

The Committee is raising other points in a request addressed directly to the Government.

## **Malaysia**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)**

*Articles 20 and 21 of the Convention. Annual report on the work of the inspection services.* The Committee notes the Government's report which contains detailed statistical information on labour inspections and inspections on occupational safety and health, with respect to Peninsular Malaysia, Sabah and Sarawak. It notes with *interest* that the information provided corresponds to the requirements under *Article 21* of the Convention. The Committee also notes the Government's indication that each one of the 11 agencies under the auspices of the Ministry of Human Resources (MOHR) produces its own annual report, and that the statistics reflecting common data are available on the MOHR's web site. The Committee wishes to indicate that these data must be published as an integral part of an annual report on the

work of the inspection services (*Article 20(1)*) within a reasonable time after the end of the year and in any case within 12 months (*Article 20(2)*). In this connection, the Committee recalls its General Observation of 2009, in which the Committee referred to the use of statistical data both at the international and national levels, indicating that at the national level, such data would allow assessment of the rate of coverage by labour inspection services in relation to their scope, as defined in national legislation. Such assessment could then be used for the determination of the appropriate number of labour inspectors and the necessary material resources for the discharge of their functions (*Articles 10, 11 and 16*), or for the provision of training (*Article 7*). With these factors identified, an appropriate budget to meet the justified and quantified needs of labour inspection could then be allocated, according to the national financial possibilities. At the international level, these data would allow for an assessment of the implementation of the Convention in practice (*Article 20(3)*). **Accordingly, the Committee requests the Government to take all necessary measures with a view to compiling and publishing an annual report of the labour inspection services, containing such data as contained in the Government's report, and to send a copy to the Office, as required under Articles 20 and 21 of the Convention.**

The Committee is raising other points in a request addressed directly to the Government.

## Malta

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)**

*Articles 3(1), 5(a), 16, 18 and 21 of the Convention. Annual report on the labour inspection activities and collaboration with the judicial authorities.* The Committee notes with **interest** the annual inspection report provided to the Office containing information reporting a number of good practices which deserve to be emphasized, and particularly the activities carried out by the Occupational Health and Safety Authority in schools to raise awareness among the public from an early age concerning occupational safety and health issues, as well as the participation in the European Safety and Health at Work Campaign with the slogan “Healthy Workplaces – Good for you. Good for business”, which emphasizes the financial value to enterprises of beneficial conditions of work for workers. The Committee also notes with **interest** the information on the inspection campaigns targeting certain branches of activity, such as hotels and the collection of household rubbish.

The Committee is raising other points in a request addressed directly to the Government.

## Mauritania

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)**

*Article 6 of the Convention. Status of labour inspectors and controllers.* In its previous comments, the Committee noted that no provision had been made for allowances in new Decree No. 021/2007/PM of 15 January 2007 issuing the specific conditions of service of the labour administration, which establishes the status of labour inspectors and controllers, whereas all the other administrative departments had been awarded an allowance in the context of another decree adopted in 2007. The Committee notes the Government's reply stating that it will make a point of rectifying this error. **The Committee therefore requests the Government to take steps in the very near future to ensure that allowances are granted to labour inspectors with regard to the specific nature of their duties and to keep the Office informed of any developments in this respect.**

*Article 7(3). Training of inspectors.* With reference to its previous comments, the Committee notes with **interest** the information supplied by the Government to the effect that the ADMITRA project, in cooperation with the Ministry of Public Service and Employment, has organized a major workshop on inspection methods for labour inspectors and trainee labour inspectors from the National School of Administration (ENA). Moreover, a workshop in “training engineering” was held for labour inspectors and trainers from the ENA, which will enable them in turn to train their colleagues. It also notes with **interest** that in 2011 a total of 40 new young inspectors and controllers who have passed an external competition will strengthen the numbers of the labour inspection staff. **The Committee requests the Government to continue its efforts to provide initial and further training for inspection staff, if necessary with technical assistance from the Office, and requests the Government to keep it informed of any developments in this respect, including the content and methodology of the training.**

*Articles 20 and 21. Annual report on the work of the labour inspectorate.* With reference to its previous comments, the Committee notes with **interest** the summary report from the regional labour inspectorates for 2008. However, it notes that, contrary to the Government's indications, the provisional table of implementing regulations for the updated law concerning penalties were not attached to its report. **The Committee requests the Government to continue to supply information on any progress made with a view to the publication by the central inspection authority of an annual report, as provided for by Article 20, containing the information required in relation to the matters covered by Article 21, or on any obstacles encountered in this respect.** It reminds the Government of the possibility of requesting technical assistance from the Office in connection with the establishment of a system for the compilation of data enabling the central authority to draw up such a report.

*Labour inspection and child labour.* In its previous comments, the Committee stressed the importance of the role of labour inspection staff in protecting the safety, health and well-being of children. It asked the Government to take the necessary steps to ensure that labour inspectors and controllers will be given the necessary training, powers and resources to take effective action in this respect. However, the Committee notes that the Government's report does not refer to this matter. ***The Committee therefore again requests the Government to take steps as soon as possible to enable labour inspectors to effectively enforce the legislation relating to child labour.***

The Committee is raising other points in a request addressed directly to the Government.

## Republic of Moldova

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1996)***

*Articles 3(1), 13 and 14 of the Convention. Labour inspection in the area of OSH.* The Committee notes with ***interest*** the adoption of the Occupational Safety and Health Act of 7 October 2009 (OSHA), which establishes an OSH strategy based on prevention and reinforces the role of the labour inspectorate in this regard. It also notes from the Government's report the activities carried out by the labour inspectorate in this area in 2009, including mass media campaigns and training on OSH; according to the annual labour inspection report provided by the Government, as a result of the above activities, the number of serious and fatal accidents decreased by 13 and six cases, respectively, as compared to last year. ***The Committee would be grateful if the Government would continue to provide information on prevention and enforcement activities carried out by labour inspectors in the area of OSH along with an assessment of their impact.***

***Noting, moreover, that according to the Government the OSHA empowers labour inspectors, in case of imminent danger, to issue injunctions which should be approved by the State General Inspector, the Committee requests the Government to specify whether such injunctions have immediate effect.***

The Committee finally takes note of the information provided by the Government on recorded occupational diseases and their origins in 2008 and 2009. It recalls that in previous reports the Government had indicated that the options for notifying cases of occupational disease to the labour inspectorate were being reviewed. ***The Committee requests the Government to indicate the measures taken or envisaged for the notification of occupational diseases and would be grateful if the Government would continue to provide information on this issue.***

The Committee is raising other points in a request addressed directly to the Government.

## Morocco

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)***

The Committee notes the Government's report received in the ILO in September 2009, and the attached documentation, in reply to its previous comments.

*Articles 6 and 7 of the Convention. Status, recruitment criteria and conditions of service of labour inspectors.* The Committee notes with ***interest*** the adoption of the conditions of service of the labour inspectorate by means of Decree No. 2.08.69 of 9 July 2008 of the Ministry of Employment and Vocational Training (MEFP). The Decree covers the conditions for the recruitment and careers of labour inspectors and deputy labour inspectors, and their career advancement at the various levels of the structure and hierarchy of the labour inspectorate.

*Article 11(2)(b). Provisional travelling expenses of labour inspectors.* The Committee notes with ***interest*** that, under the terms of Ministerial Order No. 2.08.70 of 9 July 2009, labour inspectors and deputy inspectors receive monthly indemnities to cover expenses related to visiting workplaces liable to inspection. The Committee however notes that the amount of the indemnity depends on the grade of the inspector, and not on criteria directly related to the facility or difficulty of transport, the geographical extent of the areas within their competence or the existence of public transport facilities. ***The Committee would be grateful if the Government would indicate the reasons for which the travel indemnities for inspection visits are based on the grade of the inspection staff. It also requests the Government to provide information on the manner in which inspectors operating in areas without public transport and who do not possess their own vehicle are compensated for any excess travelling expenses necessary to discharge the objective set out in Circular No. 2556 of 2 April 1999 on inspections at the rhythm of 15 inspections a month.***

*Article 15(c). Obligation of confidentiality regarding the source of complaints.* The Committee notes that, according to the Government, section 531 of the Labour Code and Dahir No. 1-58-008 of 24 February 1958 issuing the general conditions of service of the public service, as subsequently amended and supplemented, provide an adequate legal basis for ensuring compliance by labour inspectors with the obligation of confidentiality regarding the source of complaints, as required by this provision of the Convention. However, the Committee notes that the texts referred to by the Government relate to the general obligation of professional confidentiality and discretion of all public officials, but do not explicitly cover the prohibition from giving any intimation to the employer or his representative concerning the source of any complaint or that a visit of inspection was made in consequence of the receipt of such a complaint. The recommendation made to labour inspectors in the Guide on the methodology of inspections to indicate, "depending on the

circumstances”, the purpose of the inspection and the desired procedure would however appear to constitute a real obstacle to the protection of those lodging complaints against any risk of reprisal by the employer. It would be desirable for this recommendation to only apply in specific circumstances, namely during inspections requiring the presence of the employer or his representative or the preparation of a workplace, the stoppage of machines or installations, inspections to verify the implementation of an earlier injunction or order, information-gathering inspections or those organized in the context of a thematic campaign, or inspections following an employment accident or the notification of an occupational disease. However, inspections occasioned by a complaint should, in the same way as those that are planned (routine inspections), be initiated and carried out in full freedom by the labour inspector, who should not be obliged to indicate the purpose or inform the employer (or his representative) of the inspection. This is the essential condition for compliance by labour inspectors with the obligation of confidentiality set out in *Article 15(c)* of the Convention. ***The Committee requests the Government to take measures in the light of the above to ensure the freedom necessary for labour inspectors in the discharge of their duties during inspection visits so as to enable them to protect those lodging complaints from any risk of reprisals by the employer or his representative.***

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1979)**

The Committee notes the information provided by the Government in reply to its previous comments in the report received by the ILO on 14 August 2009, as well as in the report on the Labour Inspection Convention, 1947 (No. 81), received on 1 September 2009, and the attached documentation, namely the texts of Decree No. 2.08.69 of 9 July 2008 issuing the conditions of service of the labour inspectorate, Decree 2.08.70 of 9 July 2008 respecting the professional travel indemnities for labour inspectors and the report of the Labour Directorate of the Ministry of Employment and Vocational Training providing an assessment of the work of the labour inspection services for 2008.

*Articles 6, 9 and 14 of the Convention. Number and qualifications of labour inspectors in agriculture.* The Committee notes with **interest** that, to make up for the retirement of labour inspectors in 2005, the Ministry of Labour recruited 40 inspectors in 2007 and organized the recruitment of 15 inspectors in 2009. However, although it explains the reduction in the number of inspections on the grounds of the additional responsibilities entrusted to inspectors, the Government does not specify the number of those responsible for inspecting agricultural undertakings. Similarly, it does not provide details allowing a distinction to be made between occupational safety and health training activities undertaken for inspectors in agriculture in relation to the activities intended for all the inspection staff. ***The Committee therefore requests the Government to indicate the number and geographical distribution of labour inspectors and deputy inspectors in agricultural and forestry undertakings and to provide detailed information on the specific training which may have been provided to them to enable them to discharge their missions of supervision, information and technical advice in agricultural undertakings.***

*Article 12. Cooperation between inspection services in agriculture and other government services or institutions.* The Committee notes the general institutional information concerning the coordination of the activities of the external services of public administrations and public institutions at the level of the governorates. The Committee wishes to emphasize that the cooperation that the Government is called upon to promote by this provision of the Convention does not consist of entrusting inspection duties to other institutions but, more generally, of making it possible for the labour inspection services to exchange information or services relevant to the operation of the labour inspection system in agriculture with other public or private bodies and institutions. In its 2006 General Survey on labour inspection, the Committee noted that a range of different structures and bodies have at their disposal a wide range of data, information and research on the world of work which should be communicated systematically to the appropriate labour inspection departments through appropriate mechanisms (paragraph 154). In particular, it advocates such cooperation between the labour inspection services and those responsible, respectively, for employment, equality in the workplace, vocational training, job placement, migration, youth, basic or compulsory education, the disabled and for the gathering of statistical information with a view to defining the priorities for action of the labour inspection services (paragraph 155). In particular, the Committee emphasizes the value of effective cooperation with social security institutions and the police, as well as the judicial authorities, the tax authorities and the ministries responsible for the sectors covered by the labour inspection system (paragraphs 157 and 158).

In 2007, the Committee addressed an observation to the Members bound by this Convention and by Convention No. 81 on the various forms of cooperation that could be promoted between the labour inspection services and the judicial authorities and, in 2009, a general observation on the cooperation required between the labour inspection services and other public and private bodies for the establishment and regular updating of a register of workplaces liable to inspection. It notes in this respect with **interest** the guidance provided in the *Methodological guide for inspections* drawn up in 2006 with ILO support for the establishment of such a register and its content. ***The Committee would be grateful if the Government, with a view to the establishment of the register of workplaces liable to inspection, would take measures to facilitate the establishment of the above forms of cooperation, describe these measures and provide any relevant documentation, as well as information on their impact on the operation of the labour inspection services in agriculture.***

***Noting with interest that, according to the Methodological guide for inspections, an independent occupational health service has to be established in agricultural and forestry undertakings and their subsidiaries when they employ***

*at least 50 workers, the Committee requests the Government to provide detailed information on the methods of collaboration followed in practice between labour inspection services and such medical services, particularly with a view to the prevention of occupational risks, and particularly those that cause pathologies specific to agricultural activities. It also requests the Government to provide data on the geographical distribution of these services and those that are competent for workers in smaller agricultural undertakings.*

*Article 13. Collaboration between the labour inspection services and employers and workers or their organizations.* According to the Government, such collaboration is focused in particular on the field of industrial relations (collective bargaining, occupational elections, particularly with a view to the establishment of enterprise committees and safety and hygiene committees). While taking due note of this information, the Committee wishes to emphasize the need for collaboration between inspection services and the social partners in the forms and using the means advocated by the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), namely through the development of education campaigns intended to inform the parties concerned, by all appropriate means, of the applicable legal provisions and the need to apply them strictly, as well as of dangers to the life or health of persons working in agricultural undertakings and of the most appropriate means of avoiding them (Paragraph 14). ***The Committee therefore requests the Government to keep the ILO informed of any progress achieved with a view to effective collaboration between the inspection services and employers, workers or their organizations for the achievement of the objectives of the Convention and the results expected or achieved.***

*Articles 15(1)(b) and (2), and 21. Transport facilities and the reimbursement of the professional travel expenses of inspectors for the inspection of agricultural undertakings. Frequency of inspections.* The Committee notes that under the terms of Decree No. 2.08.70 of 9 July 2008 of the Ministry of Employment and Vocational Training, the travel indemnities allocated to labour inspectors and deputy inspectors are determined as a function of the grade of each official, to the exclusion of any other criterion. The text does not, for example, contain specific provisions applicable to the discharge of inspections and tours of agricultural undertakings, for which purpose the distances to be covered can be very variable and give rise to higher meal expenses and other costs than those for inspections in urban areas, where public transport may be available. Circular No. 2556 of 2 April 1999 respecting inspections nevertheless establishes the number of 15 inspections a month for each district supervisor of labour laws in agriculture and for each official responsible for the inspection of these laws. ***The Committee requests the Government to provide information on the measures adopted to allow labour inspectors principally or partially covering the agricultural sector to be provided with appropriate allowances for their inspection visits and to be able to recover, where appropriate, any additional costs that they may have had to cover in the course of their work. If such measures have not yet been adopted, the Committee would be grateful if the Government would make up this shortcoming and provide relevant information and documentation, such as cost reimbursement forms.***

*Articles 16(2) and 20(c). Confidentiality of complaints.* The Committee notes that, according to the Government in its report on the Labour Inspection Convention, 1947 (No. 81), section 531 of the Labour Code and Dahir No. 1-58-008 of 24 February 1958 issuing the general conditions of service of the public service, as amended and supplemented, constitute an adequate legal basis for ensuring compliance by labour inspectors with the obligation of confidentiality in relation to complaints, as required by this provision of the Convention. However, the Committee observes that the texts referred to by the Government concern the general obligation of professional secrecy and discretion incumbent upon all officials, but that they do not explicitly establish the prohibition on giving any intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of a complaint. The recommendation made to labour inspectors in the *Methodological guide for inspections* to indicate, “according to circumstances”, the purpose of the visit and its desired cause would moreover appear to constitute a real obstacle to the protection of the authors of complaints against any risk of reprisals by the employer. It would be desirable for this recommendation only to be applied in specific circumstances, namely when inspections require the presence of the employer or his representative or the preparation of a workplace, the stoppage of machinery or equipment, in the case of inspections to verify the implementation of an earlier order or injunction, during information visits or those organized in the framework of a thematic campaign or as a result of an industrial accident or the notification of a case of occupational disease. Inspections carried out on the basis of a complaint should, in principle, in the same way as those that are planned (routine), be initiated and undertaken in full freedom by the labour inspector without having to indicate the purpose or inform the employer (or his representative). This is the essential condition for compliance by labour inspectors with the obligation of confidentiality set out in *Article 20(c)* of the Convention. ***The Committee requests the Government to take measures in the light of the above to ensure the freedom necessary for labour inspectors in the discharge of their functions during inspections so as to enable them to protect the authors of complaints from any risk of reprisals by the employer or his representative.***

*Articles 26 and 27. Information and statistical data necessary for the functioning of the labour inspection services and the publication of an annual report on the work of the inspection services in agriculture.* The Committee notes the recommendations in the *Methodological guide for inspections* concerning the register, data entries and files on workplaces and the information that has to be contained therein, such as their characteristics, the number of persons employed, etc. It cannot overemphasize the value of also including data, such as the distribution of the workforce by type of employment (managerial and administrative staff, manual workers), sex and age, as well as the presence of persons with disabilities. In

this respect, the Committee notes with *interest* the specific recommendation to inspectors in relation to monitoring the protection of certain categories of workers (pregnant women, young workers and workers exposed to risks).

The Committee also considers that information on the existence of trade unions and their representative nature would enable inspectors to make use of such organizations for the communication within agricultural undertakings of information designed to raise the awareness of men and women workers concerning matters related to legal provisions and occupational risks. *The Committee would be grateful if the Government would ensure that the annual report on the work of the inspection services, with a view to the establishment of the register of workplaces in the agricultural sector, contains information and statistics which enable the central authority to make an assessment that is as reliable as possible of the operation of the labour inspection system in agricultural undertakings with a view to identifying priorities for action and determining appropriate budgetary allocations in relation to the national situation. Such information, which must necessarily include the number of undertakings liable to inspection, is also useful to the Committee to enable it to assess the level of application of the Convention.*

*The Government is requested to indicate whether the annual assessment of the work of the labour inspection services in agriculture is published as an annual report, as provided for in Article 26 of the Convention. If so, please indicate any comments to which it may have given rise from occupational organizations of employers and workers. If it is not published in that form, please take measures for the publication of the document on a regular basis within the required time-limits.*

## Mozambique

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1977)

The Committee notes the detailed information provided by the Government in its report received in September 2009 and in its reply to the previous comments, which reached the Office more recently.

*New legislation to protect workers living with HIV/AIDS.* The Committee notes with *interest* the indication by the Government of the adoption of Act No. 12/2009 of 12 March 2009 respecting the rights and duties of persons living with the HIV/AIDS virus, which it indicates defines the necessary prevention, protection and treatment measures. According to the Government, this Act addresses the needs of the persons concerned for protection and makes it possible to combat their stigmatization and discrimination, in accordance with the provisions of article 79(1) of the National Constitution. While noting with *concern* the information suggesting a significant contamination rate among the personnel of the Ministry of Labour, the Committee however notes that measures have been adopted for the provision of information to public employees and to the public (distribution of condoms and medical treatment to public employees; widespread dissemination of Act No. 5/2002; and distribution of information and advisory pamphlets on medical treatment and nutrition) and that labour inspectors in the north of the country have received training in this field. The Committee also notes with *interest* that the Ministry has commenced, with ILO support, the revision of the labour inspection manual with a view to helping inspectors address issues related to HIV/AIDS at the workplace. *The Committee would be grateful if the Government would provide a copy of Act No. 12/2009 and any text issued thereunder and inform the ILO of the impact of the Act on the operation and results of labour inspection activities in workplaces liable to inspection.*

*The Government is also requested to provide information on any training provided to inspectors responsible for the application of the above Act (number of inspectors, subjects of the training, duration of courses, etc.), and to provide a copy of the revised manual for the use of inspectors, etc.*

*Articles 3(1), and 21(a), (b), (d), (e) and (f).* *Labour inspection staff; activities carried out during 2008 and their results.* The Committee notes with *interest* the efforts made by the Government to compile and communicate in its report detailed information on the activities of the labour inspectorate and their results, despite the inadequacy of the resources available and the distances involved.

*Inspection staff, workplaces inspected and workers covered.* The Committee observes that in 2008 the inspection staff, composed of 135 employees (inspectors, occupational safety and health experts, controllers, auditors and industrial relations experts) carried out inspections in 5,227 workplaces, thereby exceeding the number of inspections planned (106.49 per cent). According to the Government, these operations addressed compliance with the legislation on all aspects of labour and covered 169,330 workers, including 136,368 men and 25,471 women. A total of 1,187 of the workers concerned were engaged under fixed-term contracts, 11 were miners, 3,138 were national daily workers and 3,095 were foreign workers. The Committee notes with *interest* the level of detail of this information. *With reference to its general observation of 2009, in which it emphasized the need to maintain a register of workplaces liable to inspection as a tool for planning and evaluating inspection activities, the Committee would be grateful if the Government would take measures in cooperation with other Government bodies and institutions in possession of the relevant data with a view to establishing and updating such a register regularly, and if it would keep the ILO informed of the progress achieved in this respect and of any difficulties that may have been encountered.*

*Number of violations reported.* According to the Government, the inspection services reported 8,149 violations of the legislation, issued fines in 2,496 cases (or 30.62 per cent of cases) following written warnings, while 5,653 offences gave rise to warnings in the context of guidance and education activities. Furthermore, during these inspections, the

employment relationship of 325 foreign nationals was suspended on the grounds of illegality. The Committee wishes to recall in this respect that, in accordance with the spirit and letter of the Convention, the labour inspectorate should monitor legal provisions respecting conditions of work and the protection of workers, without considering the legal nature of the employment relationship or the status of the worker. ***The Committee invites the Government to see with reference to this question paragraphs 75 et seq. of its 2006 General Survey on labour inspection and to ensure that the labour inspection services are responsible for ensuring the recovery by workers whose employment relationship is suspended on the grounds of the illegality of their employment of the social entitlements acquired during their employment.***

***Occupational safety and health. Statistics of industrial accidents.*** The Committee notes that in 2008 the inspection services were notified of the occurrence of 416 industrial accidents, resulting in 13 deaths, 251 cases of temporary incapacity for work and 106 cases of permanent partial incapacity for work. ***The Committee requests the Government to indicate the measures adopted following the most serious accidents with a view to preventing their recurrence. In cases where such measures have not been taken, it would be grateful if the Government would facilitate collaboration between the inspection services, employers and workers (or their respective organizations) with a view to promoting an effective culture of prevention, particularly making use of the means advocated in Part II of the Labour Inspection Recommendation, 1947 (No. 81).***

***Articles 10(b), 11(1)(b) and (2), and 16.*** ***The Committee requests the Government to provide specific information on the equipment and transport facilities available to labour inspectors during the course of 2008 to carry out the programme of inspections, and to describe the measures adopted to ensure that workplaces are inspected as often and as thoroughly as necessary.***

***It would be grateful if the Government would also indicate the procedures for the reimbursement to labour inspectors of the expenses incurred in professional travel undertaken using their own vehicles.***

***Articles 20 and 21. Publication and communication to the ILO of an annual labour inspection report.*** The Committee notes with ***interest*** that the statistical data provided by the Government on the operation of the labour inspectorate in 2008 amounts to a substantial part of the information that should be contained in the annual report that has to be published in accordance with ***Article 20***. The information covers the issues set out in clauses (a) (laws and regulations), (b) (staff of the inspection services), (d) (statistics of inspection visits), (e) (statistics of violations and penalties imposed) and (f) (statistics of industrial accidents) of ***Article 21***. The Committee is bound to encourage the Government to pursue its efforts for the establishment and proper functioning of a system of reporting on inspection activities throughout the national territory, including statistics of workplaces liable to inspection and the number of workers employed therein (***clause (c)***) and statistics of occupational diseases (***clause (g)***). Such a system would make it possible for the central authority to publish an annual report reflecting the operation of the inspection services, their strengths and weaknesses and to determine priorities for action taking into account national possibilities and to make the corresponding budgetary forecasts. The access of employers, workers and their respective organizations to the information contained in the annual report would also enable them to express their opinions with a view to the progressive improvement of the inspection system. Furthermore, the communication of the annual report to the ILO would enable its supervisory bodies to follow on a firm basis the development of the inspection system and to provide support to the Government through their recommendations and advice with a view to the optimal application of the Convention. ***The Committee invites the Government to refer to Chapter IX of its General Survey with regard to the objectives pursued at both the national and international levels by the provisions of Articles 19, 20 and 21 of the Convention respecting reporting requirements, and requests it to indicate in its next report the measures adopted to give effect to them, the difficulties encountered and the solutions envisaged to overcome them.***

## Netherlands

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)***

Further to its previous observation, the Committee takes note of the Government's report containing information in reply to the issues raised by the National Federation of Christian Trade Unions (CNV) in September 2007, and the Netherlands Trade Union Confederation (FNV) in August 2007 on the new Act on Working Conditions. It also notes the attached unofficial translation of the Act on Working Conditions (Health and Safety), which came into force on 1 January 2007, and the communication by the FNV of further comments received in August 2009 and transmitted to the Government on 16 September 2009.

#### ***Impact of the European Framework Directive in the area of occupational safety and health with regard to the application of the Convention***

1. The Committee notes the replies provided by the Government to the comments previously made by the CNV, and the FNV on the new Act on Working Conditions. The Committee observes that these comments concerned in essence the difficulties that may arise in the application of the new Act which is based, according to the Government, on the following principles of the European Framework Directive in the area of occupational safety and health (OSH): no additional rules above European Union OSH regulations; legislation should only set aims to be achieved as concretely as possible but should not prescribe the means for achieving them; it is the responsibility of employers and employees to



determine how to achieve these aims; less rules and lower administrative burdens and less inspection pressure on companies. The FNV and CNV question the impact of the Act on the conditions of work in terms of: univocal application of the law; equal application of the law regardless of the relative weight of employers and workers' organizations at sector and company levels; the need for continuous improvement of applicable standards; the need to continue to protect workers against conditions of work that undermine their welfare, for instance, through discrimination; and the decline in the number of labour inspectors who will be called upon to verify the application of the Act. The Government replies in essence that the labour inspectorate, regardless of a recent reduction in its staff which is due to a general reduction of the number of civil servants, will be in charge of supervising the univocal and harmonious application of the prevention principles as a minimum and will ensure the continuous improvement of the applicable standards where necessary. It further indicates that prevention with regard to psycho-social aspects, such as working under psychological pressure, stress and violence, is one of the priorities of the labour inspectorate and refers to other legal provisions as concerns the protection against discrimination at work.

*The Committee requests the Government to provide information, including statistical data, on the application of the Act on Working Conditions and, in particular, the effect this Act may have on the prevention of occupational accidents and diseases, including psycho-social aspects and related diagnosis. It would also be grateful if the Government could communicate statistics on the staff of the labour inspection service disaggregated by sex and by area of competence (OSH, so-called working conditions, working hours, wages and illegal employment).*

2. The Committee also notes the Government's reply to the comments previously made by the Confederation of Netherlands Industry and Employers (VNO–NCW) according to which the so-called "Arie" regulation on working with dangerous substances is too complex and creates a heavy administrative burden. The Government indicates in this regard that the Ministry of Social Affairs and Employment has requested the Social Economic Council (SER) for advice on this regulation and was waiting for it. *The Committee would be grateful if the Government would keep the ILO informed of the content of the advice provided by the SER and of any measures taken in order to help the employers to cope with the new requirements set in the new regulation.*

3. *The Committee finally notes the latest comments made by the FNV in its communication dated 28 August 2009 as to the need for specific training to be provided to labour inspectors in the area of technical skills relating to nanotechnology risks and requests the Government to provide its reply thereto.*

The Committee is raising other points in a request addressed directly to the Government.

## Niger

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)**

The Committee takes note of the Government's report received on 19 November 2009.

*Need for a labour inspection audit for determining needs and their satisfaction with ILO support and international financial cooperation.* In its previous comments, the Committee had taken note of the report of the high-level fact-finding mission which was conducted from 10 to 20 January 2006 by the ILO further to the conclusions of the Committee on the Application of Standards of the ILC (May–June 2005), on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), and which was extended to issues of forced labour and slavery. The Committee had noted the need for an audit of the labour inspectorate to determine exactly the type and scope of the inspectorate's needs so that, once that had been carried out, the Government, with the support of the ILO and of other United Nations agencies and concerned donors, could endeavour to mobilize the necessary resources.

Referring to the conclusions of the ILO's high-level fact-finding mission report, where it was underlined that the labour inspectorate is desperately short of the necessary resources to carry out its various missions, in terms of both human resources and material resources, the Committee notes with *regret* that the Government is confined to indicating in its report that it endeavours to take all necessary measures for the audit to take place as soon as possible and that the Committee would be informed in this regard. It provides no specific information as to any relevant measures taken or envisaged.

*Therefore, the Committee is bound to urge once again the Government to take all necessary measures, in consultation with employers' and workers' organizations, with a view to assembling the logistical and substantive conditions for launching, under ILO auspices, an audit of the labour inspectorate permitting the progressive application of the Convention in accordance with national priorities and requirements.*

## Norway

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)**

*Articles 5(a), 10, 16, 17 and 18 of the Convention.* Increase in the number of labour inspectors and inspection activities. Collaboration of the labour inspection services with the authorities responsible for education and the judicial authorities. Further to its previous request concerning the geographical distribution of inspection staff, the Committee notes the detailed information provided by the Government in this respect. In particular, it notes with *satisfaction* that the

numbers of inspectors have increased from 277 in 2007 to 315 in 2008, which has resulted in a significant increase in the number of workplaces inspected.

The Committee also notes with *interest* that guidelines to ensure uniform practice in relation to violations of the legal provisions covered by the Convention are in force and that there has been a rise in the number of judicial decisions following reported violations as a result of the development of better cooperation between the labour inspectorate, the police and the judicial authorities.

While recognizing that the number of reported offences referred to the police has increased over the past five years, the Norwegian Confederation of Trade Unions (LO) nevertheless considers that the number is low in relation to the number of violations reported by the Government in its report on the application of the Occupational Cancer Convention, 1974 (No. 139). They consisted in particular of failure to comply with the obligation to train workers responsible for certain types of work or to provide personal protective equipment, reported on the occasion of an inspection campaign targeting particularly sensitive branches. The Committee noted in a comment addressed to the Government in 2009 that through appropriate training for labour inspectors, the Labour Inspection Authority has adopted measures to extend the supervision of health risks related to chemicals, and particularly carcinogenic substances and agents, with a view to improving the quality of supervision. The Government has also launched a major campaign in four different sectors with a view to raising competence levels and reducing the risks of infection due to solvents and risks of dermatological and respiratory problems among workers. Furthermore, in its report on Convention No. 139 received by the Office in January 2010, the Government reports significant progress in the field of prevention as reported by the labour inspectorate during a second verification campaign in workplaces in which violations had been identified.

*Article 14. Cooperation in the notification of industrial accidents and cases of occupational disease.* The Committee notes with *interest* in the Government's report relating to the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that the labour inspectorate has been able to cooperate in the establishment of an electronic hospital register of the accidents treated in all Norwegian hospitals, including a special module for the registration of industrial accidents. However, according to the Government, cases of occupational disease remain under-declared despite the obligation placed on medical practitioners to notify them to the labour inspectorate; nevertheless, the Committee notes with *interest* that the difficulties relating to the slowness of the manual processing of documents are being resolved through the collaboration of the labour inspectorate with the Norwegian Medical Association for the establishment of an electronic system of reporting based on the electronic patient journal and the secure electronic portal known as "Health Net". ***The Committee requests the Government to keep the ILO informed of any progress achieved in the communication to the labour inspectorate of data on industrial accidents and cases of occupational disease, the impact of this progress on activities for the prevention of occupational risks in workplaces and their results.***

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

*Article 19 of the Convention. Notification of industrial accidents and cases of occupational disease.* As in its observation on the Labour Inspection Convention, 1947 (No. 81), the Committee notes with *interest* the establishment of a hospital accident register with a view to the registration in an electronic database of all accidents treated in Norwegian hospitals. The labour inspectorate participated in this process with a view to the establishment of a special module for the recording of industrial accidents. The Committee particularly appreciates the organization of such collaboration with a view to improving the notification and prevention of industrial accidents. The Committee also notes that, according to the Government, cases of occupational disease are still under-declared despite the obligation for medical practitioners to notify them to the labour inspectorate. The Government explains this situation by the current notification procedure which involves a paper version, which is time-consuming for medical practitioners. The Committee notes with *interest* a project carried out in collaboration with the Norwegian Medical Association for the establishment of an electronic notification procedure based on the electronic patient journal and the secure electronic portal known as "Health Net". ***The Committee requests the Government to keep the ILO informed of any progress achieved in terms of the provision to the labour inspectorate of data on industrial accidents and cases of occupational disease, the impact of this progress on activities for the prevention of occupational risks in workplaces and their results.***

The Committee is raising other points in a request addressed directly to the Government.

## **Pakistan**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)**

The Committee notes the Government's report for the period covering June 2009 to May 2010 received at the ILO on 8 June 2010 which basically contains the same information as the Government's report sent to the ILO in 2007. The Committee equally notes the information contained in the report sent to the ILO by the Government in November 2008, as well as the observations made by the All Pakistan Federation of Trade Unions (APFTU) received on 16 March 2010 and the observations made by the Pakistan Workers Federation (PWF) received on 30 July 2010.

The Committee is well aware of the difficult situation the country is facing, due to the devastating impact of the recent flood. However, it would be grateful if the Government would provide information on the following points.

*Labour inspection policy and revision of labour law legislation.* According to the report sent by the Government in 2008, a new occupational safety and health bill, based on the approach in the 2006 document on labour inspection policy (LIP 2006) by the Ministry of Labour, Manpower and Overseas Pakistanis (MLMOP), was in the course of being drafted and was expected to be adopted by the end of 2010.

The LIP 2006 document foresees various measures such as the establishment of a central labour inspection authority; the establishment of a computerized register of enterprises; the improvement of material means allocated to labour inspectorates; the establishment of integrative inspections also referred to as “one inspector, one enterprise”; the strengthening of training of labour inspectors; the increase of preventive measures; the recruitment of qualified technical experts and specialists; the increase of protection for workers in the informal economy which constitute 80 per cent of the workforce of the country and which are not covered by labour legislation; the risk assessment of enterprises and workplaces among other things through self-declaration or self-reporting by enterprises and the involvement of private actors in inspection.

According to a 2010 document on labour policy (LP 2010) published on the website of the MLMOP, it is envisaged to revise and consolidate labour legislation, to establish a tripartite council on occupational safety and health (OSH) and tripartite monitoring committees at district, province and federal levels to monitor implementation of labour laws, particularly in the area of payment of wages, working environment and working time.

In relation to labour inspection policy, the Committee notes that, according to the APFTU, “The previous Government has imposed a ban on the inspection of industries by the Labour Department, Social Security Department and Old Age benefits officers, not allowing them to inspect any industrial workplaces or departments.” The trade union adds that: “Accordingly, the Government has given open hand to employers to do whatever they want. Due to this, the previous Government has also given permission to employers to get labour from children and child labour has therefore increased in Pakistan.”

***The Committee would be grateful if the Government would communicate any up-to-date documentation on national labour inspection policy and report on any steps taken to implement it.***

***Please provide information on any developments as regards the adoption of new labour law legislation and, if applicable, communicate a copy of any text thereof. Please also provide information on the intended establishment of the tripartite OSH council and the tripartite monitoring committees mentioned in the LP 2010 document and, if applicable, provide information on their activities and their impact on the operation and outcomes of labour inspection and provide a copy of any relevant document.***

***The Committee also requests the Government to make any comment deemed relevant on the issue raised by the APFTU.***

*Article 4 of the Convention. Supervision and control within the labour inspection system.* The Government referred in its 2008 report to a review of inspection procedures at the provincial level, focusing particularly on the provincial government of Punjab. It further indicated that inspection visits continue to be under the control of provincial authorities. It indicates in its last report that it is envisaged to establish a national labour inspectorate as the central inspection authority to serve as the focal point for the nation’s inspection activities. The Committee also notes in this regard that the PWF, like other trade unions in the past, regrets once more the persisting absence of a system for supervising application of the legislation in the provinces of Sindh and Punjab. ***The Committee would be grateful if the Government would provide the ILO with information on any steps taken following the abovementioned review of the inspection procedures in the provinces of the country.***

***Please provide detailed information on the structure and organization of the labour inspection system in Punjab and Sindh and on its functioning in practice and, if applicable, a copy of any relevant legal provisions.***

***Please also provide information as regards the establishment of a national inspection authority and, if applicable, a copy of any relevant legal provisions.***

***The Committee would be grateful if the Government would also make any comment deemed relevant on the points raised by the PWF.***

*Articles 20 and 21. Publication of annual inspection reports.* The Committee recalls that the last annual report has been communicated to the ILO in 1995. It would like to come back to the information contained in the 2006 LIP document which indicates the intention to eventually establish a computerized register of enterprises, by various means such as the conduct of awareness-raising campaigns concerning the registration of workplaces and enterprises, the adoption of penalties for the non-registration with the provincial labour inspectorates, the use of existing data (e.g. information available by tax authorities) and the intended collaboration with trade unions and employers’ organizations to this end. The Committee has underlined, in its 2009 general observation, the essential character of the availability of statistics on industrial and commercial workplaces liable to inspection and the number of workers employed therein (*Article 10(a)(i) and (ii) and Article 21(c)*) and the usefulness of the availability of this data for the determination of the budgetary needs for the determination of the appropriate number of labour inspectors, the necessary material resources for the discharge of their functions (*Articles 10, 11 and 16*) or the provision of training (*Article 7*). ***The Committee asks the Government to endeavour to implement the abovementioned measures and, if applicable, additional measures with a view to establish a register of enterprises. It further asks the Government to take the necessary steps to ensure that an***

*annual report on the matters set out in Article 21 of the Convention is published and sent to the ILO.* The Committee would like to draw the Government's attention to the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), which may serve as a basis for the disaggregation of the information required as well as to the possibility of ILO technical assistance for the establishment of annual inspection reports.

## Peru

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

The Committee notes the Government's detailed report received at the ILO on 2 September 2009, as well as the documents attached. It also notes the observations made by the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT) and the Autonomous Confederation of Workers of Peru (CATP), dated 31 July 2009 and 1 September 2009 respectively, on the application of the Convention, which the ILO sent to the Government on 16 November 2009. However, the Government has not provided any comments concerning the points raised.

*Article 6 of the Convention. Status and conditions of service of labour inspectors.* According to the CGTP, the CUT and the CATP, in several regions of the country, labour inspection staff do not benefit from the status and conditions of service guaranteed to other public officials (level of pay and career prospects in particular), which are such that they are assured of stability of employment and are independent of any change of government and any improper external influence. The trade unions indicate that 33 of the 181 labour inspectors are carrying out their duties under temporary administrative service contracts (CAS), even though the career system and the guarantee of job stability should apply to all inspectors under the relevant regulations. Noting these allegations, the Committee notes that sections 6 and 25 of General Labour Inspection Act No. 28806, read in conjunction with section 3 of Supreme Decree No. 021-2007-TR, are in full conformity with the requirements of *Article 6* of the Convention. Supreme Decree No. 037-2006-TR, which the trade union organizations emphasize may be amended on a discretionary basis by the Executive Authority, is not available to the ILO. The Committee nonetheless emphasizes that it is essential that the status, level of pay and career prospects of labour inspectors are such that they attract quality staff, retain them and protect them from any improper external influence. These conditions should not only be expressed in law on the basis of legal provisions, but should also be applied in practice. **The Committee therefore requests the Government to clarify the status and conditions of service of the staff carrying out labour inspection duties as defined in Article 3(1) of the Convention. It requests it, in any case, to take measures to ensure the full application in both law and practice of Article 6 of the Convention, and to keep the ILO duly informed in this regard.**

*Article 7(3). Training of labour inspectors.* According to the Government, in 2007, 1,394 persons, including inspectors carrying out labour inspection duties, as well as persons belonging to other groups (employers, workers, trade unions, administrative staff), were given various training (relating in particular to occupational safety and health, legislation, the safety and health management system and industrial relations) in the context of a training project promoted by USAID and MYPE Competitiva, with the aim of enabling labour inspectors to carry out their duties more effectively. The Committee notes that it is envisaged to continue and strengthen the training of labour inspectors, especially in matters relating to their new duties and in specific complex areas (freedom of association, outsourcing, forced labour, child labour). **The Committee would be grateful if the Government would provide further information on the content, frequency and duration of the training given to inspectors in the course of their employment, as well as on the exact number of inspectors concerned in each case.**

*Articles 10 and 11. Human resources, transport facilities and other means of action available to the labour inspection services.* With regard to the number of labour inspectors, the Committee notes that, according to the Government, the Regional Directorate of Labour and Employment Promotion of Lima was strengthened through the appointment of 100 additional inspectors in 2007. It was also envisaged to recruit 100 additional inspectors in 2008, to be deployed across the other regions taking into account the number of enterprises and the size of the economically active population, with the aim of recruiting 250 additional inspectors by 2011. The Committee notes that, according to the CGTP, the CUT and the CATP, labour inspectors usually have to wait around 45 days to be reimbursed for their travelling expenses. Furthermore, the amounts reimbursed do not correspond to the amounts actually spent and are instead calculated and granted on the basis of distance and limited to a maximum of four inspections per day. The Government acknowledges that the National Directorate of Labour Inspection (DNIT) does not have its own means of transport and that the four cars and six lorries allocated to it under Supreme Decree No. 002-2007 were made available to the headquarters of the Ministry of Labour and Employment Promotion, where they are used by the entire administration. The labour inspection services are therefore forced to call on other units or even use their employees' own private vehicles to carry out inspections in areas where access is difficult. The Government further points out the shortage of protective clothing required for occupational safety and health inspectors as well as measuring equipment required to assess the risks posed to the health of workers, and indicates that some national directorates do not have offices that are suitable for the performance of inspection duties (accessibility, guarantee of confidentiality, etc.). In the Government's view, the labour inspection budget should be increased to enable labour inspectors to carry out their duties more effectively. The Committee emphasizes that it is necessary that the needs to that end are expressed as precisely as possible by means of an

assessment detailing the labour inspectorate's current means and its results in relation to the number of workplaces covered (nature of activities, specific risks, geographical location, etc.) and the number and classes of workers employed therein. ***The Committee therefore requests the Government to take measures to carry out an assessment of the operation of the labour inspectorate and determine the human resources and material means that are necessary for its gradual improvement taking into account priority objectives. It requests it to keep the Office informed of any steps taken to that end and any progress made, as well as any difficulties encountered.***

*Articles 4, 15(c), 16 and 19. Planning and carrying out of inspections.* The Committee notes that, according to the CGTP, the CUT and the CATP, labour inspectors continue to act mainly in response to complaints and not according to a schedule of inspections that takes into account predetermined criteria and allows them to target the branches of activity most exposed to hazards to the health and safety of workers, the legal provisions most liable to violation and the most vulnerable categories of workers. According to the unions, inspections relating to occupational safety and health are rare and, in 2008, these inspections accounted for 6.28 per cent of the total inspections carried out, while the number of inspectors responsible for inspections in this area was reduced by 50 per cent. The unions draw particular attention to the high rate of fatal accidents affecting temporary workers and point out that inspections in the public sector are rare. The Committee recalls that, under *Article 16* of the Convention, workplaces should be inspected as often and as thoroughly as is necessary to ensure the application of the legal provisions enforceable by the labour inspectorate. Furthermore, it emphasizes that inspections give inspectors the opportunity to supply on-site technical information and advice to employers and workers (*Article 3(1)(b)*), particularly in matters relating to occupational safety and health, but also in other areas, and to make use of the broad powers of investigation defined in *Article 12(1)* to ensure the application of the relevant legal provisions. Furthermore, reiterating its 2008 direct request, the Committee once again stresses the need for the labour inspectorate to introduce a combination of different types of inspection (programmed, thematic, in response to a complaint) in order to cover as many workplaces as possible, but also to ensure the principle of confidentiality relating to complaints laid down in *Article 15(c)*. In paragraph 263 of its General Survey of 2006 on labour inspection, the Committee recommends a practice of unannounced visits on a regular basis as a means of observing this principle. According to the information contained in the inspectorate's 2007 annual report, 102,123 inspections seem to have targeted several branches of activity that are particularly sensitive with regard to safety and health, such as construction, home work, port work, oil companies, transport and mines. However, the Committee emphasizes that, in order to assess the coverage of the labour inspectorate, it requires not only the number of inspections carried out, but also the number of workplaces visited, and, above all, the number of workplaces liable to inspection across the country. The latter figure is particularly important for the planning of inspection activities. The Committee notes with *interest* the Government's indication in its report that it is envisaged to ensure that, in future, the labour inspectorate develops a proactive approach based on information obtained in collaboration with the tax administration. It also notes with *interest*, with reference to its general observation of 2009 concerning the inter-institutional cooperation required for the establishment of a register of workplaces, that the labour inspectorate plans to establish broad cooperation with the National Superintendence of Tax Administration (SUNAT), the National Superintendence of Public Registries (SUNARP), the National Registry of Identification and Civil Status (RENIEC), the social security bodies (EsSalud), as well as the Public Sector Pension Fund (ONP) in order to implement the labour inspectorate's integrated computer system (SIIT). It hopes that this will result in a mapping of workplaces which will allow the central labour inspection authority, established under Act No. 28806 on labour inspection, to draw up an appropriate schedule of inspections.

***The Committee requests the Government to provide the ILO with its opinion concerning the inadequate coverage of the labour inspectorate with regard to occupational safety and health, as well as information concerning any measures taken to give effect to the above Articles of the Convention.***

*Articles 12(1)(a) and (c), and 15(c). Scope of the principle of the right of free entry of labour inspectors to workplaces liable to inspection.* The Committee notes that, according to the Government, steps have been taken to bring the legislation into conformity with the above provisions of the Convention. However, it notes that, under section 8 of Supreme Decree No. 019-2007-TR amending Act No. 28806 on labour inspection, labour inspectors are authorized, where there is a threat to the life or safety of the workers, to carry out inspections on their own initiative without a prior mission order but that subsequent approval is required to validate the inspection. Consequently, it seems that labour inspectors still do not enjoy the right of free access to workplaces, as defined by *Article 12(1)*. The Committee is therefore bound to emphasize once again that it is essential that labour inspections are not subject to any authorization. Furthermore, the requirement of a mission order containing a description of the purpose of the inspection constitutes an obstacle to the guarantee by inspectors of confidentiality concerning the source of the complaint and the link between the inspection and a complaint (*Article 15(c)*). ***Recalling that it has been commenting on the right of labour inspectors to enter freely any workplace liable to inspection for several years (2001, 2004, 2006, 2008), the Committee requests the Government to take measures as soon as possible to bring the legislation and practice into conformity with the Convention on this point, in particular through the repeal of the legal provisions which make inspection visits dependant on an order issued by a higher authority, as well as those providing that the scope and purpose of inspections must be established in advance for all inspection visits. The Committee requests it to provide information in its next report concerning these measures and to provide a copy of any relevant text.***

*Articles 20 and 21.* Noting with *interest*, following its repeated requests, the provision of a report on the work of the labour inspectorate for 2007, the Committee draws the Government's attention to the useful guidance contained in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), concerning the manner in which the information required by *Article 21(a)–(g)* could be presented and would be grateful if it would take the necessary measures to ensure that an annual report containing the information set out in these provisions is published and communicated to the ILO in the near future.

## Portugal

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

*Articles 3(1)(a) and (b), 17 and 18 of the Convention. Distribution of inspection activities between the objectives of prevention and enforcement.* Further to its previous comment concerning the observations made by the Confederation of Portuguese Industry (CIP), the Confederation of Trade and Services of Portugal (CCSP), the Portuguese Confederation of Tourism (CTP), the General Confederation of Portuguese Workers – National Trade Unions (CGTP–IN) and the General Workers' Union (UGT) concerning the priorities to be given to labour inspection activities, the Committee notes the Government's indication to the effect that a project for the creation and development of a new website was launched on 12 May 2008. This new site for the Authority for Conditions of Work (ACT) includes the preparation of new explanatory files and the restructuring of the format. In a communication received on 14 September 2009, the UGT repeats its observations and indicates that combating fraud and violations of the legislation must be a priority and the inspection services must be reinforced accordingly. ***The Committee requests the Government to send any comments that it may wish to make in reply to the observations from the UGT and to supply any relevant information concerning the development of the abovementioned website.***

*Article 5(a). Effective cooperation between the inspection services and other government services.* The Committee notes with *interest* the indication to the effect that as regards effective cooperation between the inspection services and other government services and, in particular, judicial bodies, the courts inform the ACT of the judgments and other decisions that they issue. In this respect, the Committee notes the numerous court decisions attached to the Government's report. Some decisions are analysed by the ACT services with a view to a possible review not only of the evaluation criteria used in cases of infringement but also of the inspection procedures themselves. The law enables the courts to have recourse to the ACT when they consider that to be useful for resolving a matter and taking an appropriate decision, and a member of the labour inspection staff may attend hearings in this context. In this regard, Act No. 101 of 12 May 2009 approving the procedure applicable to employment relations and social security strengthens the participation of the ACT in judicial procedures. ***The Committee requests the Government to continue to supply copies of relevant court decisions as well as any information concerning the strengthening of effective cooperation between the inspection services and other government services, in particular, the judicial bodies.***

*Article 7. Strengthening the inspection services. Adequate training.* In its abovementioned communication the CIP indicates that the ACT should focus on education and information rather than enforcement. As regards strengthening the inspection services, particularly through training, the Committee notes that in 2007 the ACT established 32 programmes of further vocational training. Two training courses were concerned with the computerized system for registering labour inspection activities, another training course was concerned with digital tachographs in road transport, and 13 courses were concerned with occupational safety and health. The remaining courses mainly dealt with machinery and equipment (4), manual handling of loads (4), safety in the construction industry (3), road transport (4) and the prevention of electrical risks. In 2008, a total of 46 programmes were established, including six on the computerized system for the registration of labour inspection activities, four on road transport, two on the participation of minors in performances and other artistic activities, four on temporary work and four on occupational safety and health in agriculture and forestry. The remaining courses mainly dealt with the manual handling of loads (7), machinery and equipment (3), undeclared work and other forms of illegal work (4), exposure to asbestos at work (4), physical hazards (4) and chemical hazards (4). ***The Committee requests the Government to continue to supply information on any measure or initiative for strengthening the inspection services. It also requests the Government to indicate the impact, if any, of the training given on inspectors' working methods and their capacity for detecting infringements of the labour legislation.***

*Articles 10 and 16. Numbers of inspection staff and inspection visits.* The Committee notes the new observations made by the CIP and UGT concerning numbers of inspection staff and inspection visits. The CIP indicates that, according to the information available on this subject, the number of inspections increased between 2003 and 2007 (from 40,083 to 60,989) and then decreased between 2007 and 2008 (from 65,284 to 60,989). The number of fatal and non-fatal industrial accidents also decreased. The UGT reiterates that the inspection services must be reinforced in order to make them more effective. During the tripartite discussions which took place concerning a new system of labour relations, the UGT indicated its wish to see the commitment to strengthen the effectiveness of the labour legislation made a reality, declaring that the making of this commitment was an essential prerequisite for the conclusion of any agreement. The union emphasizes that the Government has kept its promise to boost staff numbers by employing a total of 400 inspectors by the end of 2009 and guaranteeing an increase in the future in order to maintain staffing levels, as well as undertaking to

increase the number of technicians and/or administrative staff by recruiting at least 50 persons per year in 2009, 2010 and 2011. The UGT hopes that the expected staff recruitment will indeed take place in line with the agreement concluded. In this respect the Committee notes the information supplied by the Government to the effect that, as at 31 December 2008, the ACT comprised 311 labour inspectors, including 39 with managerial and supervisory duties and eight performing their work within other structures. A notice of 19 July 2007 announced the opening of an external competition for entry to occupational training with a view to taking up a post as labour inspector. Accordingly, 150 trainees were admitted to the inspectorate on 11 May 2009, thereby increasing the number of serving inspectors. ***The Committee requests the Government to continue to supply information on any measure or initiative taken with a view to strengthening the numbers of labour inspectors. It also requests the Government to supply up-to-date information on the number of inspectors, trainees, technicians and administrative staff currently in service.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1983)***

The Committee notes the Government's report received by the ILO on 14 September 2009.

*Articles 6(1)(a) and (b), and 22–24 of the Convention. Inspection activities in relation to prevention, prosecution and penalties for infringements.* Further to its previous comments on this point, the Committee requests the Government to refer to its observation made in connection with Article 3(1)(a) and (b) and Articles 17 and 18 of the Labour Inspection Convention, 1947 (No. 81). The Committee further notes the observations made by the General Union of Workers (UGT) received on 14 September 2009 and attached to the Government's report, which reiterate, as in 2005 and 2007, that the situation in agriculture does not appear to have changed. There is still a large number of small agricultural enterprises, especially family enterprises, and this makes the task of enforcement difficult. Whatever the action taken, it still remains inadequate in a sector as specific as agriculture. In this regard the Committee notes the information contained in the annual report on the work of the Authority for Conditions of Work (ACT) for 2008, which contains some information on this sector. The Government indicates that 98 inspections in relation to safety and health were conducted in agriculture, giving rise to 15 reports of infringements. The annual report also indicates that 7.5 per cent of fatal accidents took place in agriculture.

As regards enforcement and prevention measures taken by the labour inspectorate in agriculture, particularly pursuant to EU occupational safety and health strategies, the Committee notes that the strategy adopted at national level is principally concerned with: (1) the coherence and effectiveness of public policies, resulting from the linkage which exists between the various departments of the administration; and (2) the promotion of safety and health in the workplace. According to the Government, the task of the labour inspectorate is very general and mainly covers two essential areas, namely occupational safety and health and industrial relations. However, another task of the labour inspectorate is to promote and enforce the application of laws which transpose the provisions of EU directives into the national legislation. The Committee notes that in 2007 a plan to promote decent work and a reduction in occupational accidents and diseases was established with a focus on the sectors where the mortality rate is particularly high, including agriculture. The plan established for 2008–10 provides for action by the labour inspectorate in the areas of risk evaluation and prevention and the promotion of occupational safety and health, particularly in small enterprises. This plan also includes inspections in agriculture. These entail prevention and enforcement of the occupational safety and health provisions in this sector and also relate to plant and equipment, movement of persons, exposure of workers to risks arising from chemical and biological agents, information for and training of workers, and responsibility in the event of industrial accidents. While noting this information, the Committee notes that the report on the work of the ACT for 2008 only contains very general information with regard to agriculture, which still focuses on occupational safety and health without taking account of the other areas which should be covered by enforcement and prevention. ***In view of the specific features of this sector, the Committee again requests the Government to supply more detailed information in this area, and to ensure that information on enforcement and prevention activities appear in a distinct manner in the annual report.***

*Articles 9(3) and 14. Reinforcement of inspection staff numbers and training in agriculture.* As regards the content of the training given in 2005 and 2006, the Committee notes that the objective of this training was to enable labour inspectors to identify the main occupational hazards and preventive measures to be taken and also to use inspection service procedures while taking account of the specific features of the agricultural sector. The Committee notes that in 2008 other training was given with the same objectives in the forestry and stock-rearing sectors. This training was mainly concerned with the risks arising from the use of equipment, forestry operations, the use of pesticides and other chemical products, treatment of animals, handling and storage of waste and of cereals and fodder. The training programme also included preparedness for situations involving serious and imminent danger, the identification of risk prevention measures with reference to the applicable legislation, and the preparation, implementation and expansion of inspections in this regard.

As regards inspection staff, the Committee refers to its observation made in connection with Articles 10 and 16 of Convention No. 81. ***The Committee requests the Government to keep the Office informed of any new measures or initiatives taken or contemplated for reinforcing the inspection services in agriculture. It also requests the Government***

*to supply information on the impact of the abovementioned training on the working methods of inspectors and their capacity for detecting infringements and preventing accidents.*

*Article 27. Content of the annual inspection report.* The Committee notes that, according to the annual report of the ACT, 615 inspections were conducted in 2008 in 564 undertakings, resulting in 57 cautions and 181 reports of infringements, which differ from the figures quoted above. As regards the regions of the Azores and Madeira, the Committee notes that the report on inspection activities in the Azores does not contain any information on the agricultural sector and that the report on inspection activities in Madeira will be sent in due course. ***The Committee requests the Government to supply detailed statistics on the inspection activities of the ACT in agriculture on the mainland and also in the regions of the Azores and Madeira. It also requests the Government to indicate the reasons for the difference between the figures supplied by the Government in its report and those contained in the annual report of the ACT for 2008.***

## **Qatar**

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)***

The Committee notes the Government's report, received in the ILO on 2 September 2009, in reply to its previous comments and the attached statistics on labour inspection.

*Articles 5(a) and 21(e) of the Convention. Effective cooperation between the labour inspectorate and the justice system.* With reference to its general observation of 2007 in which it emphasized the value of effective cooperation between the labour inspectorate and the judiciary, the Committee notes that, according to the Government, such cooperation is carried out through an exchange of information, statistics and other data between the inspectorate and the High Judicial Council. However, the Government does not provide examples of the precise purpose and the manner in which the information exchanged is used. The Committee nevertheless notes that it is planned to establish a system for the registration of Court rulings, which would be accessible to the labour inspectorate.

While noting the provision of certain statistical data on the prosecutions initiated by the labour inspectorate as a result of workers' complaints in 2006 and 2007, the Committee however notes that the data provided does not allow for any analysis, as elementary details are missing, such as the subject of the complaints, the legal provisions concerned and the nature of the court rulings. For example, an indication is provided that 415 of the 1,260 prosecutions referred to the courts in 2007 were set aside, without any explanation of the grounds for their dismissal. To be analysed and exploited, statistics should reflect an object and precise results. Analysis of the statistics on prosecutions following labour inspections should make it possible to verify whether they are mainly targeted at conditions of work and the protection of workers while engaged in their work, as envisaged by *Article 3(1)(a)*, of the Convention, determine whether their dismissal was due to procedural errors attributable to labour inspectors, in which case measures would need to be taken to provide relevant training to the latter, and to ensure that court rulings correspond to the objectives of labour inspection and, if this is not the case, to develop measures to raise the awareness of magistrates concerning the importance of the socio-economic role of labour inspection. ***The Committee therefore requests the Government to take measures to establish cooperation between the labour inspection services and the judiciary so as to improve the effectiveness and credibility of labour inspection and allow publication in the annual inspection report of informative statistics and information on the impact of these activities. The Committee would be grateful if the Government would keep the ILO informed of any progress in this regard.***

*Article 12(1). Extent of the right of labour inspectors to enter freely premises and workplaces liable to inspection.* In its previous comment, the Committee emphasized, as it did in paragraph 267 of its 2006 General Survey on labour inspection, that the fact that "the instruments provide that inspectors should be authorized to enter workplaces without previous notice does not mean that, where deemed useful or necessary by the inspector, the employer or his or her representative cannot be informed of the time and purpose of the inspection". ***The Committee hopes that the Government will review its viewpoint on the meaning and scope of Article 12(1), of the Convention and accordingly take measures to amend section 7 of Ministerial Order No. 13 of 2005 in order to bring the legislation into conformity with the spirit and letter of the Convention on this point and that, while being authorized to carry out inspections freely and without notice, labour inspectors will also be able to inform the employer of their inspection or its purpose where they consider that such notification is useful or necessary for the effective supervision envisaged.***

*Article 15(c). Obligation to treat as confidential the existence of a complaint.* ***While noting the legal provisions ensuring compliance by labour inspectors with the obligation of confidentiality in relation to the author of a complaint giving rise to an inspection, the Committee wishes to emphasize once again that the Government should ensure that these provisions are supplemented so that where, during an inspection carried out in response to a complaint, the inspector may decide not to inform the employer or his representative of the existence of such a complaint and proceed to carry out an investigation of the complaint in full discretion.*** Such a provision would have the effect of ensuring the protection of those lodging complaints by any reprisals from the employer or his representative.

*Articles 14 and 21(f) and (g). Notification and statistics of industrial accidents and cases of occupational disease and the prevention of their recurrence.* The Committee notes with ***interest*** that statistics of industrial accidents which



occurred in 2008 are presented under the nationality of the victims, age group, cause, part of the body injured and resulting incapacity rate.

However, it observes that no information is provided with regard to cases of occupational diseases.

*The Committee would be grateful if the Government would indicate the objective that is pursued through the criteria for the statistical identification of victims and of the factors of industrial accidents, with an indication of whether, and in what manner, such an objective is achieved.*

*The Committee also requests the Government to provide the statistics that are available of cases of occupational diseases and to ensure that such statistics are included in the annual labour inspection report and are used with a view to developing a relevant prevention policy. It would be grateful if the Government would provide information in its next report on any progress achieved in this respect and on any measures adopted to ensure the follow up of cases of occupational diseases among migrant workers, who make up the majority of the workforce engaged in workplaces liable to inspection.*

*Articles 20 and 21. Publication and content of the annual labour inspection report.* While taking due note of the brief statistical data provided by the Government in the annex to its report, the Committee wishes to recall the importance that it attaches to compliance with the obligation of the publication and communication by the central inspection authority, within the time limits set out in *Article 20*, of an annual report containing useful information on each of the items covered by *Article 21*. Indeed, assessment of the level of application of the Convention is only possible where, in addition to legislative information, the Committee also has access to precise information on the application of the legislation in practice. Presented as suggested in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), (inspection staff, workplaces liable to inspection, persons employed therein, statistics of inspection visits, violations, penalties imposed, industrial accidents and occupational diseases), such information would also shed light on the operation of the labour inspection system in relation to the requirements of the Convention and would enable the central authority to determine priorities for action and the corresponding resources. *With reference to its general observation of 2009 concerning the importance of establishing and updating a register of workplaces liable to labour inspection, containing information on the number and categories of workers employed therein (Article 21(c)), the Committee particularly requests the Government to ensure that measures are taken to ensure that the annual report contains such information which is indispensable for assessing the effective coverage of the inspection system in relation to the industrial and commercial workplaces liable to inspection. It would be grateful if the Government would provide information on any progress achieved in this respect.*

*The Committee requests the Government to ensure that, in any case, the central labour inspection authority publishes and communicates to the ILO, within the time limits set out in Article 20, a report on the activities undertaken by the services placed under its control and supervision, containing the information required by Article 21, and presented in so far as possible as indicated in Paragraph 9 of Recommendation No. 81.*

## Rwanda

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1980)**

*Articles 1, 4, 6, 7, 10, 11, 16, 19, 20 and 21 of the Convention.* *Application of the Convention in the framework of the decentralization of labour inspection.* The Committee takes note of Act No. 13/2009 of 27 May 2009 on regulating labour in Rwanda which contains provisions on the functions and powers of labour inspectors.

In its previous comments, the Committee expressed concern at the risk of weakening the labour inspection system following the decentralization of its functions and responsibilities as long as the decentralization was not accompanied by the transfer of corresponding resources, as well as by measures ensuring equal protection for the workers concerned throughout the territory.

The Committee notes that according to the Government's report: (i) the state budget for labour inspectors has been decentralized at district level and is now determined at that level; (ii) labour inspectors at district level, currently in the number of one inspector per district, are placed under the supervision of the prefect or the mayor; (iii) the labour inspectorate is to remain "dependent" on the Labour Directorate at national level (section 157 of Act No. 13/2009) which is in fact composed of a single National Labour Inspector and has an obligation to assist labour inspectors through capacity building, technical supervision, training, transport, logistical facilities and communication; and (iv) the recruitment of labour inspectors is to take place at district level.

The Committee observes once again with **concern** that such a reform contravenes seriously the requirements of the Convention, in particular with regard to important provisions such as *Articles 1, 4, 19, 20 and 21*, since in each district a single labour inspector is placed under a local authority which does not have the specific competence necessary to supervise technically or ethically the performance of labour inspection activities.

With regard to *Articles 10 and 11* of the Convention relating to human resources and material means to allow an efficient functioning of the labour inspection system, the Committee once again recalls that according to paragraph 140 of the 2006 General Survey, the decentralization of the labour inspection system (in the form of the designation of a central authority in each constituent unit of a federal State) may be acceptable under *Article 4* only if these units have the

budgetary resources necessary for implementing the functions of the labour inspectorate within their respective jurisdictions. In this case, the decentralization of labour inspection means its dismantlement as it happens in the framework of a situation characterized by a general and chronic inadequacy of resources, with the risk that available resources differ substantially from one province to another, thus influencing not only the volume and quality of inspection activities, but also the ability of inspectors and local inspection offices to fulfil their obligations to report to the Minister, as envisaged in *Article 19*, so as to allow for the exercise of his/her prerogatives in respect of supervision for the purposes of a general assessment through the annual report requested by *Articles 20 and 21*. Finally, any instruction of a policy or technical nature addressed by the Minister of Labour to the provincial labour inspectors with a view, among other things, to ensuring consistency among provinces, strongly risks remaining a dead letter in case the budget allocated to labour inspection depends on the decision of the local prefect or mayor.

The Committee also emphasizes that the provision of adequate budgetary resources is essential to ensuring that inspection staff is composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences (*Article 6*).

***The Committee requests the Government to take all necessary measures without delay for the establishment of a functioning system of labour inspection placed under the control of a central authority and endowed with resources determined on the basis of a needs assessment (number and geographical distribution of workplaces liable to labour inspection, numbers of the workforce occupied therein, major branches of activities, etc.) in the framework of the national budget and, where needed, by recourse to external cooperation. The Committee requests the Government to report in detail to the ILO on the measures taken or envisaged in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

## Sao Tome and Principe

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 14 of the Convention. Information on industrial accidents and cases of occupational disease.* The Committee notes the Government's commitment, in response to its previous comments, to making every possible effort to ensure that the labour inspectorate is informed of industrial accidents and occupational diseases. ***It asks the Government to provide in its next report information on the procedures introduced and the specific measures taken to this effect.***

*Articles 19, 20 and 21. Inspection activity reports.* Further to its previous comments, the Committee notes that the Government has not provided any information on measures taken to ensure the publication and communication to the ILO of an annual report on the work of the labour inspectorate. ***It therefore asks the Government to take, in the very near future and with ILO technical assistance if necessary, measures to ensure that the central inspection authority fulfils its obligations under Articles 20 and 21, on the basis of regular inspection reports submitted to it, in accordance with Article 19, by the services under its control. The Committee asks the Government to keep the Office informed of any progress made in this respect and to provide in its next report any available information on inspection visits carried out during the period covered and on the results of these visits (including, in particular, details of the number and categories of inspected establishments, the contraventions reported, the measures prescribed, and the penalties imposed and effectively enforced).***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Saudi Arabia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)**

The Committee takes note of the Government's report and its annexes, received on 18 September 2009, including the annual report of the work of the labour inspectorate for the period 2008–09.

*Article 21 of the Convention. Content of the annual labour inspection report.* The Committee notes with *interest* that the provisions of the Labour Law promulgated by Royal Decree No. M/51 dated 23 *Sha'ban* 1426 (27 September 2005) and published in 2006, relating to work inspection (sections 194–209), are in full compliance, in particular, with the spirit and the letter of the provisions of *Articles 3, 4, 6, 7, 9, 12, 13, 14, 15, 17, 18, 19 and 21* of the Convention. However, the Committee remarks that the annual report on the work of the labour inspectorate still does not contain statistics on specific violations committed and penalties imposed (*Article 21(e)*), despite the relevant provision of section 206(5) of the Labour Law. Such information is essential to allow an assessment of the level of compliance with the Convention, as it is designed to indicate whether the labour inspection activities mainly focus on the enforcement of the legal provisions pertaining to conditions of work and the protection of workers while engaged in their work, as provided for by *Articles 2 and 3* of the Convention. According to a summary of the annual report on the achievement of the labour inspection for 1430H (2009), published via the Government's web site, the majority of the violations reported related to sections 25, 33, 36 and 38 of the Labour Law, especially with regard to employment, use of expatriate workers by their employers in professions different from the ones specified in their work permits, use of expatriate workers by another employer than the

one indicated in their work permit, delay of payment of salaries, absence of by-law in the enterprises, non-recruitment of Saudi nationals in the positions foreseen in the law or non-application of the rules on occupational safety and health. It is also indicated that the labour inspectors participate in the inspection activities, along with other government agencies such as the special committees entrusted with verifying the employment of Saudi nationals in certain activities and professions, or other committees entrusted with the improvement of certain aspects of the labour market. This seems to indicate that relevant data are available and could be included in the annual report as provided by section 206(3) of the Labour law, in line with *Article 21(e)* of the Convention. **Accordingly, the Committee asks the Government once again to make every endeavour to ensure that the annual report on the work of the labour inspectorate contains detailed statistics on the violations committed and the penalties imposed, according to the guidance provided in part IV of the Labour Inspection Recommendation, 1947 (No. 81).**

**Also referring to its General Observation of 2009, the Committee would be grateful if the Government would take the steps necessary to ensure that statistics of workplaces liable to labour inspection and the number of the workers employed therein (Article 21(c)) are included in the annual report, so as to allow for an assessment of the coverage of the labour inspection services throughout the whole country.**

The Committee is raising other points in a request addressed directly to the Government.

## Senegal

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes the observations made by the National Federation of Independent Trade Unions of Senegal (UNAS) on the application of this Convention, received by the ILO on 2 June 2010.

**Strengthening of the labour inspection system through the creation of a medical labour inspection service.** Further to its previous comments in which it noted that a medical labour inspection service had been institutionalized by Decree No. 2006-1253 of 15 November 2006, the Committee notes that this body has still not been set up. **The Committee would be grateful if the Government would indicate the reasons for the delay in implementing the text creating a medical labour inspection service and keep the Office informed of any concrete measures taken to give effect to that text.**

*Article 13(2)(b), of the Convention. Measures with immediate executory force in the event of imminent danger to the health or safety of the workers.* In its previous comments, the Committee noted the need to revise the legislation to give full effect to *Article 13(2)(b)*, of the Convention. It notes that, according to the Government, Decree No. 2006-1253 of 15 November 2006 does not prevent labour inspectors from adopting measures with immediate executory force in the event of imminent danger to the health or safety of the workers, including where no violation has taken place. Referring in this regard to sections 6-11 (concerning enforcement orders) and sections 18-22 (concerning urgent procedures and work stoppages) of that Decree, the Government states that inspectors have the power to adopt such measures regardless of the type of activity carried out by the enterprise concerned, but that it is nonetheless considering updating the Decree. However, the Committee notes that the labour inspector may apply to the judge for an urgent procedure under section 18 only in cases where a worker's physical integrity might be seriously undermined as a result of a failure to observe the occupational safety and health legal provisions and regulations. Furthermore, under sections 19 and 20 of the same Decree, the labour inspector may order a work stoppage in the event of a serious and imminent danger resulting from a shortcoming in or failure of protection only in the case of establishments in which the staff are involved in construction work, public works or any other works on buildings, and only where the situation constitutes a violation of the legal provisions in force. The Committee is bound to emphasize that, in accordance with the letter and spirit of *Article 13(2)(b)*, of the Convention, the exercise of this power should not be subject to any distinction based on the type of activity or work concerned. It requests the Government to refer to paragraph 112 of its 2006 General Survey on labour inspection.

**The Committee therefore requests the Government once again to take steps to amend the legislation so that it is in full conformity with Article 13(2)(b), of the Convention, according to which labour inspectors should be able to order or recommend measures with immediate executory force in the event of imminent danger to the health or safety of the workers, regardless of the branch of activity, the type of work carried out and whether or not there has been a violation of the legal provisions or regulations.**

*Articles 18 and 21(e) of the Convention. Adequate nature and effective enforcement of penalties for violations.* The Committee notes the figures on the action taken by labour inspectors (written observations (154), enforcement orders (20), reports (0), interruption of works (0) and urgent procedures (0)). It notes that the period covered is not indicated, which makes it impossible to assess the volume of activity of the inspection services over time or the type of violations reported. Furthermore, these figures are of no use in determining the action taken with a view to improving the level of application of the relevant legislation. The Government's indication that four enforcement orders were issued in 2008 provides no further clarification and is not accompanied by any information establishing that penalties were imposed on the persons responsible for the violations reported. The Committee notes with **concern** that, according to the Government, no measures to update the scale of penalties are envisaged and that the only text applicable in this regard is Decree No. 62-017 PC/MFPT/DGTSS/TMO of 22 January 1962. **Further to its previous comments concerning the need to ensure the dissuasive nature of the penalties, the Committee requests the Government to refer to paragraphs 291-306 of the abovementioned General Survey and to take measures as a matter of urgency to ensure the establishment of an**

*effective system of penalties taking into account the nature and seriousness of the violation committed, as well as, according to the circumstances, the employer's general attitude towards its legal obligations. The Committee requests the Government to describe the measures taken and to provide the most detailed figures possible on the violations reported, the measures implemented by labour inspectors and their impact in relation to the application of the legislation and occupational safety and health requirements.*

*Article 5(a). Cooperation between the labour inspection services and the justice system.* The Committee notes that, according to the Government, the cooperation between the labour inspection system and the judicial system is in the process of being strengthened with a view to improving the processing of cases. The Government mentions, however, the difficulties encountered by the inspection services in accessing the registration system for court decisions, but points out that, in response to the Committee's 2007 general observation, educational and informative training has been provided for labour inspectors and judges with a view to increasing awareness of the cooperation between the systems.

The Committee notes with *regret* that the information provided by the Government remains vague with regard to the content of the training and insufficient for the purpose of making any assessment of the impact of the measures taken. Furthermore, it is not even indicated whether measures aimed at facilitating access to court decisions by the labour inspectorate are envisaged.

*Referring to its 2007 general observation, the Committee requests the Government to provide detailed information on the measures implemented to promote effective cooperation between the labour inspection services and the justice system, as well as on the impact of these measures in terms of court decisions.*

*Articles 6, 7, 10 and 11. Labour inspectorate staff, status and qualifications; means available for carrying out inspection duties.* The Committee notes that the labour inspectorate is currently staffed by 57 inspectors and 63 controllers covering the entire country. The Government indicates in its report that the pay and career prospects of inspectors is a matter under consideration. According to the UNSAS, the working conditions of labour inspectors and controllers are clearly inadequate in view of the duties that they are required to carry out and they lack the necessary means of transport to carry out regular inspections of establishments. *The Committee requests the Government to keep the ILO informed of the process of adopting the status and conditions of service of labour inspectors, as well as of any measures taken in this regard. It would be grateful if the Government would in any case take measures to ensure that the functions of labour inspector and controller are sufficiently appealing to attract and retain qualified persons within the inspection services and that the conditions of service of inspection staff are at least equivalent to those applicable to other categories of public officials with comparable duties and responsibilities, such as finance and tax inspectors.*

*The Committee also requests the Government to take the necessary measures to ensure that labour inspectors and controllers have the material resources and transport facilities required to carry out their duties and to keep the Office informed of any progress made in this regard, as well as any difficulties encountered.*

*Article 12(1)(a) and (2). Investigation powers of inspectors.* In this regard, the Government refers to its reply contained in its previous report. The Committee is therefore bound to repeat its previous comments as follows:

The Government specifies in its report that, in both law and practice, labour inspectors and controllers are entitled to enter freely any workplace liable to inspection at any hour of the day and night, irrespective of whether or not collective work is being carried out there, as their right to enter an establishment does not depend on the nature of its work. However, according to section L.197(1) and (2) of the Labour Code, "labour and social security inspectors shall be authorized to enter freely, at any hour of the day, any workplace liable to inspection ... " and "at night, in premises where collective work is being carried out". *The Committee therefore feels bound to request the Government once again to take the necessary measures to bring the labour legislation into conformity with Article 12(1)(a), of the Convention, to ensure that inspectors might freely enter establishments liable to inspection, irrespective of their type of activity, and not only during the day but also at night.*

In its previous comments, the Committee had also requested the Government to amend section L.197(1), *in fine*, which states that "the head of the enterprise or establishment, or his representative, may accompany the labour and social security inspector during the inspection", because it hinders the freedom of action to which the inspector should be entitled during his visit. While noting the Government's comments that the fact of being accompanied during an inspection by the employer or his representative is a legal option open to the labour inspectors and controllers, the Committee nevertheless points out that the actual wording of this section of the Labour Code gives the choice to the employer (or his representative) and not to the inspector, although it should be for the inspector to decide whether or not to be accompanied during his visit in the exercise of his duties, as prescribed by the Convention. *The Committee therefore requests the Government once again to take the necessary measures to amend the Labour Code so that the labour inspector might be authorized to decide whether the employer should accompany him on his visit or not, and that he might exercise his right to interrogate the staff alone, pursuant to Article 12(c)(i) of the Convention, thereby guaranteeing the respect of the principle of confidentiality with respect to the workers (Article 15(c)). Finally, noting that, according to the Government, the labour inspector is free to decide whether he notifies the employer or not of his visit, the Committee requests it to ensure that this right, as defined under Article 12(2) of the Convention, is given a legal basis.*

*Articles 10, 20 and 21. Basic information required to assess the functioning of the labour inspectorate in practice: statistics of industrial and commercial workplaces liable to inspection and number of workers covered.* In its 2009 general observation, the Committee stressed the importance of keeping a register of the workplaces and enterprises liable to inspection, containing data on the number and categories of workers employed therein. *The Committee requests the Government to take due account of its 2009 general observation and to provide the Office with information on the measures taken to ensure that a register of the workplaces liable to inspection is created as well as on the results achieved.*

*Articles 20 and 21. Annual report on the labour inspection activities.* The Committee notes the preparation of an annual report by the labour statistics service. It reminds it of the dual obligation to ensure that the central labour inspection authority publishes an annual report and transmits that report to the ILO, as provided for by the above Articles of the Convention. **The Committee requests the Government to take every measure necessary to ensure the publication and communication of such report by the central inspection authority within the prescribed time limits (in Article 20) and further reminds it that this report should contain the information required on the matters listed in Article 21.** Part IV of the Labour Inspection Recommendation, 1947 (No. 81), contains very useful guidance on the manner in which this information could be presented so as to reflect, as faithfully as possible, the functioning of the labour inspectorate, including its strengths and weaknesses, and provide a basis for determining the budgetary, organizational and educational measures required to enhance its effectiveness.

## Serbia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2000)**

The Committee notes the Government's report received on 22 September 2009, in response to its previous comments.

*Article 3(1)(a) and (c) and (2) of the Convention. Action against illegal employment, and monitoring of legislation relating to conditions of work and the protection of workers.* In its previous comments, the Committee noted that the labour inspectorate's priority for a number of years had been the fight against illegal employment and emphasized that the exercise of such a function by the labour inspectorate should have as its corollary the reinstatement of the statutory rights of all the workers in order to be compatible with the objective of labour inspection. The Committee notes the Government's statement in its latest report to the effect that the fight against illegal labour is part of the European Union Accession Strategy and the Strategy on Poverty Reduction and focuses on industries where unregistered workers – mostly young and unqualified workers or older workers over 40 years – are most dominant (hotel/restaurant/cafe and tourism, trade, civil engineering and artisan and personal services). The Government adds that illegal employment is primarily due to a transition from public companies towards a huge number of small and medium-sized private enterprises, which has led to an aggravation of working conditions, often with regard to high-risk jobs (e.g. engineering). This is why the Government is of the view that it is important to carry out regular and intensified inspection. The Government specifies that, where illegal employment has been detected, the employer is ordered to sign employment contracts and charges are pressed against employers in cases where more than one irregular worker is hired; as a result, the number of signed employment contracts and workers reported for compulsory social security coverage usually increases after the inspection is carried out. In order to address key legislative obstacles in this regard, the labour inspectorate has, among other things, proposed amendments to applicable regulations that would require the registration of signed employment contracts and improve the procedure for registration of workers in compulsory social security schemes under section 144 of the Pension and Disability Insurance Act.

**Taking due note of the Government's statement that the fight against illegal employment aims among other things at the "formalization" of employment relations so as to prevent a deterioration of conditions of work and that this has led to an increase of the number of signed employment contracts and workers reported for compulsory social security coverage, the Committee would be grateful if the Government would provide statistical data illustrating the improvements made in the enforcement of the legal provisions relating to conditions of work and the protection of workers through the activities of the labour inspectorate in the framework of the fight against illegal employment.**

*Article 3(1)(b). Preventive role of the labour inspectorate in the field of occupational safety and health.* The Committee takes due note of the information provided by the Government on various activities relative to cooperation with services and institutions dealing with prevention during the period under review, including the organization of 15 round tables on risk assessment throughout the country from 20 to 24 October 2008, with an active participation of representatives from trade unions, employers' organizations, chambers of commerce, and experts in the area of occupational safety and health (OSH). **The Committee would be grateful if the Government would continue to provide information on any action relative to cooperation with all the services and institutions dealing with prevention, including the social partners, the intensification of media campaigns, particularly in high-risk sectors, and the development of promotional material for public information.**

**Recalling that in its previous comments the Committee had welcomed the implementation of a new policy regarding health and safety in small and medium-sized enterprises, according to which regular inspection visits would focus on prevention through information and education, the Committee also requests the Government to indicate the part of regular inspection visits targeted at small and medium-sized enterprises, and to provide information on information and education campaigns addressed at such enterprises.**

*Articles 5(a) and 18. Effective cooperation of labour inspection services with government institutions and with the judicial system. Adequate penalties imposed and effectively enforced.* In its previous comments, the Committee referred to comments by the Confederation of Autonomous Trade Unions of Serbia, according to which the system of penalties against employers is not efficient. The Committee notes that the Government refers in its latest report to the pronouncement of sentences far below the minimum foreseen by the law which constitutes an obstacle to the proper and

full application of the penal provisions envisaged under the Labour Law and the Law on Safety and Health at Work (OSH Law). The Government's report also refers to the need to accelerate judicial procedures so as to overcome related problems with regard to the statute of limitations.

According to the Government, the labour inspectorate organized expert meetings and consultations between the labour inspectorate and bodies responsible for criminal prosecution in Serbia, both at the first instance and at the level of the Council for Criminal Offences. The need to further intensify the cooperation between these bodies was underlined in these meetings with a view to overcoming problems in the duration of the criminal procedures and the amount of the penalties imposed. The importance of exchange of data between municipal bodies and prosecution councils on the collection of fines was also stressed so as to ensure the harmonization and alignment of databases and monitor the economic effects of inspections as well as the efficiency of penal policy. ***The Committee would be grateful if the Government would provide statistical data on the average duration of proceedings and the average amount of penalties imposed for violations of the Labour Law and the OSH Law as well as information on the impact of the steps taken in order to overcome problems in the duration of proceedings, the amount of fines and their effective enforcement. The Committee would also like to request the Government to continue to provide information on any further steps taken or envisaged in order to ensure effective cooperation between the labour inspection services and the judicial authorities.***

According to the Government, in 2008, 60 requests for the institution of criminal proceedings were filed by the labour inspectorate in relation to offences which apparently concerned only the area of OSH. ***Recalling that the functions of the labour inspectorate are not limited to the enforcement of the OSH legislation (the OSH Law) but also include the enforcement of legal provisions and advice relating to the conditions of work under the Labour Law, the Committee requests the Government to specify in its next report the manner in which the labour inspectorate addresses violations of legal provisions on hours of work, wages, the employment of children and young persons and other connected matters and the number of proceedings instituted for such violations.***

*Article 7(3). Adequate initial and further training of labour inspectors.* In its previous comments, the Committee had noted the comments of the Union of Employers of Serbia, according to which, following the restructuring of the labour inspectorate as a single body, labour inspectors were not provided with adequate training to perform both legal and technical supervision. According to the Government's report, the labour inspectorate launched in 2008 a modernization process to be delivered through internal training in three phases so as to enable labour inspectors to undertake integrated inspections. In this framework, an inspection methodology was designed and all inspectors gained adequate knowledge in areas in which they had not yet performed inspections (e.g. engineers in the field of labour relations, lawyers in the field of safety and health at work, etc.). ***The Committee would be grateful if the Government would communicate additional information as to the number of participants in the training sessions, their duration, the topics covered and the evaluation of the results. It also requests the Government to continue to furnish information on further periodical training for labour inspectors.***

*Articles 12(1) and 18. Penalties for obstructing labour inspectors in the performance of their duties, particularly with regard to their right of free entry in establishments.* In its previous comments, the Committee took note of comments by the Confederation of Autonomous Trade Unions of Serbia, according to which labour inspectors were occasionally denied the right to enter a workplace for inspection purposes, particularly in new private enterprises. The Committee notes that, according to the Government, the 2005 Labour Law and the 2005 OSH Law contain an obligation for the employer to allow the labour inspector to access facilities and premises at any time when occupied by workers, and, should it occur that the labour inspector is prevented from undertaking inspections, the labour inspectorate should address the Ministry of the Interior, which will enable unobstructed inspection with the assistance of the police. ***Keeping in mind that section 273(10) of the Labour Law and section 69, paragraph 1(32), of the OSH Law set fines in cases where a labour inspector is prevented from conducting an inspection, the Committee once again requests the Government to indicate if any acts of obstruction were reported by labour inspectors to the central inspection authority and, if so, to describe the penalties imposed and the proceedings followed to ensure their effective enforcement in conformity with Article 18 of the Convention.***

*Article 5(a), 14 and 21(f) and (g). Notification of industrial accidents and cases of occupational disease.* In its previous comments the Committee took note of difficulties in the actual system of notification and registration of occupational accidents and diseases, despite the existence of a legal obligation for the employer to notify these under section 50 of the OSH Law. The Government's report contains a list of steps that are necessary to ensure effective prevention of occupational accidents and diseases, including coordination of all services, institutions and individuals who work on the prevention of occupational accidents; intensified media campaigns, brochures aimed at promoting a national prevention culture in the field of safety and health at work, the introduction of a continuous data processing practice in all departments and institutions working in the area of OSH; as well as an efficient national system for recording and collecting data on occupational accidents and diseases. With regard to the latter, the Government indicates that the Serbian Institution for Occupational Medicine and Radiology "Dr Dragomir Krajovic" (under the Ministry of Health) is implementing a project on the development of a register for occupational accidents and on the identification, reporting and registration of occupational diseases. Working groups, in which representatives of the labour inspectorate have taken active part, were established in order to consider proposals for a new list of occupational diseases and an efficient registration system for occupational accidents.

The Committee once again draws the Government's attention to the 1996 ILO code of practice on the recording and notification of occupational accidents and diseases which could offer guidance in this framework. ***The Committee requests the Government to continue to provide information on the measures taken or envisaged in order to strengthen the efficiency of the system for recording and notifying occupational accidents and diseases, including through the adoption of a new list of occupational diseases and a better collaboration of all institutions concerned for that purpose.***

*Articles 20 and 21. Submission and content of the annual report.* In its previous comments, the Committee welcomed the detailed information contained in the annual report on the labour inspection activities for 2007 and requested additional information including on the total number of industrial and commercial establishments under the supervision of the labour inspectorate and the number of workers employed therein. The Committee takes due note of the information provided by the Government as to the number of establishments subject to labour inspection (318,540 businesses of which 10,056 are legal entities and 33,592 are individual entrepreneurs engaged in industrial activities as well as 35,738 legal entities and 72,703 entrepreneurs engaged in the trade sector). Drawing the Government's attention to its 2009 general observation on the importance of statistics on workplaces liable to inspection and the number of workers covered as a basis for assessing the effectiveness of the labour inspection system and its needs, the Committee takes due note of the Government's indication that, in its future annual reports, the labour inspectorate will provide statistical data on the number of registered companies engaged in industrial and commercial activities as well as on the number of workers employed therein.

The Committee also notes however, that no further annual report on the labour inspection activities was received. It recalls that, according to *Article 20*, the annual report should be published by the central authority and duly forwarded to the ILO within a reasonable time after its publication. ***The Committee therefore requests the Government to ensure that the annual report on the labour inspection activities is forwarded to the ILO on an ongoing basis in accordance with Article 20 and that it contains information on the items listed in Article 21. In particular, in order to assess the coverage of labour inspection, the Committee would be grateful if the Government would also indicate in its next report, in addition to the information usually provided in the annual report, the total number of industrial and commercial establishments under the supervision of the labour inspectorate and the number of workers employed therein (clause (c)), the statistics of inspections carried out (clause (d)), and statistics on the outcome of judicial procedures and penalties imposed (clause (e)).***

## Spain

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)***

*Article 5(b) of the Convention. Collaboration between the labour inspection services and the social partners.* Further to its previous comment concerning cooperation between the labour inspection services and the social partners, the Committee notes the Government's indication that this is possible at institutional level by means of the Tripartite Advisory Committee set up within the Labour and Social Security Inspectorate. Moreover, the Committee notes that, in 2009, a working party was formed with the social partners, and this will analyse the statistical data relating to labour inspectorate activities, including action by the inspection services in enterprises which operate in several autonomous communities.

As regards promotion of the labour inspectorate's duty to provide information, the Committee notes the indication that this duty is performed during inspection visits. Furthermore, the inspection services adopt more general measures, including the distribution of brochures during lectures and information meetings. This type of activity is undertaken as part of specific inspection campaigns. In this regard, the Committee notes the campaigns which took place in 2008, in particular the European campaign on the manual transport of loads and the SEGUMAR campaign concerning the prevention of occupational hazards on board fishing vessels.

*Articles 9 and 10. Cooperation of experts and technicians. Numbers and qualifications of labour inspection staff.* The Committee notes with *interest* the establishment of a labour and social security inspection college, which is in the process of being constructed. It notes that this college will be open to the participation of all the autonomous communities and to cooperation with other public or private institutions concerned with training. The Committee also notes the Government's indication that in 2007 a total of 559 training courses were held for 5,983 persons. In this respect the Committee notes that, for 2008, the numbers of inspection staff increased to 1,746 officials, comprising 836 inspectors and 910 deputy inspectors, as well as 236 technicians. It notes in particular that the new INTEGRA computer application, developed in the context of the "LINCE" project, has been a valuable tool in the training of labour inspectors. The Government also mentions that a study has been conducted on "Training needs of the inspection system and evaluation of appropriate solutions". The Committee further notes that, in 2008, the focus was placed on quality, not quantity, of training courses, and most of the 447 courses given were devoted to technical rather than computer education.

*Article 11(1)(a). Labour inspection information system.* As regards the development of the "LINCE" project and the new INTEGRA computer application mentioned above, the Committee notes that this application has constituted the core of the "LINCE" project since its creation in 2007 and encompasses the four subsystems of vital importance for labour inspection and social security, namely: (i) programmes and campaigns; (ii) inspection activities; (iii) follow-up to reports of infringements through administrative and dispute settlement channels; and (iv) evaluation and monitoring. According to

the Government, this application, apart from providing IT support for labour inspection activities, constitutes an integrated information management system which enables information to be transmitted, shared and utilized in a coherent manner. Moreover, the Committee notes that two other systems have been developed: (i) the INTEGRA-PERSONAL system, which manages the human resources of the inspection and social security services; and (ii) the INTEGRA-PRODUCTIVIDAD system, which manages the productivity of the inspectorate and support staff. Finally, the Committee notes the creation of a number of databases, namely: (i) the CEPROSS database concerning occupational diseases; (ii) the ADEXTTRA database concerning information on foreign workers; and (iii) the e-SIL database (occupational information system) concerning social security. It notes that, since 2007, all these projects have been subject to constant improvement, inter alia, in order to ensure coherence in methods and quality of implementation of activities in all inspection and social security services, by documenting and disseminating working procedures in a clear and accessible manner, which enables the provision of a knowledge base ensuring the coherence of inspection activities.

*Articles 18 and 21. Penalties applicable to infringements. Content of the annual general report.* The Committee notes the information supplied by the Government concerning infringements reported with regard to gender equality and discrimination and also with regard to subcontracting in the construction industry. It notes that, between 2007 and 2008, the number of infringements increased considerably (52 and 43 respectively in 2007 compared with 121 and 631 in 2008). The annual labour inspection report for 2008 indicates that 610,774 establishments were inspected, giving rise to 1,047,977 reports and 92,098 notices of infringement of the legislation. The Committee further notes the statistics on penalties imposed in the areas of labour relations (5,955 infringements reported), occupational risk prevention (27,882 infringements, in addition to which there were 5,851 infringements reported during investigations conducted further to industrial accidents), industrial accidents (954,981 in 2007 compared with 828,941 in 2008, namely a decrease of approximately 10 per cent), employment and foreign workers (12,994 infringements) and social security (40,564 infringements). Finally, the Committee notes the statistics for 2009 relating to each autonomous community and also indicating that 69,694 infringements were reported at national level.

As regards the laws and regulations relating to the competencies of the labour inspectorate, the Committee notes the adoption of Royal Decree No. 1109/2007 of 24 August 2007 concerning procedures in force in the construction industry, Act No. 20/2007 of 11 July 2007 regulating the status of self-employed workers, Act No. 38/2007 of 16 November 2007 modifying the powers of the general administration of the State to impose penalties, Act No. 44/2007 of 13 December 2007 including recruitment agencies in the list of enterprises which may be held liable for occupational infringements, and also the Decision of 25 November 2008 of the Directorate-General of Labour Inspection and Social Security, which establishes the basis for authorizing enterprises to use the electronic inspection register. The Committee further notes with *interest* Instruction No. 1/2007 of 27 February 2007 on the strengthening of relations between the Labour and Social Security Inspectorate and the Public Prosecutor's Office concerning criminal acts in the sphere of occupational safety and health.

*The Committee requests the Government to continue to supply information on the manner in which the Convention is applied, indicating in particular:*

- (a) *Any measure or initiative aimed at improving cooperation between the labour inspection services and other institutions and the social partners, and also any activity or programme relating to the duty of the labour inspectorate to provide information. The Committee also requests the Government to supply information on the activities of the working party set up in 2009, including any studies or official reports which have been drawn up.*
- (b) *Any measure or initiative taken with a view to increasing the numbers and improving the qualifications of labour inspectors and also the results achieved. The Committee also requests the Government to keep the Office informed of the progress made regarding the establishment of the labour inspection and social security college and to supply documentation relating to the legal framework of the college and its operation.*
- (c) *Any further developments relating to the labour inspection information systems – LINCE, INTEGRA-PERSONAL, INTEGRA-PRODUCTIVIDAD, etc. – and their impact on inspection service activities. The Committee also requests the Government to supply a copy of the study on the “Training needs of the inspection system and evaluation of appropriate solutions” and to indicate the measures taken to follow up on its conclusions.*

## **Sri Lanka**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1956)**

The Committee notes the Government's reports received on 23 October 2008 and 5 October 2009, along with its replies to the comments made previously in communications dated 31 May 2007 and 11 July 2008 by the Lanka Jathika Estate Workers' Union (LJEWU) and in a joint communication dated 4 October 2007 by the Confederation of Public Service Independent Trade Unions (COPSITU), the Government Service Labour Officers' Association (GSLOA), the United Federation of Labour (UFL), the Progress Union (PU), the Free Trade Zone Workers Union (FTZWU) and the Health Service Trade Union Alliance (HSTUA). The content of these communications has been summarized in the Committee's previous comments. The Committee also notes the comments made by the Ceylon Workers' Congress (CWC) in a communication dated 8 July 2008 and by the National Trade Union Federation (NTUF) in a communication



dated 22 July 2009. The Committee finally recalls that its comments also relate to the matters raised by the World Confederation of Labour (WCL – now merged into the International Trade Union Confederation (ITUC)) in September 2005.

The Committee recalls the conclusions reached by the Conference Committee on the Application of Standards (ILC, 96th Session, June 2007) which, having noted the efforts made by the Government to restructure the labour inspection system with ILO assistance, develop the prevention side of labour inspection, promote qualifications of labour inspection staff and increase the number of both female and male labour inspectors, requested the Government to communicate further information on the right of access by inspectors to establishments in export processing zones (EPZs), the powers of injunction of labour inspectors, the allocation of professional travel expenses, and the publication of an annual inspection report.

*Articles 3, 13, 16 and 17 of the Convention. Restructuring of the labour inspection system with ILO assistance.* In its previous comments, the Committee requested information on the consequences in practice of the restructuring of the Department of Labour and its agencies with ILO support. It also noted the need to give power of injunction to labour inspectors in the area of occupational safety and health (OSH).

The Committee notes from the statistical data provided by the Government that, while the number of registered factories has almost quadrupled since 1996 (from 4,669 in 1996 to 16,153 in 2008), the number of inspections has merely risen by approximately 30 per cent (from 3,061 in 1996 to 4,004 in 2008). Moreover, while there was an important increase in the number of complaints received and investigated (from 17 to 71 and from 16 to 96, respectively) during the same period, the number of court cases filed and concluded actually fell from 17 to seven and from 13 to three respectively. The CWC indicates in its comments of 8 July 2008 that it is not aware of any prosecutions undertaken against employers who have been found by labour inspectors to be in breach of their legal obligations. ***With reference to its previous comments, the Committee once again requests the Government to provide detailed information on the impact of the restructuring of the labour inspection system on the effective discharge of labour inspection functions in accordance with Article 3, in particular, the number of visits carried out, numbers and types of violations detected, cases of progress based on the provision of information and advice, cases brought to the courts and outcomes of the proceedings, number and subject of complaints investigated and results obtained.***

***The Committee also reiterates its request for a copy of the document on the restructuring of the Ministry of Labour, as well as any document setting out the new arrangements for the operation of the labour inspection system.***

The Committee also notes that the data provided on the labour inspection activities in the area of OSH (including the number of occupational accidents and cases of occupational disease, are too general. It notes from the information provided by the NTUF in its communication of 22 July 2009 that, under sections 44 and 100 of the Factories Ordinance No. 45 of 1942, factory inspecting engineers can apply to the Magistrates' Court for an injunction where there is an imminent risk of serious bodily injury. ***The Committee requests the Government to provide detailed information on the labour inspection activities carried out in the area of OSH and the results obtained as well as the numbers of occupational accidents and cases of occupational disease by sector of economic activity and geographical area. Noting moreover the comments by the NTUF on the difficulties encountered in ensuring enforcement of occupational safety and health legislation vis-à-vis employers, it invites the Government to make any comment it considers appropriate in this regard.***

*Articles 7(3), 8, 9 and 10. Numbers, composition and training of labour inspection staff and collaboration with technical experts.* The Committee notes the detailed data provided by the Government on the labour inspection staff, which amounts to a total of 544 inspectors, including 20 new Tamil-speaking labour officers. It notes furthermore with ***interest*** that action has been taken to strengthen the labour inspectorate by recruiting 80 additional officers. Action is also being taken to recruit 21 new assistant commissioners of labour from the assistant commissioners of labour (departmental) service. Finally, requests have been made to the Ministry of Public Administration to attach to the supervisory grade of the inspection staff the officers of the Sri Lanka Administrative Service (SLAS). ***The Committee requests the Government to keep the ILO informed of progress made in the process of recruiting additional inspection and supervisory staff.***

The Committee also notes that there is a marked shortage of OSH staff, who number only 27 inspectors out of a total of 545. It recalls the comments previously made by the WCL and the recent comments of the NTUF with regard to the persistent shortage of factory inspecting engineers, medical officers and occupational hygienists to carry out routine inspections of industrial enterprises, particularly those in which hazardous substances are used or handled. ***The Committee requests the Government to indicate the measures taken or under consideration to increase the number of inspection staff specialized in OSH.***

***Noting moreover the text of the National Institute of Occupational Safety and Health Act No. 38 of 2009, which empowers the officers or agents of the Institute to carry out inspections on OSH and to provide advisory services in this area, the Committee also requests the Government to provide information on any arrangement to associate technical experts and specialists from the National Institute of Occupational Safety and Health with the work of the labour inspectorate for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers and investigating the effects of processes, materials and methods of work on the health and safety of workers.***

Furthermore, the Committee notes that action has been taken to absorb 178 field officers entrusted with the enforcement of the Employees' Provident Fund Act (i.e. the social security law covering the private sector) as labour officers so as to further strengthen the labour inspection service. ***With reference to its previous comments on this question, the Committee requests the Government to indicate the impact of the increase in staff entrusted with the enforcement of the Employees' Provident Fund Act in recovering social contributions from half of all employers who, according to the Government, had failed to pay them.***

The Committee notes with *interest* that the number of female inspectors has increased to 154. However, male inspectors continue to account for over 70 per cent of the labour inspection staff (391 male inspectors). ***The Committee requests the Government to indicate the impact of the recruitment of female labour inspectors in terms of the effective discharge of labour inspection functions in sectors with a predominantly female workforce, such as the textile sector, and to keep the ILO informed of progress made in terms of the further recruitment of female staff.***

***Finally, noting the information provided by the Government on initial and periodic training of labour inspectors, the Committee requests the Government to provide details on the training activities carried out (subjects, dates, attendance and evaluation of the training).***

*Article 12(1)(a). Right of labour inspectors to enter freely workplaces liable to inspection.* With reference to the comments previously made by the LJEWU on this question, the Committee notes the Government's indication that: there is no restriction or difficulty in entering EPZs for officers of the Department of Labour; inspections can be carried out only by the commissioner of labour and his/her officers and not the Board of Investment (BOI) – there is no separate labour inspectorate for EPZs; and all relevant parties (commissioner general of labour, BOI officials, major trade unions, employers' organizations and the Minister of Labour) meet in the framework of the National Labour Advisory Council (NLAC), where the issue of labour inspection in EPZs has never been raised by the trade unions. The Committee recalls that it has noted in the past the generally applicable legislation and information on the rights exercised in practice by labour inspectors during inspections. It must, however, note that almost all the communications received from trade union organizations, including the most recent communication from the NTUF dated 22 July 2009, confirm that the right of labour inspectors to free entry in EPZs encounters obstacles in practice due to the need to give prior notice to the BOI. The Committee once again draws the Government's attention to the importance of enabling inspectors to exercise the right to free entry into workplaces, including in EPZs, without prior notice, as established by the Convention. This is necessary, among other things, to enable inspectors to observe the confidentiality required with regard to the purpose of the inspection if it is carried out in response to a complaint, as well as to maintain the confidentiality of the source of the complaint (see in this respect, the General Survey of 2006 on labour inspection, paragraph 263). ***The Committee requests the Government to take all necessary measures to ensure that, as required by Article 12, labour inspectors may enter EPZs on the sole condition that they hold appropriate credentials, without prior notice to the BOI. It would also be grateful if the Government would indicate the number of inspection activities carried out in EPZs and their outcomes (number of inspection visits, violations detected by subject, measures taken and outcomes).***

***Finally, the Committee suggests that the Government may host a discussion on ways of improving labour inspection in EPZs in the framework of the NLAC and keep the ILO informed of the outcome of the discussions.***

*Article 11(1)(b). Travelling expenses.* The Government indicates that public officers including the labour inspectorate are paid subsistence and travelling expenses in accordance with the rates stipulated by the Ministry of Public Administration in consultation with the Ministry of Finance. Most of the district offices have official vehicles to use for labour inspections. In addition, the inspecting officers could use their own vehicles. The cost of travelling is reimbursed at the rates stipulated by the Government. Finally, inspecting officers can obtain low interest loans to buy personal vehicles, if they wish. However, the LJEWU and the NTUF are of the view that the travelling allowance is inadequate and the limitations placed on the mileage that is reimbursed limits the number of inspections carried out. ***The Committee once again urges the Government to take measures to provide inspectors with the transport facilities that are indispensable for the discharge of their functions, and to keep the ILO informed of any measures taken or under consideration to this end.***

*Article 18. Dissuasive sanctions.* The Committee notes with *interest* that, following the amendment of the Employment of Women, Young Persons and Children Act, steps have been taken to update the fines and penal provisions in all legislative acts relating to conditions of work. It notes in this regard the text of the bills to amend the Shop and Office Employees' Act, the Maternity Benefits Ordinance, the Termination of Employment of Workmen (Special Provisions) Act and the Industrial Disputes Act, communicated by the Government. ***The Committee requests the Government to keep the ILO informed of the progress made in the adoption of the abovementioned bills.***

*Article 21. Statistics and the publication of the annual report on labour inspection activities.* In its report, the Government acknowledges that the collection and analysis of statistical data for the annual report could be further improved and requests the ILO for technical assistance. ***Recalling that in its previous comments the Committee welcomed action to update the master register of workplaces and, with reference to its 2009 general observation on the importance of such statistics, the Committee requests the Government to indicate any progress made in relation to the collection of data on the number of workplaces liable to inspection, including in EPZs, and the workers employed therein. It also reiterates its previous requests under Article 21 for the publication of data on the number of inspections***

made, including in EPZs; the violations identified and the penalties applied; and cases of occupational disease; and for measures to be taken to ensure that the annual report is published, as required by Article 20.

With regard to the Government's request for technical assistance, the Committee invites the Government to take formal steps to this end.

## Sudan

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1970)

*Context and developments relating to labour inspection.* Further to its previous comments, the Committee notes the Government's statement that after the adoption of a transitional Constitution of 2005, and the implementation of the federal rule which is considered to be the administrative executive system in the country, the majority of powers were transferred to the provinces (*wilayat*). This required the revision of all Sudanese laws so as to be in conformity with the new rule. The Government further indicates that the Labour Code of 1997 is being revised, and that a draft of it has been sent to the ILO for comments. However, according to information available at the ILO, the Committee notes that a request has not been received despite repeated invitations by the Cairo Subregional Office. ***The Committee would be grateful if the Government would take the necessary steps to avail itself of the ILO technical assistance for the revision of the Labour Code and to provide information on the results achieved. Referring to its previous observation as to the delegation of most of labour inspection activities to the labour offices in the provinces, the Committee requests the Government to take the measures necessary to ensure, meanwhile, that workplaces continue to be inspected, as provided by the Convention (Articles 12, 13 and 16), and that an annual report on the work of the labour inspection services is published and a copy of it communicated to the ILO (Articles 20 and 21).***

*Article 5(a) of the Convention. Cooperation between the inspection services and the judicial system.* With reference to its previous comments, the Committee notes the Government's statement that the relationship between the inspection services at the Ministry of Labour and the judicial system is strong and historic. Each labour office has an inspection unit which carries out its inspection duties, and refers its violations to the judicial bodies. At the federal Government level, inspection has been restricted. It further indicates that some cases were referred to the courts in cases where the measures taken by labour inspectors, which consist in providing advice, warning and reprimand, have all failed. The court rendered its judgement by imposing a fine and a sentence of imprisonment. ***The Committee would be grateful if the Government would provide the ILO with copies of excerpts of as many judicial decisions as possible, rendered in cases of infringement of legal provisions relating to conditions of work and the protection of workers while engaged in their work. It would also welcome any indication concerning the effective enforcement of such decisions in practice and its impact on the observance of the relevant legislation.***

## Suriname

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee notes that the Government's report received on 25 September 2009 is identical to the one submitted in 2005. Consequently, the Committee is bound to reiterate its previous comments and requests which read as follows.

*Article 7 of the Convention. Training of labour inspectors.* ***The Committee hopes that the Government will continue to provide information on any new training activities for the purpose of improving inspectors' skills and that it will also be able to report on the impact of retraining on the working and results of the labour inspection services.***

*Article 14. Notification to the labour inspectorate of cases of occupational disease.* For many years the Committee has been drawing the Government's attention to the need to ensure that full effect is given to this Article of the Convention, specifically as regards occupational diseases. The Government states that there have been no changes in the law with regard to application of the Convention, but that in view of the crucial role of labour administration in administering and enforcing labour laws, the labour inspection legislation is to be reviewed in order to bring it more into line with the provisions of the Convention. The Committee draws the Government's attention in this connection to its General Survey of 2006 on labour inspection (paragraph 118), in which it emphasized that it is vital, for preventive purposes, for formal mechanisms to be put in place to provide the labour inspection services with the data they need to identify high-risk activities and the most vulnerable categories of workers. ***The Government is therefore asked to take advantage of the planned legislative revision in order to adopt provisions that supplement the national legislation, in accordance with this Article of the Convention, by defining the instances and the manner in which the labour inspectorate must be informed not only of occupational accidents, but also of cases of occupational disease. The Committee would be grateful if the Government would keep the Office informed of any progress in this respect and provide copies of any draft provisions or any adopted texts, together with all relevant documents (administrative orders, circulars, declaration forms, etc.).***

*Article 15(b). Scope of the obligation on labour inspectors to maintain professional secrecy.* ***The Committee trusts that the Government will also take advantage of the revision which it announced, to give effect to this provision, as it undertook to do, by ensuring that a provision is adopted to extend the scope of the obligation on labour inspectors to observe professional secrecy in order to ensure that they continue to be bound by this obligation after they have left the service.***

*Scope of the obligation on labour inspectors to maintain professional secrecy.* ***The Committee trusts that the necessary measures will be taken without delay so as to give full effect to Article 15(b) of the Convention by extending the duty of labour inspectors to observe professional secrecy to the period following their departure from the service.***

In addition, the Committee draws the Government's attention to the following point.

*Articles 3(1)(a) and (b) and 5(b).* In its 2009 direct request relating to the application of the Safety Provisions (Building) Convention, 1937 (No. 62), the Committee has noted from the statistics communicated by the Government a high increase of fatal and serious workplace accidents caused by materials, substances and radiation, between 2007 and 2008 in the building and construction sector. The Committee notes with **concern** these trends which are an indication of a serious failure in the functioning of labour inspection. **The Government is requested to take all the necessary financial and capacity-building measures without delay to ensure that the labour inspection services can exercise their legal enforcement powers against negligent employers in construction workplaces with regard to occupational safety and health and provide employers and workers with information and technical advice aimed at raising their awareness in this area. The Committee urges the Government to inform the Office of such measures and the progress achieved in terms of fatal and serious work accidents.**

The Committee is raising other points in a request addressed directly to the Government.

## Swaziland

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1981)**

The Committee takes note of the Government's report received on 3 September 2009.

*Article 3(2) of the Convention. Functions of labour inspectors.* The Committee recalls that for a number of years it has observed that in settling disputes, labour inspectors risk assuming a burden that is detrimental to the performance of their primary duties set out in *Article 3(1)* of the Convention, i.e., securing the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, hygiene and welfare, the employment of children and young persons, and other connected matters.

In its previous comments, the Committee had welcomed the amendments introduced in 2005 to the Industrial Relations Act (No. 1 of 2000) and in particular, the fact that sections 76, 77 and 78, as amended, provided that labour disputes would henceforth be referred directly to the Conciliation, Mediation and Arbitration Commission and not to the Commissioner of Labour or any person authorized to act on his or her behalf. The Committee had also noted however, that pursuant to section 82 of the Industrial Relations Act as amended, the Commissioner of Labour or any person authorized to act on his or her behalf, maintained the power to "intervene" in labour disputes, before being reported to the Commission, if he or she had reason to believe that they could have serious consequences for the employers, the workers or the economy if not resolved promptly.

The Committee notes the supplementary information provided by the Government in this regard in its latest report. It notes in particular the text of the Guidelines for intervention by the Commissioner of Labour (gazetted in Vol. XL111 of 1 September 2005). The Guidelines form an integral part of section 82 of the Industrial Relations Act (section 1.2 of the Guidelines) and lay down general principles to guide the Commissioner of Labour in "preventing or limiting" disputes and assisting employers, employees and their organizations in understanding "how the Commissioner will perform the dispute functions" in terms of section 82 of the Industrial Relations Act. The Committee observes that the Guidelines, which have the force of law, appear to lump together the functions of prevention (which form an integral part of labour inspection functions), with the functions of conciliation and resolution of disputes; in several sections of the Guidelines, the Commissioner of Labour does not appear to be limited to merely exercising prevention functions but is also empowered to a large extent to carry out conciliation.

In particular, according to sections 2.3.5 and 2.4 of the Guidelines, the Commissioner is empowered to, and indeed "should", intervene in disputes irrespective of whether the parties to the dispute wish the Commissioner to do so, under a wide range of circumstances, including if "it is within the public interest generally" for the Commissioner to do so, before a dispute is reported to the Conciliation, Mediation and Arbitration Commission. A dispute is defined in very general terms as a dispute which "exists or may arise" between employees and their employers; trade unions and employers; trade unions themselves; or employer organizations themselves (section 2.2 of the Guidelines). Depending on the nature of the dispute, the Commissioner may intervene either "personally [...] to resolve or prevent the dispute through conciliation" or by appointing a person of his/her choice, to conduct fact-finding and make recommendations for the prevention or resolution of the dispute. In particular, the Commissioner may appoint a "conciliator" in consultation with the Commission; a "commissioner" in consultation with the parties; or a judge after consultation with the President of the Industrial Court (section 2.5 of the Guidelines). More importantly, if a party reports a dispute to the Conciliation, Mediation and Arbitration Commission under section 76 of the Industrial Relations Act after the Commissioner of Labour has intervened but before that intervention has been completed, the Commission may, after consultation with the Commissioner of Labour, direct the Commissioner or persons appointed by the Commissioner "to conciliate the dispute" as if they were commissioners appointed by the Conciliation, Mediation and Arbitration Commission under section 80(1) of the Industrial Relations Act (section 4.1 of the Guidelines). Furthermore, if a party reports the dispute to the Conciliation, Mediation and Arbitration Commission after the Commissioner of Labour has completed an intervention in accordance with section 82 of the Industrial Relations Act, the Commission may deem the dispute to have been "conciliated" and issue the required certificate stating whether or not the dispute has been resolved (section 4.2 of the Guidelines). Section 5.1 of the Guidelines provides that an appropriate budget needs to be allocated to ensure that the Commissioner of Labour's office is able to fulfil its obligations as set out in the Guidelines.

The Committee observes that under the Guidelines, the labour inspector (Commissioner of Labour) or a person of his/her choice, may be entrusted with both the prevention and the conciliation of disputes on his/her own initiative. Thus, the powers which had been lifted from the Commissioner of Labour under sections 76, 77 and 78 of the Industrial Relations Act as amended in 2005, appear to be reinvested in the Commissioner of Labour through the provisions of sections 2, 4 and 5 of the Guidelines, thereby preventing the legislative amendments of 2005 from producing any effect. The Committee also observes that this situation takes place within a certain context which was discussed at the Conference Committee on the Application of Standards in relation to the application of Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in 2009, and that it emerges from the Government's report under that Convention that, further amendments to the Industrial Relations Act are currently under way.

The Committee recalls that according to *Article 3(2)* of this Convention, any further duties which may be entrusted to labour inspectors should not be such as to interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. In this respect, the Committee also emphasizes that, Paragraph 8 of the Labour Inspection Recommendation, 1947 (No. 81), provides that the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.

***The Committee requests the Government to indicate in its next report the measures taken or considered for the amendment or abrogation of the provisions of section 82 of the Industrial Relations Act, and sections 1, 2, 4, and 5 of the Guidelines for intervention by the Commissioner of Labour, so that the Commissioner of Labour may be exempted from carrying out functions of conciliation and resolution of industrial disputes, which are likely to interfere with the effective discharge of the primary duties of labour inspectors, or prejudice the authority and impartiality which are necessary to inspectors in their relations with employers and workers.***

***The Committee also requests the Government to provide information on the part of the activities of the Commissioner of Labour, which concern the enforcement of the legal provisions relating to conditions of work, the protection of workers compared to the part of activities which concern conciliation and the settlement of disputes.***

*Articles 20 and 21. Annual labour inspection report.* In its previous comments, the Committee had welcomed the detailed information provided in the 2005 annual report of the Department of Labour. The Committee notes however, that no subsequent annual reports have been received. It recalls that according to *Article 20(3)* of the Convention, the obligation to communicate the annual labour inspection reports within a reasonable period after their publication, is an ongoing one. ***The Committee would therefore be grateful if the Government would ensure that the annual report of the Department of Labour was communicated on a regular basis and that they continued to contain the information listed in Article 21 of the Convention.***

The Committee is raising other points in a request addressed directly to the Government.

## Tunisia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1957)**

The Committee takes note of the Government's report received at the ILO on 19 November 2009. It also notes the labour inspection reports for 2006 and 2007, received at the ILO on 4 January 2008 and 17 March 2010.

*Articles 10, 21(b) and (c) of the Convention. Number of inspectors and geographical distribution. Statistics of workplaces liable to inspection and number of workers employed.* The Committee notes with **interest** from the labour inspection reports for 2006 and 2007 the composition and distribution by sex of the labour inspectorate staff (*Article 21(b)*). However, the reports contain no information on the number of workplaces subject to inspection and the number of workers employed therein (*Article 21(c)*). According to *Article 10*, the number of labour inspectors shall be determined according to the number, nature, size and situation of the workplaces. It is therefore important that the Government should ensure that such data are collected so that it is in a position to distribute the inspection staff appropriately throughout the territory in accordance with priorities to be defined on the basis of criteria such as the risk level of the main activities, worker categories (young workers, women, level of qualification, etc.) and available resources. Besides, such information is essential for the central authority in scheduling routine inspection visits, assessing the workplace coverage rate and establishing resource requirements in annual budgets with a view to better coverage. The Government may wish to refer in this connection to paragraphs 325 and 326 of the 2006 General Survey on labour inspection, and to Paragraph 9(c) of Labour Inspection Recommendation, 1947 (No. 81), regarding the level of detail to be given in the relevant information. ***The Committee asks the Government to provide figures showing the geographical distribution of labour inspectorate staff, so that it can assess the extent to which the abovementioned Articles of the Convention are observed, and to ensure that the annual labour inspection report contains, in the future, statistics of the workplaces liable to inspection and the number of workers employed therein.***

*Articles 17 and 18. Information concerning action taken on unheeded warnings and on reports of violations.* The Committee notes from the labour inspection reports that inspectors issued 3,386 warnings in 2007 and 3,318 in 2006, as well as 652 violation reports in 2007 and 402 in 2006. It notes, however, that no information has been sent on the action taken on these warnings and reports.

The Committee further notes that since the inspection report for 1998, received at the ILO in 2000, according to the Government, inspections of labour suppliers have been stepped up, the aim being to get employers to comply with the legislation in force. However, the Government provides no information on any follow up to such inspections. To assess how effective such action has been, a record is needed of all the offences committed by labour suppliers and the action taken by labour inspectors to remedy them or punish the offenders.

The Committee invites the Government to refer to Chapter VIII of its General Survey of 2006 in which it points out that the provision of advice and information, the issuing of orders and the initiation of legal procedures are complementary approaches to achieving the Convention's objective. The credibility and effectiveness of a labour inspection system depend to a large extent on the action taken on contraventions reported. It is accordingly essential that penalties imposed by labour inspectors for violations should be visible enough to be dissuasive. ***The Committee therefore asks the Government to provide information on the action taken on unheeded warnings and on violations notified to courts of law, and to ensure that in future relevant statistics are supplied in the annual report of the central labour inspection authority.***

*Articles 3(1)(b), 14, 21(f) and (g). Statistics of industrial accidents and cases of occupational disease.* The Committee notes from the labour inspection report for 2007 that employers too often neglect to notify industrial accidents and cases of occupational disease and that this prevents the inspectorate from compiling complete and relevant data. In this connection, the report only refers to the statistics contained in the annual report of the Sickness Insurance Fund (CNAM), without providing the report in question. The Committee reminds the Government that according to *Article 14* of the Convention, the labour inspectorate must be notified of industrial accidents and cases of occupational disease. The inspectorate needs data of this kind, in particular so that it can fully assume its preventive role and so that in the annual inspection report it can include statistics of industrial accidents and of the case of occupational disease, as required by *Article 21(f) and (g)*. In this connection, the Committee invites the Government to refer to paragraphs 118 to 132 of the abovementioned General Survey in which it points out the importance and scope of the labour inspectorate's preventive role. To enable the central authority to include in its annual report information regarding industrial accidents and instances of occupational disease, the competent authority is required by *Article 5(a)* of the Convention to promote cooperation between the two institutions to this end. Furthermore, such information is essential to the development of a relevant prevention policy.

In order to combat negligence of employers in notifying industrial accidents and cases of occupational disease, it would likewise be appropriate to ensure that laws and regulations are sufficiently clear as to the cases and circumstances in which such incidents are to be notified to the competent authorities, and as to the procedure for notification and the penalties that apply in the event of negligence. Informing and sensitizing employers and workers about this matter is an essential means of encouraging compliance with the relevant legal provisions. Labour inspectors can carry out such measures as part of the duties they perform in pursuance of *Article 3(1)(b)* and of Paragraphs 6 and 7 of Recommendation No. 81. ***The Committee accordingly asks the Government to take steps to ensure that the labour inspectorate is informed of industrial accidents and cases of occupational disease in the instances and circumstances laid down in the national legislation. If failure to notify is a result of gaps in the legislation, the Government is asked to take steps to complete the legislation accordingly so as to facilitate enforcement and supervision by the labour inspectorate. The Committee would be grateful if the Government would proceed at once to encourage cooperation between the labour inspection services and the CNAM so that, in future, available relevant statistics may be included in the annual labour inspection report, in accordance with Article 21(f) and (g), if possible in the manner indicated in Paragraph 9(f) and (g) of Recommendation No. 81.***

*Article 20. Publication and communication to the ILO of the annual inspection report.* The Committee appreciates the Government's efforts to compile annual labour inspection reports. It notes, however, that there is no requirement for such reports to be published and that they are in any event not communicated to the Office within the deadline prescribed by *Article 20* (the inspection report for 2007 was not received until March 2010). The Committee reminds the Government that according to *Article 20*, the annual report must be published at the latest within 12 months of the end of the period they cover. ***Consequently, the Committee asks the Government to ensure that full effect is given to the abovementioned Articles of the Convention and that, in future, the annual report of the central inspection authority on the work of the inspection services under its control is published and that a copy of it is sent to the International Labour Office within the period prescribed. It would be grateful if, in the meantime, the Government would ensure that the reports for 2007, 2008 and 2009 are published and sent to the Office promptly.***

The Committee is raising other points in a request addressed directly to the Government.

## Turkey

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)***

The Committee notes the general report on labour inspection containing information and statistical data on labour inspection activities for 2008. The Committee also notes the comments made by the Turkish Confederation of Employer Associations (TİSK) dated 20 May 2009 and the Confederation of Turkish Trade Unions (TÜRK-İŞ) dated 3 June 2009 with regard to the application of this Convention.

*Article 2 of the Convention. Labour inspection in the informal sector.* In its report, the Government indicates that, in order to extend the scope of inspection activities to include establishments in the informal economy, section 59 of the Social Insurance and General Health Insurance (SIGHI) Act No. 5510 requires inspection officers to determine during their inspections whether or not employees are insured, and submit to the social security institution within a maximum of one month the names, citizen ID numbers and wages of those who are employed without insurance. The social security institution is responsible for undertaking the necessary legal proceedings based on such notifications. The General Report on Labour Inspection for 2008 indicates that 642 workplaces were inspected, covering a total of 23,574 workers, and 2,996,425 Turkish lira (TRY) of administrative fines were imposed in 179 workplaces, and 962 workers were found not to be insured in 367 workplaces inspected.

In this respect, in its comments of 28 May 2009, the TİSK refers to the adoption of the Action Plan for the Strategy to Combat Informal Economy, published in the *Official Gazette* No. 27132 on 5 February 2009. The Action Plan was drawn up with a view to creating a comprehensive strategy in which all sectors of society participate with a strong social and political will to raise awareness of the disadvantages of the informal economy, promote the registration of employment, simplify the legislation and procedures, develop an effective monitoring system and system of sanctions, strengthen the sharing of data among institutions and ensure effective coordination among the organizations concerned.

The TİSK also reports that the scope of labour inspection has been broadened and labour inspectors have been given new powers. An important change is the promulgation of Act No. 5763, which modifies paragraph 2 of section 3 of Act No. 4857 (the Labour Code). Under the new provision, a subcontracting employer is required to notify and register his place of employment with the regional directorate, and to include the subcontracting contract together with all the necessary documents. This provision also authorizes labour inspectors to inspect documents concerning the registration of the subcontractor's place of employment to determine whether they are genuine.

In this respect, the TİSK refers to section 11 of the Regulation on subcontracting relations of 27 September 2008, which provides that the original work may only be divided and subcontracted if expertise is required by the process and the nature of the work and/or for technological reasons. The TİSK considers that section 11 of the Regulation introduces a power that exceeds the purpose and scope of section 3 of the Labour Code, which only authorizes labour inspectors to ascertain the existence of collusion and not to examine subcontracting relationships from the viewpoint of section 11 of the Regulation. The TİSK states that the criteria for exercising this power are so ambiguous that problems may be generated in practice.

Furthermore, the TİSK reports that the practice of short-time employment is steadily spreading. In accordance with the Regulation on short-time work and short-time allowances/benefits of 13 January 2009, employers who apply for the authorization to put their workers on a short-time working scheme due to the general economic crisis or for reasons of force majeure must notify the provincial/district office of the Turkish Labour Institute and the trade union concerned if there is a collective labour agreement. Such applications are promptly examined by the labour inspectors of the Ministry of Labour and Social Security. Where an application is found to be admissible, the dates of the commencement and termination of the short-term employment and a finalized list of workers' details are sent to the Turkish Labour Institute. The Institute notifies the employer of the results of the investigation and the employer notifies the workers by posting a notice at the place of employment; if there is a collective labour agreement, the employer also informs the trade union that is party to the agreement. The TİSK considers that the Regulation of 13 January 2009 extends the scope of labour inspection in connection with the short-time work and short-time benefits and improves the compatibility of the legislation with the Convention.

***The Committee requests the Government to provide a copy of the SIGHI Act in its amended version and to continue providing information on the measures taken to extend labour inspection activities in the informal sector, as well as relevant and updated statistics of unregistered workplaces and uninsured workers. The Committee also requests the Government to provide information on the implementation of the abovementioned Action Plan, and on the results achieved and measures envisaged in that context. Finally, the Committee requests the Government to provide feedback on the viewpoints expressed by the TİSK concerning section 11 of the Regulation on subcontracting and the practice of short-time employment.***

*Articles 3(1)(a) and 7(3). Training of labour inspectors necessary for the effective discharge of their duties.* In its report, the Government indicates that, in order to strengthen the capacity of the Labour Inspection Board for the effective implementation of the new EU legislation in the area of health and safety at work and labour relations, an EU twinning project on improving the labour inspection system in Turkey was launched in January 2008 and completed in October 2009. The Committee notes with *interest* that during the implementation of the project, training related to the chemistry, metal, construction and mining industries were organized for labour inspectors and the social partners in Turkey by German and Belgian experts, and that general guidelines on the labour inspection system and guidelines on the management of occupational safety and health in the chemical, metal, construction and mining sectors, as well as on social inspection, were prepared. The Government also indicated that all labour inspectors and 76 representatives of the social partners participated in the four-day training course organized for them.

The Committee further notes with *interest* that, according to the Government, from 2007 until April 2009, labour inspectors participated in training for an accumulated duration of 6,272 hours in the field of occupational safety and health and labour legislation. ***The Committee would be grateful if the Government would provide more detailed information on***

*the training organized for labour inspectors, particularly on the content, regularity and the number of participants in such training. The Committee would also be grateful if the Government would provide copies of the abovementioned guidelines and any relevant information on their application.*

*With reference to its 2009 observation, the Committee reiterates its request to the Government to provide clarifications on the views expressed by the TISK regarding the sharing of responsibilities for the supervision of social security legislation.*

*Articles 3(1)(b), 17 and 18. Balance between the proactive measures taken and sanctions applied by labour inspectors.* In its report, the Government indicates that, from the occupational safety and health perspective, 37,005 inspections were conducted from January 2007 through March 2009, of which 18,383 were general inspections, 2,171 control inspections and 16,451 investigative inspections. Through these inspections, labour inspectors raised TRY15,102,383,00 in fines for occupational safety and health violations and TRY64,325,183,00 for violations relating to the organization of work. The Government indicates that labour inspectors primarily report deficiencies in the establishments inspected using their discretion so that employers can rectify these deficiencies in a certain period of time. If employers do not comply with the instructions of inspectors, an administrative fine is imposed on them. As regards the technical assistance provided to employers and workers, the Committee notes that the Chairman of the Labour Inspection Board provided training on occupational safety and health in 34 workplaces in 2008, while labour inspectors trained engineers, workers and executives at various levels at the Centre for Labour and Social Security Training and Research in the Tuzla shipyard region. Twelve labour inspectors trained 20,000 workers between 17 July 2008 and 29 August 2008 in the Tuzla region.

In this respect, the TISK reports that one of the purposes of the Action Plan for the Strategy to Combat the Informal Economy is “to strengthen inspection capacities and enhance the deterrent effect of sanctions”. According to the Action Plan, inspections will be carried out more with a view of educating people and increasing their awareness than imposing sanctions. The TISK considers that effective inspection aimed at encouraging people to act in compliance with the law will reduce losses, as well as the incidence of undeclared work to a minimum, and will eliminate the situation of unfair competition that arises between those who comply with the law and those who do not.

*The Committee would be grateful if the Government would provide details on the activities of labour inspectors to provide technical information and advice to employers and workers concerning the most effective means of complying with legal provisions. Moreover, the Committee would be grateful if the Government would provide information on the implementation of the abovementioned Action Plan, as well as a copy of it, and on the effect of the proactive measures taken and sanctions applied by labour inspectors.*

*Articles 4 and 5(a). Placement of labour inspection under the supervision and control of a central authority and effective cooperation between the various services entrusted with labour inspection.* Noting that the Government has not provided any information on this subject, the Committee is bound to reiterate its previous request, which read as follows:

According to the TISK, the transfer of duties from the Ministry of Labour and Social Security to other ministries (Ministry of Health, Ministry of Defence, Ministry of Energy and Natural Resources) and to municipalities constitutes an obstacle to the necessary coordination of labour inspection activities. In the view of the TISK, the dispersion of responsibilities jeopardizes the integrity of inspection and does not allow the necessary coordination under the authority of a central body, as envisaged in the project for intervention against illegal employment prepared by the Ministry of Labour and Social Security. The TISK adds that, although section 95(2) of the Labour Law establishes the requirement to inform the responsible regional authorities of the results of inspections, this requirement is not often met, with the result that neither inspection records nor the relevant statistics are up to date. The TISK calls for the Government to publish the results of the remedial measures adopted for this purpose.

The Committee observes that neither the Government’s report received in 2007, nor the general report of the labour inspection for 2005 refers to any restructuring of the labour inspection system. *The Committee would be grateful in this respect if the Government would provide clarifications, describe the measures referred to by the TISK to improve the exchange of information between inspection services and supply detailed information on their implementation in practice and on their impact on the compilation of statistics.*

*With reference to its 2007 general observation, the Committee requests the Government to provide information on any measure implemented to promote effective cooperation between the labour inspection services and the judiciary with a view to the achievement of the economic and social objectives of the labour inspection services.*

*Article 5(b). Collaboration between the labour inspection services and employers and workers.* In its report, the Government indicates that inspection teams in cooperation with workers, employers and/or representative of the employer carry out, in parallel with existing labour inspection activities, “project” inspections covering specific areas, professions and branches of activities or specific risks and issues. The teams plan in detail and determine every aspect of such inspections, their scope, aims and methods of application, including the duration and source of financing. These “project” inspections are implemented within the framework of annual inspection programmes or within the year in accordance with the methods and principles specified in the “Guide for project inspections”. *Noting this information with interest, the Committee would be grateful if the Government would provide more information on the activities of such teams, and particularly on their composition and operation, as well as a copy of the abovementioned guide.*

*With reference to its 2009 observation, the Committee requests the Government to provide more information on the purpose, frequency and impact of the collaboration projects of the Labour Inspection Board with the social partners in terms of the objectives of labour inspection.*



*Article 6. Status and conditions of service of labour inspectors.* Noting that the Government has not provided any information on this matter, the Committee is bound to reiterate its previous request, which read as follows:

The Committee notes, from the information provided by the TISK, that draft conditions of service for the public service, including a draft text of the specific conditions of service of labour inspectors, have still not been adopted and that labour inspectors are accordingly still covered by a 1979 text. ***The Government is asked to provide clarifications on this matter and to supply a copy, if possible in one of the working languages of the ILO, of any text that is in force determining the status and conditions of service of labour inspectors.***

*Articles 10 and 11. Human and logistical resources of the labour inspection services necessary for the effective discharge of their duties.* In its report, the Government indicates that between January 2007 and May 2009, 69 new assistant labour inspectors were recruited by the Labour Inspection Board. By May 2009, the total number of labour inspectors was 534, and there were 68 assistant labour inspectors, while the number of staff assisting labour inspectors on administrative tasks was 108. However, according to the General Report on labour inspection for 2008 there were 591 labour inspectors, of whom 306 were responsible for the inspection of administrative and social aspects of labour relations (social inspections) and 285 for inspections related to occupational health and safety (technical inspections). However, table 1 of the General Report for 2008 indicates that the total number of labour inspectors in the Board was 642, of whom 522 were labour inspectors and 119 assistant labour inspectors. It also emerges from table 1(a) of the General Report on labour inspection for 2008 that there are no labour inspectors for technical inspections in Antalya, Erzurum and Samsun administrative provinces, while there is only one labour inspector for social inspections in Zonguldak and two such inspectors in Erzurum Province. In this context, in its comments submitted through the International Trade Union Confederation (ITUC), TURK-İŞ, considers that both the number of labour inspectors and the equipment at their disposal are inadequate. TURK-İŞ considers that in order to make labour inspection effective the first step should be to increase the number of labour inspectors and ensure their absolute independence during their activities.

In this respect, the Government announces that the number of labour inspectors will be increased gradually in future, while according to the TISK, the institutional capacity of the Head of the Labour Inspection Board will be strengthened in 2009–11 with the employment of 118 assistant labour inspectors in 2009 under priority 19.4 of the Turkish National Programme for the Adoption of the *Acquis Communautaire*, published on 31 December 2008 in *Official Gazette* No. 27097. As regards the equipment and facilities available to labour inspectors, the Government indicates that all labour inspectors in the Board are already equipped with portable computers and that a fund is reserved for the purchase of portable computers for assistant labour inspectors.

***The Committee requests the Government to provide up-to-date information on the total number of labour inspectors employed, their categories and the measures taken to strengthen the inspection staff. Moreover, the Committee requests the Government to take measures to ensure that an appropriate number of inspectors are recruited and assigned to the Antalya, Erzurum and Samsun and Zonguldak administrative provinces. Finally, the Committee requests the Government to indicate the manner in which it is planned to strengthen the logistical resources of the inspection services and to provide detailed information on the transport facilities, and other office and inspection equipment available to labour inspectors.***

*Labour inspection and child labour.* The Committee notes the information provided by the TURK-İŞ that, according to the studies undertaken in the context of the ILO–IPEC Programme, the number of working children aged 6–14 in the industrial sector has significantly decreased in Turkey. The TURK-İŞ proposes that social and economic measures be taken, compulsory education age raised to 12 years, and that local administrations, public and non-governmental organizations carry out projects to prevent child labour on the streets. The Committee also notes the information provided by the TISK on the opening of a second branch of its Office for Working Children in the Kartal District Vocational Training Centre of the Ministry of Education on 3 May 2007 with the support of the Kartal District (Istanbul) authorities. According to the TISK, a 15-month project entitled “Eliminating the worst forms of child labour in Adana Province: Social cooperation to fight child labour” was launched together with the TURK-İŞ on 12 December 2005. As a result of the project, working on the street and in temporary agricultural workplaces, as well as heavy and dangerous work in small and medium-sized enterprises were identified as the worst forms of child labour in Adana Province. The TISK and TURK-İŞ Social Support Centre for Working Children was opened in Adana on 23 May 2006 in the context of the project. The project made it possible to stop the employment of 345 children and provide medical treatment to 126 children. Although the project ended on 30 March 2007, the TISK continues to finance the health and educational programme of the Centre for Working Children, as it does in the TISK offices for working children.

***The Committee requests the Government to provide more information on the measures taken and/or policies designed by the Government to combat illegal recourse to child labour and to promote education among young workers. The Committee also requests the Government to provide information on the specific role of labour inspectors in combating child labour and relevant statistics on the ten-year project to combat child labour, 2005–15, referred to in its previous report.***

## Uganda

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that the Government has not sent the report requested by the Conference Committee on the Application of Standards concerning the measures taken to follow up its conclusions adopted at its session in May–June 2008. However, it notes the information received by the ILO on 11 November 2008 concerning the adoption in 2006 of Employment Act No. 6 and Occupational Safety and Health Act No. 9, and the views expressed by the Central Organization of Free Trade Unions (COFTU) and the National Organization of Trade Unions in Uganda (NOTU) at a tripartite workshop on the application of the Convention. The Committee also notes that, as recommended by the Conference Committee in 2001, 2003 and 2008, an ILO technical assistance mission was received from 13 to 17 July 2009 and that, together with the Government and the social partners and various public bodies, it examined the reasons for the deterioration in the labour inspection system since the 1990s, with a view to remedying it.

*Need to establish a labour inspection system that meets the requirements of the Convention*

The ILO technical assistance mission noted that the dismantling of the labour inspection system that followed its decentralization observed by an earlier ILO mission in 1995, has progressively worsened. The many interviews it had with staff of the labour administration and other public departments and with the social partners provided the mission with information betraying a level of distress that demands the urgent re-establishment of a labour inspection system able to ensure the supervision of the legal provisions related to conditions of work and the protection of workers, in accordance with *Article 3, paragraph 1(a), of the Convention* and to provide both employers and workers in industrial and commercial workplaces with useful information for their implementation, as required by *Article 3(1)(b)*.

The field visits proposed to the mission were limited to two very large foreign-owned agro-food companies located in areas of very intense industrial activity (Kampala and Jinja) and the mission *regretted* that it had not been in a position in which it could assess working conditions in small and medium-sized Ugandan establishments. However, the gradual deterioration in the labour inspection situation can be discerned from the information contained in the annual inspection reports received at the ILO in 1994 and 1996. According to the report covering 1994, the Labour Department had 83 employees, of whom 62 worked in the districts. Despite limited resources, the inspection staff managed to carry out 280 fully fledged visits, 292 visits to monitor implementation and 436 visits for other purposes. As prescribed by *Article 3(1)(a)* of the Convention, these inspections focused on application of the provisions on working conditions (general conditions and occupational safety and health) and the protection of workers. Of the many complaints from workers that had reached it, the labour inspectorate was able to deal with 1,252 and refer 32 to the courts. The annual inspection report for 1994, as well as providing detailed information on the work of the inspectorate, supplied statistical data together with relevant analyses and comments, including on occupational accidents, placing special emphasis on the lack of general safety and health standards in small and medium-sized establishments.

In 1995, an ILO technical assistance mission found that the labour administration was only represented in 20 of the country's 39 districts and had lost over 75 per cent of its human resources. For example, of the 67 posts planned for the occupational safety and health department, only two existed, one in Jinja, the other in Mbala, notwithstanding the significant number of establishments covered by the 1964 Factories Act and the fact that they were located throughout the country.

The annual inspection report for 1996 referred to 17 collective labour disputes concerning trade union rights, the refusal by employers to pay wage arrears and retirement benefits, and unfair dismissals of unionized workers. With the restructuring of the country's administration, unemployment was compounded by the dismissals of public employees. During the period covered, supervision of working conditions appears to have been marginalized in relation to employment policy and to no longer have been a matter of concern for the Government. The central labour administration's resources had been so reduced that no vehicles were left for travel outside the capital to supervise the operation of district services, some of which were unattainable by telephone. During the year covered by the above report, only 13 of the 21 district labour services were able to communicate information on their work: in all, 1,151 inspection visits were carried out, for some of which transport was provided by the employers. In total, there were 19 occupational safety and health inspection staff. Out of the 104 occupational accidents notified, only eight were investigated. Records showed that 25 per cent of the accidents were in construction and 33 per cent in government services and private security bodies. The 26–30 age group accounted for 34.61 per cent of the accidents, but no legal proceedings had been initiated during the period covered. The industrial court nonetheless apparently played an important role in pacifying and harmonizing industrial relations and, in most of its decisions it found for the workers. Its impact was attributed to its functional and financial independence.

In the observations it made in the years that followed, the Committee repeatedly noted that the Convention was not applied and reminded the Government of the obligations arising out of ratification, asking it to take the necessary steps to remedy the situation of the labour inspection services. Such measures involve, in particular, placing the inspection services under the supervision and control of a central authority and recruiting qualified and properly trained personnel. Financial, material and logistical resources are also essential for the control of the industrial and commercial establishments covered by the Convention and of the relevant national legislation (suitably equipped offices, provision of appropriate technical equipment for inspections and transport facilities and repayment of duty travel expenses). The diversity and complexity of the labour inspection functions defined in the Convention also require labour inspectors to devote most of their time to these duties, in their capacity as public officials who are assured of stability of employment and are independent of improper external influences.

Nevertheless, due to the decentralization of the labour administration as a whole, the Ministry of Labour as such soon disappeared and its component parts were absorbed by a succession of ministries. The labour administration is now a department in the Ministry of Gender, Labour and Social Development (MGLSD). Its resources have been significantly reduced, as has its authority over the decentralized services. While decentralization was designed as a response to the demands of a policy to encourage investment, both national and international, in the interests of developing the national economy and creating jobs, its implementation has become increasingly detrimental to workers because it has overlooked issues relating to conditions of work, which is in violation of the Convention.

The Local Governments Act, No. 1 of 1997, transferred labour issues to the districts, together with services and activities for social rehabilitation, probation and well-being of street children and orphans, the role of women in development, community

development, youth, culture and information services. With this transfer of authority, the districts are now exercising powers formerly held by central government, such as formulating development plans on the basis of priorities defined at the local level including raising, levying, managing and assigning resources through separate budgets, and establishing or abolishing public service bodies. As labour administration issues were no longer given priority, district labour departments were consequently reduced to rudimentary structures, and in some instances disappeared altogether. Furthermore, the number of districts increased from 56 to 75 in 2005 and to 80 in 2009, and is likely to increase further in the near future. Only the district of Kampala, which has a special status, is administered by the country's central authorities. COFTU and NOTU have expressed concern at the fragmentation of the country's administration at a time of drastic reductions in labour administration personnel and have called for amendment of the Constitution so that labour inspection can be placed back under the control and supervision of a central authority in a fully fledged ministry of labour endowed with the necessary capacities to fulfil its functions effectively. Although a similar view was expressed by nearly all the political and administrative officials and other stakeholders it met, the mission concluded that there is no such prospect on the agenda.

On 15 September 2008, the Local Governments Act was again amended with a view to the further decentralization of the administration taking account of a distinction between rural and urban entities. In accordance with section 77 of the Act, local governments will have the right and duty to formulate, approve and execute their budgets and plans subject to compulsory budgetary equilibrium (paragraph 1). Subject to the obligation to give priority to the objectives set out in national programmes (paragraph 2), urban governments are given financial independence, provided that their plan is incorporated into the district plan (section 79). The Committee notes that, according to section 83 (paragraph 2), central Government allocates to local governments to finance the operation of decentralized services, an unconditional minimum amount calculated in accordance with Chapter 7 of the Constitution, equal in value to the amount of the previous tax year for the same item.

In its report received in November 2008, the Government stated that it was seeking funds within the framework of the Decent Work Country Programme adopted in May 2007, while pointing out that the enhancement of labour inspection is a key element of a strategy for improvement of industrial relations through the promotion of rights at work. It undertakes to address all the issues raised by the Committee in the report due in 2009, taking into account the conclusions of the Conference Committee on the Application of Standards in June 2008. However, the Government has not sent the report as announced, but documented information gathered by the ILO mission of July 2009 shows that, while the MGLSD received an additional budgetary allocation in the course of the year, the labour inspectorate had no place in the MGLSD's budgetary allocations for the current fiscal year and that, moreover, labour administration issues in general are not included in any of the projects or strategies developed for the short and medium term by the Ministry in charge of local governments.

The Committee nevertheless hopes that, as soon as possible, the labour inspectorate will be given a key role in the country's social and economic development strategy, in particular through the process for revising the Decent Work Country Programme adopted in 2007, through the enactment of the above new legislation on employment and occupational safety and health, and to ILO technical assistance in fulfilling the objectives of the Convention. The Committee recalls that labour inspection is a function of the public administration that needs its own operating budget allowing the recruitment of suitable personnel and adequate resources to be made available. It is for the ministry responsible for labour to define requirements for this purpose and to raise awareness among governmental authorities and the social partners, particularly employers, of the positive impact of efficient labour inspection on a country's economic development and enterprise financial results.

The Committee notes the re-establishment of an Industrial Court financed by the state budget. In accordance with Act No. 8 of 2006 on labour disputes (arbitration and settlement), the court hears disputes that the labour inspector has been unable to settle or appeals by one of the parties where there has been no decision within 90 days. However, if the Industrial Court is to play its role fully, it would be advisable for the legislation on the functioning and powers of the labour inspectorate to be revised so as to adapt it to developments in the world of work, and for the legislation on conditions of work to be supplemented by regulations to give it practical effect under the supervision of the labour inspectorate. The Committee notes the indication to the technical assistance mission that a parliamentary process is under way for this purpose. **The Committee notes that the Employment Act, No. 6 of 2006, and the Occupational Safety and Health Act, No. 9 of 2006, contain provisions that are largely consistent with the Convention, and requests the Government to take measures promptly to give effect to them in practice. In particular, it requests it to ensure that effect is given in the near future to section 3(1) of the Occupational Safety and Health Act (No. 9) and section 9 of the Employment Act (No. 6), concerning the recruitment of the necessary inspection staff to ensure the implementation of these Acts, and that the number of inspectors will be determined in each district on the basis of the technical and geographical criteria referred to in Article 10 of the Convention. The Committee therefore urges the Government to ensure that the necessary conditions are created to establish effective cooperation between the labour administration and the other public services and private institutions that possess useful data (such as the ministries of finance, justice, tourism, commerce and industry, the Bureau of Statistics, the Investment Authority and the National Social Security Fund (NSSF)) for the establishment of a companies register providing the labour inspectorate with the necessary information to develop an inspection programme that takes into account the branches of activity in which workers are the most vulnerable in view of the general conditions of work and the risks for their safety and health.**

The Committee notes that, in accordance with section 20 of the Employment Act (No. 6), an annual report containing information on labour inspection must be published by the labour commissioner at the ministry responsible for labour, which seems at least to suggest a return to the idea of a central labour inspection authority within the meaning of Article 4 of the Convention to supervise and control the work done by the district inspection services. An annual report, prepared in accordance with Articles 20 and 21 of the Convention, will also enable the national authorities concerned, as well as the social partners and the ILO's supervisory bodies, to gain a sufficiently clear idea of the way the labour inspection system functions and hence to envisage or propose, as the case may be, the necessary means of improving it.

**The Committee requests the Government to provide information on any measures taken in pursuit of the above objectives, together with any relevant documents. It would be grateful in particular for information on the manner in which it plans to give effect to Article 4 of the Convention in terms of organizing and running the labour inspection system in practice in the context of the application of the current version of the Local Governments Act. The Committee finally requests the Government to ensure that an annual inspection report, containing the information available on the subjects listed at Article 21 of the Convention and reflecting both progress made and the shortcomings of the labour inspection system, will be published and that a copy will be sent to the ILO.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Ukraine

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)***

Referring to its previous observation regarding the comments by the Federation of Trade Unions of Ukraine (FTUU), dated 28 September 2009, on the application of this Convention, the Committee notes the Government's communication of 12 January 2010 replying to the points raised by the union.

In its comments, the FTUU referred to Act No. 877-V, adopted on 5 April 2007 by the Supreme Council concerning the fundamental principles of state supervision in the area of economic activity, which entered into force on 1 January 2008. According to the union, the Act was supplemented on 23 May 2009 by an Order of the Cabinet of Ministers of Ukraine concerning temporary restrictions on state supervision activities in the area of economic activity, applicable until 31 December 2010. Although the FTUU has not transmitted to the ILO copies of the abovementioned instruments, it indicates that they contain a number of discrepancies with regard to the provisions of this Convention and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

According to the union, Act No. 877-V significantly restricts the rights of state inspectors and their ability to carry out their supervisory functions as a result of the introduction of additional procedures, namely:

- the requirement to establish the periodicity of inspection visits to workplaces;
- the requirement to obtain specific authorization documents, without which inspection officials may be refused entrance by the employer;
- inspection visits must be carried out only during working hours;
- notice of a planned visit must be given at least ten days in advance;
- the requirement of an order or warrant from the relevant superior authority in case of unscheduled inspections.

Moreover, Cabinet Order No 502 provides that scheduled inspections of economic entities shall be temporarily suspended until 31 December 2010, except in the case of entities which, according to the risk assessment criteria approved by the Cabinet of Ministers, are classified as “high-risk” economic entities, and in the case of regular monitoring operations in connection with the enforcement of tax legislation and the verification of the calculation, completeness and timeliness of payments due under various budgets and state tax and contribution funds.

According to the union, the provisions of these texts undermine the effectiveness of state labour inspection, in particular inspection activities in connection with the enforcement of legislation regarding occupational safety and health and the working environment. The Committee understands that, in response to the union's request (by letter No. 4322-0-33-08-21 of 19 May 2008) for a clarification regarding the legality of the provisions of Act No. 877-V, the Ministry of Justice affirmed that, under the terms of the Constitution and the Act concerning international agreements to which Ukraine is party, international agreements currently in force, which have been accepted by the Supreme Council as binding, are an integral part of the national legislation and must be observed conscientiously in accordance with international law and that, consequently, in case of conflict with national provisions, those of international agreements prevail. However, the Ministry refused to ask the Government to initiate an amendment process of these instruments. As a result, according to the union, the inspectors of the state occupational safety and health and mining inspectorate are hindered in their activities.

The FTUU requests that the Government's attention be drawn to the importance of bringing the national legislation into line with the obligations it has accepted under the terms of this Convention and Convention No. 129.

In reply to the points raised by the FTUU, the Government fully recognizes that *Article 12(1)(a) and (2)*, as well as *Article 15(c) of the Convention*, have indeed been violated by several provisions of Act No. 877-V, and that the provisions of Cabinet Order No. 502, issued to restrict temporarily the performance of state monitoring activities in the sphere of economic activity until 31 December 2010, are also contrary to the provisions of *Articles 16 and 18* of the Convention. Moreover, the Committee notes that, according to the Government, the State Department for Supervision of Labour Legislation (*Goznadzortruda*) has prepared a Bill to amend Act No. 877-V and a draft Cabinet Order to amend Cabinet Order No. 502, but none of these texts have yet been approved by the competent executive authorities. In this regard, the Committee would like to draw the Government's attention to paragraph 266 of its General Survey of 2006 on labour inspection, in which it explains that “the different restrictions placed in law or in practice on inspectors' right of entry into workplaces can only stand in the way of achieving the objectives of labour inspection as set out in the instruments” and notes that “such restrictions are not in conformity with the Conventions”. The Committee recalls that, under the terms of *Article 12(1)(a)*, labour inspectors with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection and that “the protection of workers and the technical requirements of inspection should be the primordial criteria for determining the appropriate timing of visits, for example to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections requiring machinery or production processes to be stopped” (see General Survey, op. cit., paragraph 270).

As regards the frequency and thoroughness of inspection visits in accordance with *Article 16* of the Convention, the Committee notes that “how this provision is applied in practice is the basic test of any labour inspection system” (see

General Survey, op. cit., paragraph 256). It further recalls that “in order for labour inspectors to carry out inspections as often and as thoroughly as prescribed in the instruments, they must have adequate freedom of movement and logistical means. They must also have the necessary information on the enterprises and activities liable to inspection to enable them to focus their interventions on priorities defined on the basis of objective criteria, such as level of occupational risk, categories of men and women workers employed (young persons, migrants) and the presence of a trade union” (see General Survey, op. cit., paragraph 258).

***The Committee requests the Government to provide a copy of Act No. 877-V and Cabinet Order No. 502, as well as the related abovementioned draft texts, and to take the necessary measures in the near future to ensure that law and practice are brought into line with the provisions of the Convention with regard in particular to the rights and powers of labour inspectors. It would be grateful if the Government would report on the steps taken and the results achieved and provide the Office with any relevant documentation.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2011.]***

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2004)***

Referring to its previous observation regarding the comments by the Federation of Trade Unions of Ukraine (FTUU) dated 28 September 2009 on the application of this Convention, the Committee takes note of the Government’s communication of 12 January 2010 by which the Government replies to the points raised by the union.

In its comments, the FTUU referred to Act 877-V adopted on 5 April 2007 by the Supreme Council concerning the fundamental principles of state supervision in the area of economic activity, which entered into force on 1 January 2008. According to the union, the Act was supplemented on 23 May 2009 by Order of the Cabinet of Ministers of Ukraine concerning temporary restrictions on state supervision activities in the area of economic activity, applicable until 31 December 2010. Although the FTUU has not transmitted a copy of the abovementioned instruments to the ILO, it indicated a number of discrepancies they contain with regard to the provisions of this Convention as well as the Labour Inspection Convention, 1947 (No. 81).

***Referring to its observation under Convention No. 81 and noting that the issues raised by the FTUU and the provisions referred to by the Government relate to the same extent to Articles 1(1)(a) and (2); 20(c); 21 and 24 of the present Convention, the Committee requests the Government to also provide, in addition to the requested documentation, any information relating specifically to the rights, the powers and the means of action of the labour inspection staff in agricultural enterprises.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2011.]***

## **United Arab Emirates**

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)***

With reference to its previous comments, the Committee notes with *interest* the information and documentation relating to the following provisions of the Convention and specific issues.

*Article 3(2) of the Convention. Lightening of additional functions entrusted to labour inspectors in the framework of disputes settlement.* The Government indicates that the transfer of the department which examines workers’ conflicts to the Ministry to the Workers’ Abu Dhabi Court was to be effective beginning 2010.

*Articles 5(a) and 21(e). Measures aimed at promoting cooperation between the labour inspection service and the judicial system.* The Ministry of Labour held several meetings with the judicial bodies to facilitate the procedures of referring work-related criminal cases, which impact on workers’ rights, set up a mechanism to regulate the referral of lawsuits by the Ministry of Labour against undertakings found in violation, and resolve the violations notified by the labour inspectorates. According to the Government this step has enabled the labour inspectorate to refer cases without administrative complications and contributed in deciding on cases of an urgent nature.

Moreover, to implement the guidelines on the development of the adjudication mechanisms, the Ministry of Labour set up three new offices in charge of labour relations at local courts in addition to the offices in each of the Dubai and Abu Dhabi courts. A coordinating committee has been set up between the judicial department in Abu Dhabi and the Ministry of Labour to, notably, help judges and labour officials obtain all the relevant information on workers’ cases. In the context of cooperation with the judicial department in Abu Dhabi, the first programme for the training of labour inspectors was held from 1 to 9 March 2009 at the Training and Judicial Studies Academy, attached to the department. Eighteen inspectors and legal researchers participated.

Referring to its general observation of 2007 under the Convention, the Committee notes that, according to the Government, coordination is under way with the Ministry of Justice and relevant judicial bodies to find a system for the

registration of judicial decisions which will be made accessible to the officials and the central authority of the labour inspection system.

*Articles 7(3) and 8, 10, 11, 20 and 21. Restructuring of the labour inspection system. Training of labour inspectors and material facilities available for the performance of their functions.* According to the Government, three new administrations for inspection have been upgraded: the Workers Guidance Administration; the Occupational Safety and Health Administration; and the Labour Inspection Administration.

The Workers Guidance Administration is responsible for making workers aware of the measures taken by the Ministry and work policies by undertaking field visits to this effect, as well as providing advice and counselling to employers and workers and residents through the media and convene symposia, and orientation lectures in collaboration with other administrative units at the Ministry. It is also responsible for preparing booklets, newsletters and special guiding materials related to inspection, labour laws and policies, and their dissemination through official communication channels.

The Occupational Safety and Health Administration is responsible for the formulation of plans, standards and technical instructions and rules which are to be observed in the area of occupational safety and health, the recording of violations of occupational safety and health and the adoption of measures to prevent diseases and injuries by participating in medical arbitration committees, carrying out periodic inspections of various types of undertakings and workplaces liable to inspection, providing protection from occupational injuries, monitoring the requirements and standards of workers' accommodation and occupational safety, and raising awareness among workers through various means. In addition, training programmes and courses for the qualification of labour inspectors at the Ministry continue to be organized. In November 2009, the training concerned judicial enforcement; the labour code; criminal proceedings; application of penal sanctions; alternatives to conflict resolution; problems encountered by inspectors; and ethics of inspectors.

The labour inspection administration is responsible for supervising the application of the federal law which relates to regulating labour relations and the orders putting it to effect, in addition to following up on workers, and investigating the violations committed by undertakings and workers. It is responsible for carrying out various types of inspection visits in accordance with set deadlines so as to ensure a continued revision of the extent of observance by undertakings of the application of the provisions of the law in collaboration with various government bodies. It also prepares reports and statistics related to the administration. According to the Government, the Labour Inspection Administration relies in its work on report forms designed specifically for this purpose so as to regulate the work of the inspection system, and to ensure that labour inspectors carry out their duties as set out in the Convention.

In reply to the Committee as to the reason for the decrease in the number of inspection visits in the Emirate of Dubai, the Government indicates that this was due to the three-month training course which started in October 2007 and was followed by all 84 employees of the inspection department. In 2008, the number of inspections increased from 14,000 to 27,895 in Dubai, after the completion of the training.

*Article 3(1)(a). Control of the legal provisions relating to working conditions, accommodation, living and transport for lower skilled workers.* The Committee notes the indication by the Government that the guidelines of November 2006 which specify the need to provide decent living conditions to migrant workers, to construct model housing complexes and provide appropriate transportation means between workplaces and workers' accommodation are mandatory and that their implementation has improved, to a large extent, the migrant workers' accommodation and transportation facilities to and from their work. The step taken to refuse to grant reluctant employers collective labour contracts unless a clear commitment to providing suitable accommodation to workers is proved, has been very efficient to this end. Order No. 13 of 2009 issued by the Council of Ministers relating to the manual on general standards for workers' housing, contains relevant provisions. According to the Government, such standards were prepared by the bodies responsible for workers' accommodation in the State, and specialized advisory offices in accordance with relevant best practices and international standards.

Moreover, in an increasing number of workers' residence complexes, which have been built to match the increase in the rates of demand on manpower and are run by private sector undertakings under the supervision of the local government of the Abu Dhabi Emirate, the role of labour inspectors now lies in verifying the application of the conditions and criteria which have been introduced in order to ensure the health and safety of the inhabitants of the residence complexes. The occupational safety and health section of the inspection unit inspects workplaces and workers' accommodation in order to verify the extent of conformity with relevant standards, investigates occupational accidents and provides expertise and knowledge in these fields.

*Specific protection of workers exposed to direct sunshine and dehydration.* In reply to the previous Committee's request, the Government states that suitable means of transportation have been provided between workers' accommodation and their workplaces in order to put into effect the Order issued by the Undersecretary of the Ministry of the Interior in 2004, which prohibits the transportation of workers on board open vehicles or modified cargo vehicles of all types and sizes. These vehicles were identified as main causes for the increased rate of injuries and deaths of workers.

The Committee also notes the statistical information provided by the Government on violations of Order No. 408 of 2007 which regulates work in the sun during the months of July and August for the period 2007–08 and a copy of

Ministerial Order No. 587 of 2009 which relates to determining the hours of work for the tasks carried out in the sun, and in open air places, and the Government's statement that the number of undertakings found in violation has significantly decreased thanks to the increase of inspection visits.

*Workers' right to transfer to another employer.* The Government communicates, in reply to the previous Committee's request, copies of Ministerial Order No. 634 of 2008 which amends some provisions of Ministerial Order No. 826 of 2005 to facilitate the transfer of the sponsorship of all categories of workers on the basis of a written report of the labour inspection department or by the labour office, as well as a number of other texts out of which Ministerial Order No. 788 of 2009 obliges undertakings to transfer workers' wages through banks, currency exchange companies and financial institutions equipped to operate through a wages protection system (WPS). The latter is a system which was developed by the Central Bank of the United Arab Emirates, equipped with a technique which authorizes the Ministry of Labour to monitor all the data related to workers' wages so as to give a warning to undertakings which are late in the disbursement of workers' wages.

*Article 15(c). Confidentiality relating to complaints and their source.* In the above context, the Government refers to a service called "a salary system" which is an electronic system allowing workers in the private sector to notify the delay with which undertakings where they are employed pay their wages in relation to set deadlines, and notify the Ministry of illegal deductions or the failure to add overtime hours, without revealing the identity of the plaintiff, so as to keep the worker in his/her job, and to ensure continuity of the employment relationship. Labour inspectors verify the soundness of the complaint as well as the identity of the plaintiff before carrying out the workplace inspection and then adopt the necessary measures without revealing the identity of the person who submitted the complaint. On that occasion, the inspectors also verify the situation of the rest of the workers of the undertaking at fault so as to hide that the visit was performed following a complaint.

*Articles 14 and 21(f) and (g). Notification of, and statistics on, employment accidents and cases of occupational disease.* In reply to the Committee's previous observation on the lack and imprecision of statistics on employment accidents and the importance of establishing a formal mechanism for the communication to the labour inspectorate of industrial accidents and cases of occupational disease, the Government refers to Ministerial Order No. 32 of 1982 and to a Memorandum of Understanding signed by the Ministry of Labour and the health authority of Abu Dhabi to promote the working environment in accordance with the most updated occupational safety standards and to reinforce cooperation with respect to occupational health, safety activities, prevention, as well as to monitor damage and injuries related to work in Abu Dhabi. The instrument also seeks to ensure an exchange of data and statistics on occupational-related diseases, damage and injuries at the workplace, occupational health, injuries and medical care in emergencies, medical care services, medical treatment and clinical results, as well as an evaluation of the extent to which this data coincides. Each undertaking occupying over 15 workers will be obliged to submit a register on occupational injuries and diseases according to the law. The partnership with the health authority is expected to ensure the flow of a large number of data and information on private sector companies, which will help the Ministry in instituting legal proceedings against non-compliant companies. It will also seek to ensure a certain degree of collaboration and coordination in the process of registering occupational injuries between the Ministry of Labour and the authority.

*Articles 17 and 18. Deterrent effect of legal proceedings and penalties applied against employers who are in violation of the legal provisions enforced by labour inspectors.* In its previous comments, the Committee noted the indication by the Government that daily newspapers publish the identity of those undertakings which violate the legal provisions relating to certain areas of conditions of work. It notes in this regard, the communication of a copy of the *UAE Gazette*, dated 25 July 2007, whereby 201 names of such offenders are mentioned. The Government also mentions other legal provisions relating to conditions of work and the protection of workers in industrial and commercial establishments and refers again in this regard to the possible refusal to authorize the conclusion of any new labour contract by an undertaking in violation or the eventual transfer of the sponsorship of its workers. It states that these measures led to more attention being paid by undertakings to the observance of the provisions of the law because of the consequences of a cessation of transactions with them and the refusal of new work permits for the recruitment of workers indispensable to the running of their activities. In 2008, 7,083 undertakings were stopped.

However, it is also intended to launch an annual labour prize to reward undertakings which observe the legal provisions relating to conditions of work and the protection of workers.

*Noting that no annual report on labour inspection activities has been received at the ILO to allow for an assessment of the application, in practice, of the new provisions referred to by the Government, the Committee would be grateful if the Government would take the necessary measures to ensure, according to Articles 20 and 21 of the Convention, that such annual report is published soon and that it contains all relevant information.* It recalls that guidance is provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), as to the appropriate manner in which the requested information could be disaggregated.

*In addition, while noting the communication of a copy of Order No. 367 issued by the Undersecretary of the Ministry of Interior on 25 December 2002, which prohibits the confiscation of the passport of any person resident on the UAE territory without a judicial order, the Committee would be grateful if the Government would provide statistics of infringements of this Order.*

## United Kingdom

### Anguilla

#### ***Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)***

The Committee notes with *regret* that the Government's brief report contains no reply to its previous comments. It is therefore bound to repeat its 2009 direct request which read as follows:

The Committee notes the indication by the Government that the United Kingdom no longer provides grant-in-aid to the Government of Anguilla in an effort to ensure greater economic and political autonomy to the territory. It also notes that the territory has no responsibility for its economic development, social progress and employment policies. *The Committee would be grateful if the Government would provide the ILO with a copy of the legal provisions relating to the status of the territory as described in the report and its impact on the application of the Convention, and give, in particular, details on the arrangements made between the Government of the United Kingdom and the Government of Anguilla regarding the allocation to the labour inspectorate, the human resources and financial and material means necessary for its functioning.*

The Committee observes that for more than 15 years, no new information had been received at the ILO concerning measures undertaken in order to give effect in law and in practice to the Convention, and that the only information contained in the report is that labour inspectors attend all training programmes in labour inspection and occupational health and safety organized by the ILO subregional office. *The Committee hopes that the Government will communicate in its next report, as detailed information as possible on the application of each of the provisions of the Convention as well as copy of relevant legal texts and available statistics on the labour inspection activities performed during the period covered by the report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### British Virgin Islands

#### ***Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat the matters raised in its 2006 direct request which read as follows:

The Committee notes the Government's report to the effect that, since the previous report (1999), no change has occurred in application of the Convention. The Committee notes that the Government has given the same information in successive reports since 1979. *As the Committee has received no information on which to base an appreciation of the level of application of the Convention ratified in 1950, it is bound to request the Government to supply in its next report to the International Labour Office, in conformity with article 22 of the ILO Constitution, up to date information on measures taken or envisaged to give effect in law and in practice to each of Articles 1 to 5 in reply to the requests made in Parts I to VI of the report form of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Bolivarian Republic of Venezuela

#### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)***

*Articles 20 and 21 of the Convention. Publication and communication to the ILO of an annual report on the work of the labour inspection services.* The Committee notes the detailed information provided by the Government in its report received in September 2009 in reply to the previous comments. In particular, it notes with *interest* the indication of the existence of a website for the National Institute for Prevention and Occupational Safety and Health (INPSASEL), on which information is published on the mandate, activities and results of the labour inspectorate. The Committee notes that in 2009 and 2010 activities were targeted at:

- conditions of work and accommodation of workers engaged in catering (violations were noted in relation to safety and health and the obligation to notify risks, accidents and cases of occupational diseases);
- the working conditions of men and women workers in the State of Aragua, bringing to light a significant number of cases of persons suffering from musculoskeletal injuries; a similar operation is planned in 32 other regions of the country according to the operational plan 2010;
- risks related to health, occupational safety and the environment in relation to the transport of chemicals and hazardous gases;
- supervision of workers' delegates responsible for prevention in workplaces throughout the country;
- the registration of occupational safety and health committees (9,595 in the construction and factory sectors, as well as in commercial establishments in 2009); and
- the system for the declaration of cases of occupational diseases (1,904 cases declared in 2009).

The Committee also notes the detailed analysis of the statistics of industrial accidents over the period 2005–06, based on their geographical distribution, economic activity, occupation, material factor, part of the body injured, nature of



the injury, educational level of the worker and age group. The efforts made to reduce the phenomenon of under-declaration are also reported to have allowed the reinforcement of INPSASEL policies in relation to men and women workers engaged in sectors that are traditionally excluded, namely SMEs, the informal economy, young workers, women and hitherto invisible categories of workers.

Analysis of the statistics is also reported to have enabled the Institute to reinforce and renew public policy on occupational safety and health and to reorient its programmes of action through strategic intervention projects, particularly in construction, factories and mines, with particular emphasis on activities in the petroleum sector, both with regard to its strategic importance and the high level of occupational risks which characterize it.

The Committee notes however that the above statistical analysis covers a relatively old period and reminds the Government that *Articles 20 and 21* of the Convention respecting the annual report on the work of the labour inspection services determine, respectively, the time-limits and the content of such a report. ***The Committee would be grateful if the Government would therefore take measures to ensure that, as envisaged by Articles 20 and 21, the central labour inspection authority publishes and communicates to the ILO each year within the required time-limits an annual report containing updated information on the relevant laws and regulations, the staff of the labour inspection service, the number of workplaces liable to inspection and the number of workers employed therein, statistics of inspection visits, violations and penalties imposed, as well as of industrial accidents and occupational diseases. In view of the level of detail of the relevant data already posted on the INPSASEL website, the Government should be in a position to comply with this requirement rapidly and to provide information in its next report on the progress achieved in this respect, as well as ensuring that an annual labour inspection report is published and communicated to the ILO in the near future.***

## Zimbabwe

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1993)

*Articles 6, 10 and 11 of the Convention.* The Committee notes that in its brief report received on 21 December 2009, the Government is confined to indicating that the information previously requested by the Committee on the composition and conditions of service of labour inspection staff and the material resources made available to them, is being collected and will be communicated in due course. It also notes the comments made by the Zimbabwe Congress of Trade Unions (ZCTU) in communications dated 29 August 2008 and 21 September 2009 in relation to the scarcity of human and material resources which obstructs the effective exercise of the functions of the labour inspection system. It notes that the Government confirms in its report that resource constraints have hampered the inspection service owing to economic challenges. The Committee also notes that the ILO is to provide a technical assistance package in the areas to be identified by the Government and the social partners. ***The Committee once again requests the Government to provide information on: (i) the composition and distribution of the inspectorate staff responsible for general conditions of work and occupational safety and health, and on any development with regard to inspectors' conditions of service; (ii) the manner in which effect is given to each provision of Article 11 of the Convention, specifying in particular the procedure for refunding labour inspectors' duty travel costs. Please also provide copies of the relevant texts.***

*Articles 5(a) and 18. Suitable and effectively applied sanctions.* In its previous comments, the Committee had welcomed the adjustment of pecuniary penal sanctions to ensure that they maintain a deterrent effect and the possibility of imprisonment for violations of the fundamental rights of employees. The Committee refers in this regard to its general observation of 2007 on the importance of effective cooperation between the labour inspection and the justice system in ensuring the effective enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. In this regard, the Committee notes the conclusions and recommendations of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), according to which, there are significant gaps in the administration of justice and it is necessary to provide appropriate resources and training to the courts, especially the Labour Court and the key institutions and personnel in the country, in the areas of freedom of association and collective bargaining and human rights more generally [Report of the Commission of Inquiry, December 2009, para. 606(4) and (5)]. ***The Committee requests the Government to indicate the measures taken or envisaged, including in the framework of the technical assistance package, to strengthen the cooperation between the labour inspection services and the justice system, including through training of labour inspectors and judges on the fundamental rights of workers.***

***Noting moreover that no reply has been provided in relation to its previous request for statistical data on the contraventions reported by inspectors in respect of the subjects covered by the Convention, and the sanctions imposed and effectively applied in practice, the Committee once again asks the Government to provide this information.***

*Articles 20 and 21. Annual inspection report.* The Committee notes that no annual report on the activities of the labour inspection system, as prescribed by *Articles 20 and 21*, has been received by the ILO since the ratification of the Convention in 1993. In its report the Government indicates that it has previously sought the assistance of the ILO in order to set up a labour market information system which is a prerequisite to the production of annual reports but this assistance is yet to be availed of. ***Drawing the Government's attention to its General Survey of 2006 on labour inspection in***

*which it explains the importance of publishing and communicating to the ILO an annual report on inspection activities, and to Part IV of Labour Inspection Recommendation, 1947 (No. 81) on the manner in which the requisite information might be presented to good effect, the Committee trusts that the Government will ensure that effect is given as rapidly as possible to Articles 20 and 21, and invites the Government to avail itself of technical assistance from the ILO in this regard.*

*The Committee would be grateful if the Government would report any progress made towards ensuring an effective and efficient labour inspection system with the support of the social partners.*

The Committee is raising other points in a request addressed directly to the Government.

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1993)**

The Committee notes that the Government's report, received on 21 December 2009, is confined to indicating that the Government takes note of the Committee's comments and undertakes to keep the Office informed of any developments in the strengthening of labour inspection in the agricultural sector.

The Committee also notes the comments made by the Zimbabwe Congress of Trade Unions (ZCTU) in a communication dated 21 September 2009, which provides information in relation to the comments previously made by the Committee. According to the ZCTU, there is no legislation in place that deals specifically with agricultural undertakings. However, occupational safety and health issues are covered under the Environment Management Act (Chapter 20:27) according to which, every worker has the right to work in an environment that does not endanger his or her safety. The Act regulates the usage, storage, labelling and disposal of hazardous substances and articles. The Act is complemented by the collective bargaining agreement in the agricultural industry SI323/1993 which compels employers to provide employees appropriate protective clothing and devices to protect them from hazardous substances. The labour inspection in agriculture is also covered by sections 125–126 of the Labour Act which empower labour officers and designated agents of Employment Councils to investigate and inspect work practices in any employment establishment.

The ZCTU deplores that this enforcement mechanism has not been effectively applied in farms since 2000 due to the troubled political situation. Labour officers as well as designated agents of Employment Councils are incapacitated in terms of resources. It adds that political violence in some farms is still a problem and that trade unions, in particular the officials of the General Agriculture and Plantation Workers' Union (GAPWUZ) which is affiliated to the ZCTU are harassed, beaten, detained and intimidated whenever they try to conduct trade union activities. According to the ZCTU, in some farms that have been compulsorily acquired by the Government, workers are evicted from their dwellings for demanding their salaries; efforts to enforce payment of salaries are becoming fruitless and a relevant dispute is pending before the National Employment Council for the Agriculture Sector while the eviction dispute is pending in the Mutare Magistrate Court as Case No. 42/09. Furthermore, the employers are refusing to negotiate insisting that the 10 Zimbabwe dollars (ZWD) salary currently paid to farm workers is adequate. The lack of meaningful inspections in the agriculture sector subjects farm workers to exploitation and lack of enforcement and penalties remain a challenge. *The Committee requests the Government to provide any comments it may consider appropriate to the observations of the ZCTU. It further requests the Government to send a detailed report on the manner in which the Convention is applied in law and in practice on the basis of the questions raised in the report form of the Convention.*

## **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 63** (Algeria, Barbados, Chile, Cuba, Djibouti, Egypt, France, France: French Polynesia, France: New Caledonia, Uruguay); **Convention No. 81** (Armenia, Australia, Azerbaijan, Bahamas, Bahrain, Benin, Bosnia and Herzegovina, Burkina Faso, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Cuba, Democratic Republic of the Congo, Ecuador, France, France: New Caledonia, Gabon, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Hungary, India, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mauritania, Republic of Moldova, Netherlands, Netherlands: Aruba, Portugal, Rwanda, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Singapore, Slovenia, Solomon Islands, Suriname, Swaziland, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom: Gibraltar, Viet Nam, Zimbabwe); **Convention No. 85** (United Kingdom: Montserrat); **Convention No. 129** (Azerbaijan, Bosnia and Herzegovina, Colombia, Egypt, Estonia, France: New Caledonia, Hungary, Kazakhstan, Luxembourg, Madagascar, Malta, Netherlands, Norway, Serbia, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Ukraine); **Convention No. 150** (Albania, Armenia, Australia, Belarus, Benin, Burkina Faso, Cambodia, China, Costa Rica, Cyprus, Democratic Republic of the Congo, Denmark, Dominican Republic, Egypt, El Salvador, Gabon, Guinea, Guyana, Jamaica, Jordan, Kyrgyzstan, Liberia, Luxembourg, Malawi, Mali, Mauritius, Republic of Moldova, Romania, San Marino, Seychelles, Suriname, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United Kingdom: Isle of Man, Zambia, Zimbabwe); **Convention No. 160** (Armenia, Australia, Australia: Norfolk Island, Austria, Azerbaijan, Belarus, Benin, Plurinational State of Bolivia, Canada, China: Hong Kong Special Administrative Region, Colombia, Costa Rica, Cyprus, Denmark, Finland, Germany, Greece, Guatemala, India, Ireland, Italy, Kyrgyzstan, San Marino, Tajikistan, United Kingdom, United Kingdom: Gibraltar).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 150** (*Argentina, Israel*); **Convention No. 160** (*El Salvador*).

## Employment policy and promotion

### Algeria

#### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes the information supplied by the Government in August 2009 in reply to the observation of 2008. The Government indicates that a Plan of Action for the Promotion of Employment and Combating Unemployment was adopted in April 2008. This plan places the creation of lasting and decent employment at the heart of economic and social policies and aims to reduce the unemployment rate, standing at 13 per cent since 2007, to under 10 per cent by 2009–10 and under 9 per cent by 2011–13. Seven priority areas have been determined in the plan of action, including: support for investment in the employment-creating economic sector, promotion of training leading to qualifications, promotion of an incentive policy for the creation of employment in favour of enterprises and promotion of youth employment through the new mechanism providing assistance with vocational integration. The Government indicates that employment support programmes have also been put in place, such as the national programme for the development of agriculture and the national programme for rural development, which aim to provide rural groups that usually have no land assets with the financial and material means to enable them to participate in the implementation of projects in their locality. The Committee also notes the National Economic and Social Pact, which was concluded on 30 September 2006 for a period of five years. ***The Committee requests the Government to indicate in its next report whether any particular difficulties have been encountered in achieving the objectives of the National Economic and Social Pact, adopted in September 2006, and the Plan of Action for the Promotion of Employment and Combating Unemployment, adopted in April 2008, and to state to what extent these difficulties in job creation have been overcome. The Committee also requests the Government to include up-to-date information on the current situation and trends regarding the active population, employment, underemployment and unemployment, throughout the country and in the different regions, by sector of activity, sex, age and level of qualifications.***

*Youth employment.* The Committee notes the vocational integration assistance mechanism (DAIP), which has facilitated the conclusion of 48,002 professional integration contracts, 29,721 vocational integration contracts and 86,573 training/integration contracts. By the end of 2008, a total of 164,296 jobs had been created for young first-time jobseekers. The DAIP also introduced a training/integration contract for young persons without training or qualifications, by means of an apprenticeship with a master craftsman for one year with a grant of 4,000 Algerian dinars (DZD) per month for a maximum period of six months. In the same context, there are plans to pay grants of DZD3,000 to unqualified young persons who embark on training in shortage occupations. A local project financing study committee (CLEF) responsible for evaluating projects presented by young jobseekers, in collaboration with the National Youth Employment Support Agency (ANSEJ), has been established. According to the information compiled in the General Survey of 2010 concerning employment instruments, the Committee noted that there is a high rate of unemployment among educated workers, particularly young university graduates, who are unable to find employment commensurate with their skill level. This is now an issue for the advanced market economies as well as developing countries. Not only are the skills of young graduates underutilized, but this pattern of casual jobs can also prove detrimental to their lifetime career progression. The Committee therefore encourages governments to develop job creation and career guidance policies targeted at this new category of the educated unemployed (General Survey, op. cit., paragraph 800). ***The Committee therefore requests the Government to indicate in its next report the results achieved for ensuring productive employment for the recipients of the vocational integration assistance mechanism (DAIP) and to provide information on the new measures adopted to combat youth unemployment, particularly young graduates and under- or unqualified young persons.***

*Promotion of small and micro-enterprises.* The Committee notes the measures adopted for promoting the development of SMEs, particularly in the form of training in techniques for the creation and management of activities for promoters; the development of business incubators; the setting up of facilitation centres in the craft sector; the establishment of an advisory council for SMEs; and the setting up of three specialist micro-enterprise agencies and specific funds to support small enterprises. In 2008, a total of 13,191 micro-enterprises were created, generating 37,154 permanent jobs. In the 2010 General Survey, the Committee also emphasized the importance for small and medium-sized enterprises to have access locally and nationally to support services for human resources development. ***The Committee requests the Government to supply information in its next report on the measures taken “to create an environment conducive to the growth and development of small and medium-sized enterprises” (see Paragraph 5 of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)).***

*Labour market policies in favour of workers with disabilities.* The Government indicates that centres providing assistance through work and also teaching centres provide training for persons with disabilities with a view to their vocational integration. ***The Committee requests the Government to supply further details in its next report on the activities of these centres and to include any other relevant information concerning the integration of workers with disabilities in the labour market.***

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Committee notes the establishment at national level of two national committees, the first chaired by the Prime Minister and the second by the Minister for Employment, and also of a local committee responsible for the monitoring and coordination of employment mechanisms in order to evaluate progress towards full employment. ***The Committee invites the Government to supply in its next report, further information on the activities of these committees indicating, in particular, the contribution of the social partners to the formulation and revision of employment policies and programmes. It also requests the Government to indicate the manner in which account is taken of the opinion of “representatives of other sectors of the economically active population” such as those working in the rural sector and the informal economy, with a view to securing their full cooperation in formulating and enlisting support for such policies.***

## Angola

### **Employment Service Convention, 1948 (No. 88) (ratification: 1976)**

*Contribution of the employment service to employment promotion.* The Committee notes the succinct report provided by the Government in May 2010. In its 2008 observation the Committee noted that, in the context of its policy to combat unemployment and poverty, the Government established some public policies with a view to stimulating employment. It further noted that employment and vocational training were one of the ten priorities of the poverty reduction strategy, which should channel the resources obtained from oil to create favourable opportunities for productive employment for young persons and to reduce the informal economy. The Committee observed that the social indicators were a source of great concern – 70 per cent of the population survived on less than US\$2 a day and enrolment in primary schools was increasing very slowly (from 50 per cent in 1990 to 53 per cent in 2000). It therefore emphasized the need to guarantee the essential function of employment services to promote employment in the country. The Committee notes the Government’s statement that the employment service staff is composed of public officials who are hired through public competition according to the needs of the Ministry of Public Administration, Employment and Social Security and of the employment centre. ***The Committee once again requests the Government to provide a report containing the available statistical information on the number of public employment offices established, the number of applications for employment received, vacancies notified and persons placed in employment by such offices (Part IV of the report form) and to provide information on the following matters:***

- *consultations held with representatives of employers and workers on the organization and operation of the employment service, and on the development of employment policy (Articles 4 and 5 of the Convention);*
- *the manner in which the employment service is organized and the activities which it performs to effectively carry out the functions set out in Article 6;*
- *the activities of the public employment service in relation to socially vulnerable categories of jobseekers, with particular reference to workers with reduced mobility and disabilities (Article 7);*
- *the results of the measures adopted to give effect to Act No. 1 of 2006 to encourage young persons seeking their first job (Article 8);*
- *the measures proposed by the Training Centre for Trainers (CENFOR) and other institutions to provide training or further training to employment service staff (Article 9(4));*
- *the measures proposed by the employment service in collaboration with the social partners to encourage the full use of employment service facilities (Article 10); and*
- *the measures adopted or envisaged by the employment service to secure cooperation between the public employment service and private employment agencies (Article 11).*

The Committee recalls that the Office is in a position to provide the Government with technical advice and assistance for the establishment of a public employment service, as required by the Convention.

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Argentina

### **Employment Service Convention, 1948 (No. 88) (ratification: 1956)**

*Contribution of the employment service to employment promotion.* In reply to the 2005 observation, the Committee notes the report received in 2010 in which the Government indicates that 324 municipal employment offices have been established in 23 provinces with a coverage of 76 per cent of the total population. In 2008, the employment offices provided services for 157,548 persons and in 2009 for 316,957 persons. The Committee notes that the National Employment Services Network also endeavours to provide vocational guidance, support for job-seeking, employment placement, guidance for self-employment and referral to educational institutions and/or training activities. ***The Committee invites the Government to provide up-to-date information in its next report on the measures adopted to ensure that the National Employment Services Network has sufficient offices to meet the needs of employers and workers in each of the regions of the country (Article 3 of the Convention). In this respect, the Committee invites the Government to***

*include the statistical data requested in Part IV of the report form for the Convention on the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by the 324 municipal employment offices.*

*Cooperation with the social partners.* The Government refers in its report to the action taken by employment offices and also mentions the establishment of the Employment Services Directorate under the National Directorate of the Federal Employment Service. The Committee refers to its General Survey of 2010 on the employment instruments, in which it highlighted the fact that direct and constant interaction between the public services and employers and jobseekers in the job market is essential (paragraph 208 of the General Survey of 2010). ***The Committee reiterates the request that it has been making for many years for the Government to include in its report information on the manner in which the social partners have been associated with the activities of the public employment service. The Committee recalls the requirement in Articles 4 and 5 of the Convention to establish advisory committees for the full cooperation of the representatives of employers and workers in the organization and operation of the employment service.***

*Strengthening of employment services through technical cooperation.* The Committee notes the final report of the Integrated Support Programme for the Reactivation of Employment in Argentina (AREA) of October 2008. The AREA programme was supported by the Government of Italy and received ILO assistance to facilitate the creation of public employment services, vocational training and local development. ***The Committee invites the Government to include information in its next report on the manner in which ILO advice has contributed to strengthening the operation of the public employment service.***

## Austria

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1972)**

The Committee notes the Government's report for the period ending May 2009, including replies to its 2008 direct request, the Second National Reform Programme for Growth and Employment, the Economic Report Austria 2009 as well as current labour market statistics.

*Articles 1 and 2 of the Convention. Employment trends and active labour market measures.* The Committee notes that the goal of full employment had been reached in August 2008, when the unemployment rate stood at 3.3 per cent. The Government states that as a result of the global financial and economic crisis, since autumn 2008, the situation of the Austrian labour market had deteriorated and unemployment rose by 30 percentage points as compared to autumn 2008. According to data available from the OECD, this rate reached 4.9 per cent in the fourth quarter 2009 after having peaked at 5.1 per cent in that year's third quarter. This drop of the employment rate, the first for seven years, mostly affected young persons, men and foreigners working in manufacturing and for temporary work agencies. The Government remains committed to again achieve full employment and has introduced a package of measures to increase the employment rate beyond the EU's targets for 2010. Having reached the overall EU quantitative goal of 70 per cent in 2008, the employment rate stood at 72.1 per cent. Having achieved the goal of 60 per cent as early as 2001, the female employment rate in 2008 was 65.8 per cent. The Government is further aware that as before, the better integration of older workers in the labour market, which has reached 41 per cent in 2008, continues to be a key in order to reach the Stockholm target of 50 per cent. The Committee recalls that increasing the participation and employment rates of older workers is a crucial issue common to advanced economies in light of the ageing and shrinking of their working age population.

The Committee notes that in light of the ongoing effects of the global economic crisis, the measures undertaken by the Government to stimulate the economy and create jobs resulted in economic packages and tax breaks amounting to €5.7 billion – 2 per cent of the Austrian GDP. Furthermore, the budget for active labour market policies has been increased by almost half; the total in 2009 was €1.3 billion. Legislative measures comprise the Employment Promotion Act 2009, which focuses on expansion of short-time work, training and facilitating the establishment of labour foundations. The “Early Intervention Strategy” remains the Government's main tool to improve the integration of young and older persons in the labour market. The employment campaign for persons with disabilities will be continued and supported with additional resources to facilitate their entry into the labour market. ***The Committee requests the Government to continue to provide in its next report information on the situation, level and trends of employment, unemployment and underemployment, both in the aggregate and as they affect particular categories of workers, especially with regard to young persons and workers with disabilities.***

*Article 3. Consultation with social partners.* The Committee notes that the social partners' proposals were taken into consideration by the Government. This led to a reform of the Youth Employment Package 2008 to include on-the-job and external training and the implementation of a training guarantee for young persons below the age of 18. In this regard the Committee notes with ***interest*** that the social partners' document “Labour Market – Future 2010” would be integrated into the 24 integrated guidelines for growth and employment of the National Reform Programme. ***The Committee invites the Government to also include in its next report updated information on the participation of the social partners in the design and implementation of other active employment market measures as required by the Convention.***

## Belarus

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1968)**

*Articles 1 and 2 of the Convention. Measures to promote employment.* The Committee notes the Government's report received in September 2009 containing replies to the 2008 direct request. The Committee also recalls its 2009 observation, including comments submitted by the Belarusian Congress of Democratic Trade Union (CDTU), which indicated that short-term contracts, in practice, limit workers' rights to free choice of employment. Under Presidential Decree No. 29 of 1999, employers may conclude fixed-term contracts with all categories of employees, including those who already have indefinite contracts. The CDTU argued that such legal framework hinders the workers' right to free choice of employment and is contrary to the spirit of the Convention. The CDTU drew attention to instances of abuse by some employers in Bobruisk and Novopolotok, who have threatened workers with dismissal and non-renewal of fixed-term contracts. In its General Survey of 2010 concerning employment instruments, the Committee indicated that the realization of the right to work as a basic human right can be attained through the promotion of full, productive and freely chosen employment as the cornerstone of economic and social policies. The Committee, referring to *Article 1(2)(c)* considered that, similar to the United Nations Committee on Economic, Social and Cultural Rights, the right to work included the obligation to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly (paragraphs 48 and 49 and summary on page 24 of the 2010 General Survey). **The Committee thus hopes that the Government will report on the regulations adopted to generate decent jobs with adequate protection specifying how it has been possible to satisfy the employment needs of the workers whose short-term contract of employment has ended.**

*Active employment policy. Coordination with economic and social policy.* The Government recalls that the State Employment Promotion Programme, aimed to enhance the effective use of available human resources, is annually approved by the Council of Ministers. According to the data provided by the Government in its report, the unemployment rate was at 0.8 per cent of the total economically active population in January 2009. In 2008, 4,522,600 persons were employed; 162,700 new jobs have been created, including 1,492 temporary jobs under the Youth Work Experience Programme; 23,200 permanent jobs for unemployed persons; and 509 partially subsidized jobs for persons with disabilities. **The Committee requests the Government to continue providing information in its next report on policies and programmes promoting full employment and how these policies and programmes will translate into productive and lasting employment opportunities for the unemployed and those categories of workers most affected by the crisis.**

*Equitable regional development.* In reply to previous requests, the Government indicated that, as part of the State Employment Programme for 2008, it had taken several labour market measures to address the consistently high level of unemployment in 36 small and medium-sized towns, villages and regions. The Government indicates that out of 31,000 jobs created, 7,700 were in small towns and contributed to a subsequent decrease in unemployment rates among those which were otherwise consistently high. **The Committee asks the Government to continue providing information on the measures taken to address high levels of unemployment in small and medium-sized towns, as well as the results of such measures.**

*Vulnerable categories of workers.* The Committee notes that the State Employment Programme for 2008 includes particular measures for those who are unable to compete on equal terms in the labour market. The Government indicates that in 2008 the local authorities reserved a total of 25,600 jobs for persons with disabilities, young persons, and persons released from correctional institutions. The Government also communicates that subsidized jobs have been created to provide temporary employment to young persons who are graduates of higher educational institutions, specialized schools, and vocational and technical schools. The Government reports that the unemployment rate for women decreased from 66 per cent in January 2008 to 60.6 per cent in 2009. **The Committee asks the Government to continue providing information on the active measures adopted to promote employment for vulnerable categories of workers and the impact of such measures.**

*Education and vocational training policies.* The Committee notes that the national system of vocational training is developed and implemented under the Regulations on the Organization of Vocational Training, Retraining and Further Training of the Unemployed (Order No. 1334 of 2006) and the Regulations on the Continuous Training of Manual and Non-Manual Workers (Order No. 599 of 2007). The Government explains that the vocational training provided is shaped by the regional labour market situation, as determined annually by different bodies of the state employment service, and that unemployed persons are provided with compensation during the period of their training. The Government communicates that a total of 22,300 unemployed persons received vocational training in 2008; 11,000 of them were trained in their first occupation, 9,600 underwent retraining, and 1,600 received further training. **The Committee invites the Government to provide information on the impact of the measures mentioned above on enabling a better alignment of vocational education and future labour market needs.**

*Article 3. Participation of social partners.* The Committee notes that the Ministry of Labour and Social Protection consulted the Federation of Trade Unions of Belarus (FPB) and the Belarusian Confederation of Industrialists and Entrepreneurs (BCIE) in the design and implementation of the State Employment Programme for 2009–10. The Government indicates that the General Agreement for 2009–10, signed in December 2008 by the Government, the national employers' organizations, and the trade unions, contains a chapter entitled "Development of the labour market

and employment promotion”, emphasizing the need to prioritize active labour market measures. Furthermore, the tripartite National Council for Labour and Social Issues convenes every six months to supervise compliance with the General Agreement. The Committee also notes that the interests of the agricultural sector are represented in the National Council for Labour and Social Affairs by the Agricultural Sector Workers’ Union (ASWU), a workers’ organization, and the Belarusian Agroindustrial Union (BelAPS), an employers’ organization. ***The Committee invites the Government to continue providing information on participation of the social partners in employment policy formulation and implementation.***

## Cambodia

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1971)***

The Committee notes the Government’s report received in May 2010 containing some replies to the points raised in the 2009 observation. The Committee has also benefited from the information provided by the ILO specialists in the Regional Office for Asia and the Pacific.

***Articles 1 and 2 of the Convention. Coordination of social and economic policy with poverty reduction.*** In its report, the Government refers to the implementation of the National Strategic Development Plan, the Rectangular Strategy Plan, and the Vocational Training’s Strategic Plan. The Committee notes that the Government’s new policies under the Tourism Law include plans to establish a tourism-focused research institute, university, and vocational school to promote industry-specific skills. The Government details other measures adopted to respond to the global crisis, including provision of short-term vocational training and micro-credit service to newly unemployed workers and availability of low interest, short-term credit to farmers in small and medium-sized enterprises. The Government also describes the 2008–11 implementation of the Emergency Food Project financed by the Asian Development Bank, which seeks to build a better response system to food crises, provide subsidies for seeds and fertilizers, and distribute free food to the most vulnerable groups in 200 communes and seven provinces. The Committee notes that the Government also endorses a policy of labour migration to neighbouring countries as a way of reducing poverty and unemployment. ***The Committee invites the Government to provide information in its next report on the achievements of the employment objectives defined in the Rectangular Strategy and other development plans designed to promote full, productive, and lasting employment opportunities to the unemployed and other categories of workers affected by the crisis. The Committee also invites the Government to report on the action taken within the framework of an active employment policy to prevent abuse in the recruitment of Cambodians working abroad (see Part X of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).***

***Employment trends.*** The Committee notes that according to the Ministry of Planning’s 2007 Labour Force Report, Cambodia’s labour force participation rate in 2007 remained at 75 per cent and its unemployment rate continued to be low at 1 per cent. The informal economy is said to provide up to 90 per cent of all employment due to inadequate opportunities and wages in the formal sector. The Committee notes that under the global economic crisis, the economy has experienced a significant drop from the average growth rate exceeding 10 per cent in the years between 2004 and 2007 to loss of 2 per cent in 2009, although the growth rate in 2010 has recovered to a rate between 4 and 5 per cent. ***The Committee invites the Government to provide in its next report updated information on the labour market and employment trends and communicate any difficulties experienced in collecting relevant data and using such data to implement policies in accordance with the Convention.***

***ILO technical assistance.*** The Government indicates improvements in labour law compliance since the Better Factories in Cambodia Programme despite the pressure engendered by the economic crisis. Minimum wage compliance rate increased by 12 per cent, while the compliance rates regarding requirements to provide protective equipment and install needle guards on sewing machines have also increased by 12 per cent and 7 per cent, respectively. ***Noting that the garment industry has been particularly affected by the crisis and that its workers are among the most vulnerable, the Committee requests the Government to continue providing information on the progress in implementing the Better Factories initiatives in the country and its impact on fostering productive employment.***

***Regional development and rural employment.*** The Committee notes the Government’s efforts to address the regional disparity in development by promoting the tourism industry, planning to establish Special Economic Zones in locations other than Phnom Penh, and cooperating with regional partners like Japan to develop the triangle area of Cambodia–Laos–Viet Nam. The Committee also notes that the ILO has assisted the Government since 1992 to promote labour-based appropriate technology (LBAT) to build essential rural infrastructure and that this strategy is currently being considered as a part of the Government’s comprehensive strategy to improve social safety through productive and employment-intensive public works. ***The Committee requests the Government to provide information on the effects of the abovementioned measures on promoting employment opportunities in the rural areas, including data and analysis examining the progress made towards achieving equitable regional development. In addition, the Committee invites the Government to detail the specific employment objectives of the Triangle Development Area in its next report.***

***Youth employment.*** In its 2009 observation, the Committee expressed its concern regarding the estimated rate of 275,000 young people annually entering the labour market. The Committee understands that the Government is finalizing



a youth policy with an action plan partly addressing the employment issue. *The Committee asks the Government to provide information on specific measures adopted to generate employment opportunities for the youth.*

*Educational and training policies.* The Committee notes the establishment of the National Training Board, headed by the Deputy Prime Minister and composed of representatives from the private sector, training institutions, and governmental ministries. The Board seeks to improve the existing educational and vocational institutions by setting national standards and certificates in cooperation with foreign experts, as well as creating a National Employment Agency and job centres. The Government indicates that there are 45 public and 209 private/NGO educational and vocational institutions and that the number of students graduating from these programmes has increased by 22.5 per cent in the years between 2006 and 2008. *The Committee requests the Government to continue providing information on the effects of such educational and training measures on increasing employment opportunities.*

*Article 3. Participation of the social partners.* The Government continues to indicate that the Labour Advisory Committee has not been consulted in the development and implementation of employment policies. The Committee emphasizes that social dialogue is essential in normal times and that it becomes even more so in times of crisis. The employment instruments require member States to promote and engage in genuine tripartite consultations (General Survey of 2010 concerning employment instruments, paragraph 794). The Committee invites the Government to intensify its efforts to take into account the stakeholders' perspectives in formulating and implementing employment policies. *The Committee asks the Government to address this essential issue in its next report by demonstrating how the representatives of employers and workers are consulted at the policy planning and implementation stages so that their experience and views are taken into account.*

## Chile

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1968)**

*Articles 1 and 2 of the Convention. Declaration and pursuit of an active employment policy.* The Committee notes the report received in November 2009, in which the main legislative provisions adopted in relation to training and employment are listed. The Government indicates that the Committee of Experts will be informed as soon as possible of the results of action taken in response to the matters raised in the observation of 2008. In the General Survey of 2010 concerning employment instruments, the Committee noted the National Agreement for Employment, Training and Labour Protection, signed in May 2009 in response to the crisis. The measures included encouraging the retention of workers and promoting skills training with tax incentives for enterprises which facilitate the training of workers as an alternative to redundancy. According to data published by the ILO in the *2009 Labour Overview*, the unemployment rate increased from 7.9 per cent in 2008 to 10 per cent in 2009, particularly affecting women and young people. *In order to be able to examine the manner in which the Convention is applied, the Committee requests the Government to supply detailed information on how an active policy designed to promote full and productive employment has been formulated within the framework of a coordinated economic and social policy. The Committee requests the Government once again to identify the most effective programmes with the most positive impact on the creation of employment for the most vulnerable groups, such as women, workers in precarious situations and workers affected by restructuring.*

*Youth unemployment. Coordination of vocational education and training measures with employment policy. Participation of the social partners.* *The Committee reiterates the other points raised in its observation of 2008, in relation to which the Government is requested to supply detailed information in its report on the following:*

- *the measures adopted to ensure decent working conditions for young persons entering the labour market;*
- *the manner in which education, training and lifelong learning policies are coordinated with prospective employment opportunities;*
- *the manner in which the experience and views of the social partners are fully taken into account, their full cooperation secured, and their support enlisted for the formulation and implementation of the employment policy. In particular, the Committee requests the Government to provide information on formal procedures for consultation with the social partners on the matters covered by the Convention (Article 3);*
- *the action taken as a result of the assistance or advice received from the ILO with regard to employment policy (Part V of the report form).*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## China

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1997)**

The Committee notes with *interest* the detailed information provided by the Government in September 2009, in reply to the tripartite discussion that took place in the Conference Committee in June 2009 and to its previous observation.

*Articles 1 and 2 of the Convention. Formulation of an employment policy.* The Committee notes that the Government pursues long-term strategies and policies for employment promotion, prioritizes employment expansion in

the socio-economic development and endeavours to achieve a healthy interaction between economic development and employment generation. The Government has devoted its attention to developing labour-intensive and tertiary industries, private enterprise and enterprises with foreign investment, small and medium-sized enterprises (SMEs), self-employment and flexible forms of employment. To ensure that job creation is placed at the centre of macroeconomic policies, the authorities have established interdepartmental employment working groups for policy coordination. A joint ministerial meeting system which was headed by a vice-premier brought together representatives of more than 20 ministries. Active employment policies are being adopted, focusing on tax reduction, microcredit and interest subsidized loans for business start-up and self-employment; hiring incentives such as tax reduction and social insurance contribution subsidies for enterprises that recruited unemployed people; public job-creation schemes for hard-to-place workers; and targeted employment assistance programmes to ensure every family had at least one member in employment. The Government acknowledges the long-term employment pressure that they suffer due to factors such as a large population, industrialization, urbanization, economic restructuring and the comparatively low quality of the labour force. The Government also states that, every year, China has 24,000,000 jobseekers in urban areas and 10,000,000 rural workers yet to be transferred, resulting in a degree of employment pressure not experienced by any other country. In its report, the Government indicated that, since 2003, over 10,000,000 jobs have been created and more than 8,000,000 workers have been transferred from rural areas each year. In 2008, registered urban unemployment stood at 4.2 per cent. ***The Committee invites the Government to include in its next report information on the impact of the measures mentioned to generate employment.***

*Measures taken in response to the global crisis.* The Committee notes that the crisis has especially affected the exporting sector and SMEs and that migrants and new labour entrants have been among the most affected. In its General Survey of 2010 concerning employment instruments, the Committee noted that the State Council had adopted Notification No. 4 in 2009, which deals with employment issues under the economic situation, and other documents which deal with facing the current economic situation and stabilizing the labour relationship (General Survey, op. cit., paragraph 620). Among the measures taken to respond to the crisis, the Government launched stimulus packages that focus on infrastructure, public works, rural development investment and support for labour-intensive industries, particularly SMEs and the service sector. Enterprises have been allowed to postpone or reduce payment of social insurance contributions and have also received subsidies. The Committee notes that social dialogue is being promoted as a tool to respond to the crisis. The national tripartite mechanism jointly issued the guidance on how to face the current economic situation and to stabilize the labour relationship, to encourage and guide enterprises and workers in stabilizing job posts and avoiding lay-offs as much as possible, by taking, through consultations, measures such as wage adjustments and flexible working time. The Committee notes the importance of genuine tripartite consultations to confront and mitigate the effects of the global economic crisis. ***The Committee invites the Government to provide in its next report information on the participation of the social partners in the design and implementation of an active employment policy to overcome the negative effects of the crisis.***

*Impact of legislation on employment creation.* The Government indicates that the implementation of the Labour Contract Law has brought an increase in employment (reaching 93 per cent in 2008), and a decrease in the tendency of signing short-term contracts, which has increased workers' stability in employment. The implementation of the Labour Contract Law has also resulted in an increase in the number of people signing up for social security. The Government also states that the Employment Promotion Act has translated active employment policies into law, providing powerful legal support for achieving full employment. ***The Committee invites the Government to continue to provide information on the impact and results achieved in terms of productive employment creation and the improvement of employment security for workers through the implementation of the Labour Contract Law and the Employment Promotion Act.***

*Vulnerable groups.* The Committee notes the different employment policies, plans and actions developed to tackle the consequences of the devastating earthquake in Sichuan (May 2008), including employment assistance and support policies to recover production and stabilize employment. According to the data provided by the Government, up to March 2009, the supporting localities had supplied information on over 1,170,000 job opportunities in the areas affected by the earthquake, helped 105,000 workers find employment through remote job-changing employment and direct employment by disaster-relief reconstruction projects, assisted over 1,267,000 workers to find employment on the spot or nearby and 308,000 workers were transferred from Sichuan through organized labour migration. The Committee also notes that the Emergency-Start and Improve Your Business (E-SIYB) was launched to support SMEs recover production in the area and rural workers to create business in the cities of Chengdu, Deyang and Mianyang. In its previous comments, the Committee noted the regulations adopted to promote employment of people with disabilities. The Government further informs that it has formulated a series of accompanying policies and measures in order to further assist people with disabilities and promote their employment, including special services, improvement of employment services and training to help them start their own businesses and self-employment. The Government has also adopted specific measures for rural workers with disabilities to increase their employability. At the end of 2008, new employment had been found for 368,000 workers with disabilities in the urban areas and 17,171,000 rural workers with disabilities were engaged in active production. ***The Committee invites the Government to continue to provide information on the impact of the measures taken in order to promote productive employment for vulnerable categories of workers. Please also include in the next report data on the situation and trends of the active population, employment, unemployment and underemployment disaggregated by***

*sector, age, gender, in particular for vulnerable groups such as young persons, women, people with disabilities, rural workers and ethnic minorities.*

*Ensuring re-employment of laid-off workers.* With reference to the measures to enhance the employability of workers that had been laid off by state-owned enterprises, the Government indicates that between 2003 and 2008, over 30,000,000 workers had realized work through different channels. The Government has designated occupational training institutions to carry out flexible and diversified trainings and has launched the Re-employment With Skills project, which expected to train 4,000,000 workers per year. Between 2006 and 2008, 68 per cent of the 18,880,000 workers who had participated in the re-employment training had found work. The Committee notes that companies that hire older workers receive subsidies and that special attention is paid to older workers in the 40–50 age group. ***The Committee wishes to continue to receive information on the measures envisaged to improve the insertion in the labour market of the remaining workers affected by the lay-off by state-owned enterprises.***

*Consistency and transparency of labour market information.* The Government reports that up to November 2008, seven labour surveys had been conducted. Nevertheless, the complexity of the labour market is not entirely reflected. The Committee notes that the Government is exploring ways to improve these survey methods to enhance the results afforded by them. The Committee noted, in the 2010 General Survey, that the China Enterprise Confederation, through its membership network, is gathering information regarding recruitment, management of human resources and vocational training from companies (General Survey, op. cit., paragraph 80). The Committee recalls the importance of compiling and analysing up-to-date statistical data and trends as a basis for deciding measures of employment policy. ***The Committee wishes to continue to receive information on the progress made in order to obtain accurate data and how it is being used to formulate and review employment policies.***

*Constructing a unified labour market.* The Committee notes that the reform in the household registration system is steadily advancing and that the reform aims at achieving an integrated management of residence permits for the migrant population. The Government is relaxing the requirement for rural workers who already have stable employment and residence in cities and townships. Efforts are also being made to actively develop village and township enterprises and the county-level economies to increase job opportunities for the rural labour force. The Government informs that it intends to increase efforts to ensure a unified urban–rural labour market and implement the Employment Promotion Law in greater depth so as to accelerate the establishment of an employment policy that embodies equality between urban and rural areas. ***The Committee invites the Government to provide in its next report information on the impact of the measures that are being implemented in order to ensure that workers enjoy the same rights and obligations in a unified labour market. Please provide further information on the projects launched to unify employment management and the results achieved by the employment services in providing jobs for rural workers seeking employment in cities. The Committee hopes that the measures to be taken will succeed in unifying the labour market and invites the Government to include an evaluation on how a balanced growth between economic development and employment has been achieved among the different regions of the country.***

*Extension of social security and healthcare.* The Government indicates that social security coverage is being expanded to cover more people, particularly rural migrant workers and workers in precarious employment, and that the establishment of a basic medical insurance system is being accelerated. The Government further reports that from 2009 to 2011, governments at all levels were expected to invest around US\$120 billion in improving medical insurance and the medical service system. The Government expects that by 2010 every one of the country's 1.3 billion citizens will enjoy full health insurance coverage. ***The Committee invites the Government to include in its next report updated information on the matter and its impact on creating lasting employment.***

*Strengthening employment services.* The Government indicates that in 2008, 99 per cent of the urban neighbourhoods and 80 per cent of towns have set up public employment services that provide assistance and job placement services and have helped 20 million people find work. The Committee recalls the key role that efficient employment services play to maintain full employment and to secure the needs to workers and enterprises (General Survey, op. cit., paragraph 202). In 2008, 10,000 private employment agencies operated in the country. The Committee notes that within the efforts to complete and improve the employment services that cover both rural and urban areas, pilot projects for the establishment of county- and town-level public employment service systems were initiated. In 2009, another programme was launched to provide internships for 3 million college graduates, and there were plans to help 1,000,000 long-term unemployed workers to find jobs and assist 8,000,000 migrant workers to transfer to the non-agricultural sector. ***The Committee invites the Government to report on the achievements made in strengthening public employment services and regulating private employment agencies. Please also provide information on the measures taken to ensure cooperation between the public employment services and private employment agencies and measures that the Government is taking to encourage private employment services to improve the quality of their services in order for them to fulfil their employment promotion functions.***

*Promoting small and medium-sized enterprises.* The Committee notes the increase of channels to finance SMEs. The Government has also encouraged financial institutions to improve their services and increase their credit support for SMEs, including granting microcredits for individuals setting up their own business. In 2008, the Government issued the guidance on boosting the efforts to encourage start-ups for employment promotion and created a directorate to offer assistance to entrepreneurs which are starting up their businesses. The Committee notes that 82 cities have been selected

to pilot a new initiative of Start-up Oriented City. *The Committee invites the Government to include in its next report more information regarding these pilot initiatives and information on the impact of these measures on employment creation. Please also inform on the measures taken in order to facilitate procedures to start-up business and on the efforts made to create an environment conducive to the creation, development and sustainability of SMEs.*

*Vocational training and education policies.* The Government intends to provide non-agricultural occupational training to 40,000,000 rural workers through the Employment-With-Skill for the Rural Labour Force Programme. Between 2006 and 2008, 26,500,000 rural workers have received training. In addition, some localities have issued training coupons and opened training accounts in an effort to encourage rural workers to participate in trainings. The Committee also notes that the Ministry of Human Resources and Social Security implemented a special occupational training programme in 2009–10 to provide “tailored training” to meet the specific job requirements of enterprises, so that rural workers may walk directly into the job. The Committee also notes that, to assist laid-off workers and the rural labour force re-enter the labour market, the Government designated occupational training institutions to carry out flexible and diversified trainings. The Committee also noted in the 2010 General Survey that trade unions at various levels had set up vocational training institutions (General Survey, op. cit., paragraph 176). *The Committee invites the Government to include information on how the human resource development policies are coordinated with employment policies and on how the Government is strengthening the coordination between vocational institutions. It also welcomes information on how the local entities and social partners participate in the design and implementation of training policies and programmes.*

*ILO technical cooperation.* The Committee notes that the ILO’s SIYB Programme completed activities in areas of product development, quality control and development of trainers. It also notes that the technical assistance provided under the UN Millennium Development Goal, with the ILO as the leading executive agency, expects to improve the content and implementation of the young peasant workers services policy framework. *The Committee invites the Government to provide information on the results obtained through these projects and also on the results in terms of employment creation derived from the implementation of the Decent Work Country Programme (2006–10).*

## Côte d'Ivoire

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1992)**

*Part III of the Convention. Regulation of fee-charging employment agencies.* In reply to the observation of 2006, the Government indicates in a report received in June 2010 that the activities of temporary work enterprises can in fact be deemed equivalent to those of a fee-charging employment agency, since they are also conducted with a view to profit. The Government indicates, however, that the promulgation of two different decrees, one concerning fee-charging employment agencies (No. 96-193 of 7 March 1996) and the other concerning temporary work (No. 96-194 of 7 March 1996), stems from the fact that, in the case of fee-charging employment agencies, the employment relationship ceases once the worker has been made available to the employer whereas, in the case of temporary work enterprises, the employment relationship may continue for up to six months. Under these circumstances, the Committee notes the Government’s statement to the effect that it does not consider the ratification of the Private Employment Agencies Convention, 1997 (No. 181), to be necessary. The Committee notes that, in 2008, a total of 37 approved employment agencies, 27 of which deal with temporary work and ten with placements subject to payment, received 2,519 requests for employment and actually placed 226 jobseekers in companies. In reply to the previous comments, the Government indicates that the renewal of the operating licence takes place on an annual basis and occurs on presentation of the statistics concerning job offers and requests and placements of jobseekers. The Government also indicates that, at the opening of a temporary work enterprise, the licence costs 250,000 CFA francs (XOF) and its renewal costs XOF200,000 per year and, for fee-charging employment agencies, the licence costs XOF200,000 and its renewal costs XOF100,000 per year. The Government states that there is no competition between fee-charging employment agencies and the Agency for Employment Research and Promotion (AGEPE) but that certain placement agencies do not supply statistics because they work within the informal economy after obtaining the initial licence. The Government states that, in such cases, licences will not be renewed because one of the conditions for the renewal of licences is the production of statistics. However, the Government indicates that the controls exercised by the AGEPE are minimal and that, since the liberalization of the activities of employment agencies, just one office has been closed for failing to adhere to its stated objectives. *The Committee requests the Government to continue to supply information on the steps taken to ensure regular controls on the activities of fee-charging employment agencies. It recalls that Article 13 of the Convention states that appropriate penalties, including the withdrawal when necessary of the licences and authorizations provided for by the Convention, shall be prescribed for any violation of the relevant national legislation. The Committee also requests the Government to continue to supply general information on the manner in which the Convention is applied, including, for instance, extracts from official reports, information on the number and nature of infringements reported, and any other particulars relating to the practical application of the Convention.*

## Cyprus

### **Employment Service Convention, 1948 (No. 88) (ratification: 1960)**

*Decisions relating to the application of the Convention.* The Committee notes the simplified report provided by the Government for the period ending in July 2010. The Government indicates that, in June 2009, a private employment agency filed a complaint with the Commission for the Protection of Competition against the Public Employment Service with the allegation that the state maintenance of a Public Employment Service offering free employment services to employees violated national law and the European regulation on the protection of competition and placed private employment agencies into a less favourable or disadvantaged position. The Government indicates that, after the investigation of the complaint, the Commission for the Protection of Competition issued a decision stating that the allegations were not valid based on the fact that the Public Employment Service operates according to the Convention which has been ratified by Cyprus and which has become an integral part of the country's legislation. The fact that the Public Employment Service provides services according to the law is compatible with the national and European regulation on the protection of competition because the competent authority is entrusted by the State to provide a public service. The Government indicates that the decision also stated that since the Convention does not discriminate between employers and employees, it is implied that services can be offered free of charge to both parties. The Committee notes with *interest* that this decision contributes to the achievement of the Convention objectives. ***The Committee invites the Government to continue to provide information, including statistical data, on the contribution of the public employment service to the maintenance of full employment and use of productive resources.***

## Dominican Republic

### **Employment Policy Convention, 1964 (No. 122) (ratification: 2001)**

With reference to its previous comments, the Committee notes the information supplied by the Government in the reports received in July and November 2009. Moreover, the Government sent a report containing statistical information relating to the period ending October 2010. In comments sent to the Government in September 2010, the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Trade Union Unity (CNUS) and the National Confederation of Dominican Workers (CNTD) state that an employment policy does not exist as such but forms part of other policies formulated and implemented by the Government in the production, fiscal and social spheres.

*Articles 1 and 2 of the Convention. Active policy designed to promote full, productive and freely chosen employment.* The Government indicates in the report received in November 2009 that the Dominican Republic economy achieved average annual real GDP growth in excess of 6 per cent between 1991 and 2000. A local financial crisis occurred in 2003 as a result of the bankruptcy of three banks. After 2005, growth in GDP was restored until the impact of the global financial crisis made itself felt. The Government also indicates that the rate of employment lagged behind the dynamic growth in GDP. During the 2000–08 period, the average annual growth rate in employment was 2.4 per cent, with the creation of 569,000 new jobs. The Government regrets that most people are occupied in precarious work and have few or no qualifications – some 1.4 million persons consider themselves as non-professional self-employed workers. In addition, in the report received in July 2009, the Government indicated that, by means of Decree No. 340/09 of April 2009, the National Employment Commission (CNE), made up of an inter-governmental technical team, was revived. The trade union organizations mentioned above point out that the CNE has not held any meetings since May 2010. The Committee understands that an Employment Plan 2009–10 is being drawn up. The Committee refers to paragraph 785 of the 2010 General Survey concerning employment instruments, which states that there are three fundamental steps to achieving full, productive and freely chosen employment. The first is to make a political commitment to achieve full employment. The Committee observes that *Article 2* of Convention No. 122 states that member States shall establish a clearly defined framework for coordinating economic and social policies. ***The Committee therefore again requests the Government to indicate the manner in which an active policy designed to promote full, productive and freely chosen employment has been formulated. The Committee hopes that the next report will include up-to-date statistical information on the size and distribution of the labour force and the nature and extent of unemployment as a key component in the implementation of an active employment policy within the meaning of the Convention.***

*Article 3. Measures for tackling the crisis. Participation of the social partners.* In the report received in October 2010, the Government indicates that the global economic crisis had an impact on the economy, with the GDP growth rate decreasing from 5.3 per cent in 2008 to 3.5 per cent in 2009 and the Dominican Republic peso having been devalued by 2.2 per cent. The Government refers briefly to the stimulus measures adopted in the area of taxation. The Committee notes the meetings of the Social and Employment Policy Round Table held in January and February 2009, in the context of the "Summit on national unity in the face of the global economic crisis". In order to overcome the global financial crisis, the social actors and other parties involved discussed and formulated proposals mainly intended to promote employment, support micro-, small and medium-sized enterprises, promote entrepreneurs and create new enterprises. The Committee underlines the importance of ongoing and genuine tripartite consultations for confronting and alleviating the effects of the global economic crisis (paragraph 788, 2010 General Survey). ***The Committee again requests the Government to supply detailed information in its next report on the consultations held with respect to formulating and implementing an active***

*employment policy. The Committee also requests the Government to supply information on the consultations held with representatives of the persons affected by the measures to be taken in other sectors of the active population, such as rural workers and workers in the informal economy.*

*Articles 1(3) and 2. Coordinated economic and social policy.* The Committee notes that the State Secretariat for Economics, Planning and Development, with the collaboration of the National Council for State Reform, has drawn up a proposal for the “National Development Strategy 2010–30”. The third component of the strategy proposes an articulated, innovative and sustainable economy which has a productive structure generating substantial sustained growth with decent employment and plays a competitive role in the global economy. One of the general objectives within this third component consists of reorienting the economic structure in such a way as to be more conducive to the creation of decent jobs in sufficient numbers. *The Committee requests the Government to supply information in its next report on the manner in which the objective of creating decent work has been reflected in the formulation of economic and social policy. The Committee also requests the Government to indicate the manner in which the National Development Strategy has been coordinated with a national employment plan.*

*Compilation and use of labour market information.* The Committee notes the indication in the Government’s report received in July 2009 that a first edition of the *Dominican Republic Labour Overview* has been drafted. The report states that an observatory has been set up to monitor the behaviour of general labour market indicators, general characteristics of the economy, population trends and other important aspects such as technical and vocational training and social security for the workforce. *The Committee requests the Government to provide information in its next report on the labour market as compiled by the labour market observatory in the Dominican Republic.*

*Vulnerable groups.* The data on the labour market supplied by the Government in the report received in October 2010 indicate that the unemployment rate remained at 14.9 per cent of the population, while still showing a sharper increase for young persons and still remaining higher for women than for men. The Government recognizes that informal occupation remains high, with 57 per cent of people working in the informal economy. The Committee highlights the fact that the specific lines of action of the second component of the National Development Strategy include seeking to raise human and social capital, increasing economic opportunities for people living in poverty, and strengthening the labour training system in order to facilitate access to productive work for persons living in poverty. *The Committee hopes that the next report will include information on the measures taken to strengthen programmes designed to facilitate the access of young persons and women to the employment market and on the results achieved through those measures. The Committee requests the Government to report in detail on the situation, level and trends of employment, unemployment and underemployment, indicating the extent to which they affect the most vulnerable sections of the population (women, young persons, persons living in poverty, rural workers and those working in the informal sector).*

*Migrant workers.* The Committee observes that one of the specific objectives of the second component of the National Development Strategy is to restructure and modernize the legal and institutional framework in order to strengthen the system for the management and control of migratory flows, in line with the best international practices and respecting the rights of the migrant population. *The Committee requests the Government to provide information on the measures taken in the context of an active employment policy to prevent abuses in the hiring of foreign workers and of those who leave the country to seek employment opportunities abroad.*

*Coordination of training policies with employment policies.* The Committee observes that the National Development Strategy provides for the consolidation of a high-quality higher education system and a system of further training in order to facilitate entry into the employment market, develop entrepreneurial capacities and increase the productivity of the population. *The Committee again requests the Government to include detailed information in its next report on the measures taken to coordinate education and vocational training policies with prospective employment opportunities, including a summary of the results achieved by the National Institute of Technical and Vocational Training (INFOTEP).*

*Small and medium-sized enterprises.* The Committee notes the promulgation of Act No. 488-08 of December 2008 establishing a regulatory regime for the development and competitiveness of micro-, small and medium-sized enterprises. The Committee recalls that the 2010 General Survey also underlined the central role played by micro-, small and medium-sized enterprises in reducing poverty through job creation, in accordance with the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). *The Committee requests the Government to include information in its next report on the impact of Act No. 488-08 on the creation of high-quality employment and the reduction of poverty.*

## Ethiopia

### **Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its 2009 observation which read as follows:

The Committee notes the Government’s report received in November 2008 referring again to the Employment Agency Proclamation No. 104 of 1998, which has already been examined in previous comments. The Committee also understands that in June 2007 the Office reviewed a draft proclamation aimed at strengthening the authority of public authorities in dealing with

private employment agencies and to revise the regulations concerning the operation of those agencies. The draft proclamation was also discussed in tripartite workshops with government authorities and other stakeholders. ***In this context, the Committee asks the Government to provide a report including the text of any new legislative text enacted concerning the application of the Convention and information on the matters raised in its previous comments.***

*Article 8 of the Convention. Protection of migrant workers.* The Government indicates that to implement the Convention, the Ministry of Labour consulted with the Ministry of Foreign Affairs and Ethiopian embassies. An inter-ministerial committee has been established including representatives of the Ministry of Justice, the Emigration Office and the federal police. The Government also mentions the provisions of section 598 of the Criminal Code to combat unlawful recruitment. The Committee reiterates its concern regarding the protection of Ethiopian workers recruited or placed either through regular or irregular private agencies for employment outside the country and the prevalence of trafficking in persons. ***The Committee asks the Government to report on the measures taken by the inter-ministerial committee to provide adequate protection and prevent abuses of workers recruited in Ethiopia for employment abroad and law cases. Please also provide particulars of cases when section 598 of the Criminal Code has been applied to abusive recruiters. Please also specify if the most representative organizations of employers and workers have been consulted in this matter (Article 8(1)). It also again requests the Government to provide information on bilateral labour agreements concluded to prevent abuses and fraudulent practices in the recruitment, placement and employment of Ethiopian migrant workers abroad (Article 8(2)).***

*Article 9. Trafficking of children.* The Government states in its report that, according to section 15(4) of the procedure prepared by the Ministry of Labour and Social Affairs, recruited workers should not be less than 18 years and that this would be safeguarded by routine inspection systems. ***The Committee refers to its comments on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), and requests the Government to indicate the measures taken to ensure that child labour is not used or supplied by private employment agencies.***

***The Committee reiterates its interest in receiving detailed information in the Government's next report on the measures adopted to apply the provisions of the Convention which are referred to specifically in a direct request.***

## France

### **Employment Service Convention, 1948 (No. 88) (ratification: 1952)**

*Article 4 of the Convention. Reform of the public employment service. Participation of the social partners.* The Committee notes the Government's report received in February 2010, which contains information in reply to the matters raised in its 2008 observation. The Committee notes that the establishment of closer links between the National Employment Agency (ANPE) and the National Occupational Union for Employment in Industry and Commerce (UNEDIC) has led to the creation of *Pôle Emploi* as a new one-stop shop. Under Act No. 2008-126 of 13 February 2008, a National Employment Council was established as a tripartite body responsible for giving strategic direction to employment policies and ensuring coherence between the missions and activities of the various bodies comprising the public employment service. The Government also indicates that, in the context of the 2008 stimulus package, a social investment fund was created in February 2009 for a period of two years. The fund is designed to coordinate efforts to promote employment and vocational training and is managed by a group comprising representatives of the Government, social partners and the public employment service. ***The Committee requests the Government to indicate in its next report the activities carried out by the National Employment Council and the governing body of the Pôle Emploi relating to the organization and operation of the public employment service. The Government is requested to indicate whether, in addition to the governing body meetings held, there are any other arrangements allowing the effective involvement of the social partners in the operation of Pôle Emploi.***

*Article 1(1). Contribution of the free public employment service to employment promotion.* The Committee notes that, according to the summary of the results of the evaluation conducted concerning the use of private placement operators, published in October 2009, jobseekers seem to be dealt with more quickly and monitored more often in the context of private job placement operators and the *Cap vers l'entreprise* (CVE) scheme compared to the usual process. Jobseekers registered with private job placement operators benefited from more support in obtaining employment than they received in the usual process, including assistance in targeting enterprises and help with interview preparation. The Government indicates that, as of 30 June 2009, 9,939 young graduates had benefited from a support service, 62.4 per cent of whom were women, and that 31 per cent of these persons had been placed in long-term employment. The Government also indicates that nearly 70 per cent of these young persons were still in employment six months after the start of their employment contract. ***The Committee requests the Government to continue providing information on the results of the evaluations conducted concerning the use of private job placement operators, in terms of the integration or reintegration of jobseekers, particularly young persons, into the labour market. It requests the Government to indicate the manner in which collaboration between private job placement operators and Pôle Emploi is ensured.***

*Article 3. Development of employment offices throughout the territory.* The Government indicates that it was deemed necessary to develop the operations of employment centres. Compulsory areas of activity have been determined to contribute to the development of local employment and reduce the cultural and social obstacles preventing access to employment. The reform was due to enter into force in January 2010. According to the Government, the aim of *Pôle Emploi* is to establish 950 sites covering the entire national territory. This objective was due to be achieved by the end of 2009. ***The Committee requests the Government to continue reporting on developments relating to the operations of employment centres. It also requests the Government to provide information on the progress made in ensuring that there are sufficient employment centres and Pôle Emploi agencies to serve all geographical areas and that their location makes them easily accessible to both employers and workers.***

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1953)**

*Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.* The Committee notes the Government's report received in January 2010 in reply to its 2008 observation. The Government indicates that Act No. 2008-126 of 13 February 2008 concerning the reform of the public employment service established the *Pôle Emploi* as a new one-stop shop which registers unemployed people, functions as a job placement agency and provides jobseekers with benefits and support. The Government confirms that the new Act has opened up the employment placement market to private employment agencies by bringing an end to the legal monopoly of the National Employment Agency (ANPE). The activity of private employment placement, either in a primary or secondary role, is henceforth provided by sections L.312-1 to L.312-8 of the Labour Code. The Government indicates that the French legislation was drawn up based on the Private Employment Agencies Convention, 1997 (No. 181). According to the Government, the new legislation provides a similar framework with regard to the conditions governing the performance of private employment placement activities by private employment agencies and workers benefit from the protection provided under Convention No. 181, if not a higher level of protection, in terms of a free placement service, the prevention of discriminatory practices with regard to employment placement and protection of privacy in the processing of personal data. In its previous comments, the Committee drew the Government's attention to the fact that, like other member States which have ratified Convention No. 96, France has accepted *Part II* of the Convention, which obliges it to abolish fee-charging employment agencies conducted with a view to profit. The measures introduced in January 2005 and February 2008 opening up the employment placement market to private employment agencies do not give effect to the obligations contained in Part II of Convention No. 96 accepted by France at the time of its ratification in 1956. ***The Committee therefore hopes that the Government will soon be in a position to adhere to the obligations of the Private Employment Agencies Convention, 1997 (No. 181), the ratification of which involves the immediate denunciation of Convention No. 96. It invites the Government to report on steps taken in consultation with the social partners to ratify Convention No. 181.***

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Article 1(1) and (2) of the Convention. Implementation of an active employment policy.* The Committee notes the detailed information contained in the Government's reports received in May and October 2010, in reply to its 2009 direct request. The Government indicates that, between October 2007 and March 2008, around 150,000 additional jobs were created in the competitive sector. At the end of 2009, the economic recovery was not visible in the unemployment rate, which stood at 10 per cent of the active population at that time. The main aims of the employment policy implemented for the period 2007–09 were to integrate as many people as possible into the labour market, promote close cooperation with the social partners and enhance job security. In view of the difficult economic climate and its consequences on employment, the Government indicates that it is continuing a programme of reforms for the years 2008–10 with the aim of promoting growth and employment in the context of the European Lisbon Strategy, while implementing an economic recovery plan. The Committee previously noted that, in November 2008, the Government established an economic recovery plan to tackle the crisis, which totalled 26 billion euros (€), including €14.9 billion allocated to supporting enterprises and employment. The plan aims to create a secure framework that acts as an incentive for jobseekers and encourages them to look for work more actively and tackle the major challenge of long-term unemployment. The Government also mentions other specific measures that have been implemented to combat the effects of the crisis, including the creation of the Social Investment Fund (FISO) designed to support workers and jobseekers exposed to the crisis; the temporary use of part-time work, particularly in the automotive sector; and the strengthening of the employment services through the establishment of *Pôle Emploi*. In July 2010, the Government provided a detailed assessment of the measures financed under the FISO, which have benefited nearly 2 million people. As a tool to support workers exposed to the crisis, nearly 400,000 workers have benefited from the part-time scheme, nearly 80,000 of whom have received training. As support for the retraining of workers made redundant, at the end of May 2010 around 115,000 persons had benefited from one of the two schemes designed to get them back into work quickly. Under the measures to provide compensation and support the purchasing power of jobseekers, a total of 47,708 allowances were granted between April 2009 and March 2010 to workers who had lost their jobs but were not eligible for unemployment benefit. The Government also mentions a new method of terminating an employment contract based on the mutual agreement of the employer and the employee, implemented by Act No. 2008-596 of 25 June 2008 modernizing the labour market. ***The Committee requests the Government to provide detailed information in its next report on the results of the various measures reforming the labour market and their impact on the employment situation. It also requests the Government to continue providing information on the progress made in implementing the measures to tackle the crisis, in terms of employee protection and improved access to the labour market for jobseekers.***

*Article 1(2). Youth employment.* In its previous comments, the Committee requested the Government to provide information on the results achieved in terms of the creation of jobs for young persons. The Government indicates that, in the first quarter of 2010, of the 2.7 million persons who are unemployed (9.5 per cent of the active population), 634,000 persons, or 23 per cent, are aged between 15 and 24 years. To address this situation, the Government indicates that it has established a series of specific measures targeting young persons, particularly those without qualifications and those from



sensitive areas. On 31 May 2009, 468,000 young persons had benefited from CIVIS, which target young persons without qualifications, of whom 176,000 have found long-term employment, 32,000 short-term employment and 31,000 have received training. As of 14 September 2009, 13,044 autonomy contracts had been signed under the *Plan Banlieues*, aimed at young persons under 26 years of age, which resulted in 1,026 positive outcomes, of which 75 per cent involved the young persons concerned finding long-term employment. The Government also indicates that, in the context of the emergency youth employment plan of 24 April 2009, it has been decided to implement a programme of additional training for young persons aged between 16 and 25 years who are finding it difficult to find a job. Among other measures, it is envisaged to provide 50,000 young persons with new and enhanced skills for accessing employment. The Committee also notes other measures in favour of the training of young persons financed by the recovery plan which are focused on the long-term vocational and social integration of young persons who have left the education system without qualifications and without a job, namely “training support contracts” and “second chance schools” (E2C). Under the emergency youth employment plan, which provided for the creation of 7,200 places in E2Cs, 925 places had already been opened in May 2010. A total of 775,400 assisted contracts had been signed in the form of employment initiative contracts in the commercial sector and bridging contracts in the non-commercial sector. The Government indicates that the recovery plan also contributes to the “Action for Youth” plan (designed to reduce school drop-out rates and promote the vocational integration of young persons) by including a provision to increase the resources allocated to the contracts for integration into working life, which will assist 200,000 young persons in 2010. In this regard, the Committee refers to paragraphs 288 and 289 of its General Survey of 2010 concerning employment instruments, which refer to the employment situation of young persons in France. The Committee also expressed its concern at the very high unemployment rate among graduate jobseekers, particularly among young university graduates, who are unable to find employment commensurate with their skill level. This problem affects both developing and industrialized countries, where the skills of these young graduates are underutilized and they find themselves accepting casual jobs. This situation can prove detrimental to their career progression. The Committee therefore encourages governments to develop job creation and career guidance policies targeted at this new category of graduate workers (see General Survey, op. cit., paragraph 800). ***The Committee requests the Government to provide detailed information on the efforts made to improve the youth employment situation. It would like to be able to examine elements in the Government’s next report which allow it to assess the effectiveness of the various measures implemented to promote the long-term integration of young persons into the labour market.***

*Older workers.* In its previous comments, the Committee requested the Government to provide up-to-date information on the impact of the measures intended to increase the employment rate of older workers. The Committee notes the indications that, in 2008, 56 per cent of persons aged between 50 and 64 years were active. Although unemployment affects young persons more than older workers, the latter struggle to find a route out of unemployment, particularly men, and, in 2008, 60 per cent of unemployed men aged between 50 and 64 years had been unemployed for more than one year, compared to 38 per cent of those aged between 30 and 49 years. The Government mentions a number of measures in favour of older workers, such as special allowances which guarantee a replacement income for older workers who lose their jobs and whose employment prospects are limited, until they are able to claim their pension rights. The Government also indicates that enterprises with up to 50 employees are required to conclude an agreement or establish a unilateral action plan in favour of the employment of older workers before 1 January 2010, failing which they will incur a financial penalty equivalent to 1 per cent of their total wage bill. The Government indicates that enterprises with 51–300 employees have been granted a period of three years (from the first quarter of 2010) to enable them to hold negotiations and finalize their action plans. These measures must include the overall objective of keeping employees aged 55 years and over in employment or recruiting workers aged 50 years and over. ***The Committee requests the Government to provide detailed information on the results of the implementation of the action plans in favour of the employment of older workers in enterprises with up to 50 employees. It also requests the Government to provide any relevant information concerning the progress made with regard to the employment of older workers in other enterprises.***

*Education and training policy.* The Committee notes the adoption of Act No. 2009-1437 of 24 November 2009 concerning lifelong vocational training and guidance which aims to facilitate the training of jobseekers and workers with few qualifications and develop training within small and medium-sized enterprises. The Committee notes that the Act guarantees the right to lifelong training. It also notes the communications sent in July 2010 by the National Autonomous Union of Sciences and the National Union of Scientific Researchers concerning the possible effects of the Act of 3 August 2009 concerning mobility in the civil service and also the Government’s reply received in November 2010. The Government indicates that this Act has established a joint job security fund designed to contribute to the funding of vocational training leading to the qualification and renewed qualification of workers and jobseekers. The Act also provides for regional planning contracts for the development of vocational training (CPRDF) designed to define a medium-term programme of vocational training for young persons and ensure the coherent development of initial and continuous vocational training paths based on a joint regional analysis. The vocational reorientation mechanism enables civil servants to progress in their professional careers according to their skills, abilities and wishes, thus reinforcing their freedom of choice in employment. In addition, by providing for guidance, training and evaluation measures, the mechanism creates favourable conditions for ensuring that civil servants receive the best training for their new jobs. ***The Committee requests the Government to continue providing information on the vocational training measures and their impact in terms of integration into the labour market. It hopes that the report will contain information on the measures***

*to coordinate education and training policies with employment, as well as on their impact in terms of the long-term integration of the most vulnerable categories of workers into the labour market.*

*Article 3. Participation of the social partners in the preparation and formulation of policies.* The Government indicates that employment and vocational training policies are defined in close consultation with the social partners and that certain measures are financed jointly and implemented through coordination between the State and the social partners, such as the vocational training measures for young persons, the unemployed, older workers and workers at risk of redundancy. The social partners also took part in the social summit of 18 February 2009 which resulted in the establishment of the FISO designed to coordinate crisis response policies on employment and vocational training. The Government indicates that the latest inter-occupational agreement signed on 9 July 2009, concerning the social management of the impact of the economic crisis on employment, has resulted in the implementation of a number of temporary measures (in force until 1 January 2011), such as the “occupational transition contract” (CTP) and the “personalized back-to-work assistance agreement” (CRP) to improve the situation of employees who are made redundant. The Government also mentions the composition of the National Employment Council, which brings together representatives of all actors involved in employment and training policies. ***The Committee requests the Government to indicate how the consultations held with the social partners within the National Employment Council have contributed to the formulation of employment policies and how their experience and opinions have been fully taken into account when formulating these policies.***

## Germany

### **Employment Service Convention, 1948 (No. 88) (ratification: 1954)**

*Organization and functions of the employment service.* The Committee notes the comprehensive analysis and detailed information provided by the Government in the report received in August 2010 in reply to the 2006 observation. The Committee asked the Government to report on the practical impact of the measures implemented by the newly created Federal Employment Agency (BA). The Government recalls that in the framework of the reform of the BA between 2005 and 2006, a results-oriented management strategy has been introduced that was geared towards cost-effectiveness. It states that one of the fundamental prerequisites for the success of this new management strategy was to create transparency with respect to results and processes and to provide clarity as to the BA’s general policy orientation. Also, a system of targets geared to outcomes was developed. Unlike the situation in the private industry, financial goals were not seen as top priorities. Rather, the target system had to reflect the mission as required by law. Therefore, success is measured on whether it is possible to avoid unemployment and whether the length of a client’s unemployment has been reduced. The Committee notes among the results achieved: a reduction of unemployment duration (down from approximately 168 days in 2006 to approximately 125 days in 2007); an increase in the number of persons integrated into the labour market (up from 37.3 per cent in 2006 to 42.2 per cent in 2009); an increase of the public institutions’ share in successful placements (up from 9.3 per cent in 2006 to 10.6 per cent in 2009); an increase of successfully filled vacancies (up from 203,725 in 2006 to 293,042 in 2009). The Government indicates that the BA’s efforts were focused on its core activities, namely advisory services and placement. Specific action programmes for employers were introduced in all employment offices at the end of 2006 as a central element of the reform. Cases of good practice were selected, systematized and publicized. The Committee also notes that in 2006, the BA placement, advisory and information system (VerBIS) was put into operation to complement the Job Exchange database. Since August 2009, jobseekers can register online. Approximately 820,000 jobs are currently offered on the Job Exchange, 3.7 million candidates’ profiles are published, an average of 665,000 persons visit Job Exchange every day and ten million persons view the site, which is one of the largest e-Government applications. ***The Committee refers to its observation on the application of the Employment Policy Convention, 1964 (No. 122) and expresses its appreciation of the efforts in implementing measures to achieve the best possible organization of the employment market through the public employment service in an extremely difficult period. It invites the Government to continue to provide, in its next reports on the application of Convention No. 88, relevant information concerning the results of measures implemented to enhance the capacity of the BA to promote full and productive employment (Articles 1 and 6 of the Convention).***

*Status and training of employment service staff.* In reply to the 2006 observation, the Government indicates that out of a staff of approximately 110,000 persons, around 67,800 have employee status (of which around 800 are on temporary leave from civil servant status), and 15,600 have civil servant status. Some 23,200 persons are employed with fixed-term contracts and 3,200 are junior employees. Approximately 63,000 staff members are employed in the unemployment insurance field; 43,000 in the field of the guaranteed minimum income for jobseekers and 3,600 in the Family Allowance Fund. The Committee notes that the BA Diversity Management Strategy ensures that the varying experience and skills of certain staff members, such as migrants and persons with disabilities, are used specifically to meet clients’ needs. The Government also indicated that the Collective Agreement for Persons Employed by the Federal Employment Office (TV-BA) entered into force in January 2006 and that the BA has reviewed the in-house training system in recent years with a view to keeping staff members’ qualifications up to date.

*Cooperation between the public employment service and private employment agencies.* The Committee recalls its 2006 observation in which it invited the Government to report on the measures taken to ensure that cooperation between

the BA and private employment agencies is effective within the meaning of *Article 11* of the Convention. In paragraph 227 of the 2010 General Survey concerning employment instruments, the Committee also recalled that in Germany cooperation between public and private employment services has taken the form of quasi-outsourcing by the public employment services. In this regard, the Government confirms in its report that the private placement market is firmly established. The existing cooperation between the public and private services has been increased and private agencies make use of the Job Exchange platform to publish job offers. The Committee further notes that the possibility of outsourcing placement services to private providers has been expanded to cover more generally activation and vocational integration measures, including placement services, to assist persons seeking training, and those who were made redundant or who are unemployed (section 46 of the Social Code, Book III, as modified by the Law on Modification of Labour Market Policy, which entered into force on 1 January 2009). As part of the decentralized structure, the individual employment offices bear individual responsibility for using private providers' services and for referring their clients to those services. ***The Committee invites the Government to continue to provide information on measures taken to ensure effective cooperation between the BA and private employment agencies.***

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy.* The Committee notes the comprehensive information contained in the Government's report for the period ending in May 2009, including detailed replies to the issues raised in the 2008 observation. The Government states that the German industry was going through an extremely difficult period. In the second half of 2008, there was a significant fall in GDP as a result of the global financial and economic crisis, leading to economic growth of only 1.3 per cent in 2008. In the first quarter of 2009, GDP fell by a further 6.7 per cent as compared to the same period in the previous year. The average figure for unemployment in 2008 was 7.8 per cent (old Länder, 6.4 per cent; new Länder, 13.5 per cent). In June 2009, 3,410,000 persons were unemployed in Germany. The Government provided information on the main labour market reform measures undertaken and the results achieved in terms of insertion into labour. The Committee notes that the Law on Modification of Labour Market Policy entered into force on 1 January 2009 and aims at integrating jobseekers and potential trainees more quickly into the labour market. The Government intends to strengthen preventive measures within an active labour market policy. A core element of this strategy is the introduction of the right for young people and adults who have left school without a qualification, to receive support and obtain a secondary education degree, which will improve their chances to enter the labour market and to acquire professional qualifications. ***The Committee requests the Government to provide information in its next report on policies and programmes promoting full employment and how these policies and programmes will translate into productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers affected by the crisis. It trusts that the Government will continue to provide information on the consultations held on the matters covered by the Convention with the social partners, including details of their contribution to mitigate the effects of the global crisis and to implement an active employment policy.***

*Long-term unemployment.* The Government reports that the number of persons without work for more than 12 months in the years 2007 and 2008 continued to decline to 1.1 million persons, which is equivalent to 36.6 per cent of all unemployed. The rate of women among the long-term unemployed stood at 52.7 per cent in 2008, of which 64 per cent were registered in the new Länder. In both regions, women (39.5 per cent) were relatively more severely affected by long-term unemployment than men (33.5 per cent). As part of the measures to decrease this form of unemployment, the Government has extended the federal "50plus" programme, which is aimed at reintegrating older workers in employment, until the end of 2010. During the first phase of this programme, between October 2005 and December 2007, 79,670 older long-term unemployed persons could be activated, resulting in 22,562 integrations from within this group. The new measures adopted in 2008 enabled the activation of 73,800 older long-term unemployed, of which some 19,500 became employed or founded a company. The Committee further notes the employment subsidy programme "JobPerspective", in which employers contribute, for a maximum period of 24 months, up to 75 per cent of the salary of persons with specific impediments for placement. In April 2009, approximately 32,000 persons were in the Job Perspective programme. The Government further states that the overall decrease of unemployment, and thus including long-term unemployment, that has been achieved until the effects of the worldwide economic crisis became apparent in October 2008, was not only an effect of the favourable economic environment. Rather, this development is also owed to the success of the legislative measures adopted in 2008 to modernize public employment services through which structural unemployment could be reduced and long-term unemployment prevented. ***The Committee asks the Government to continue providing information in its next report on the results achieved through measures taken to combat and prevent long-term unemployment.***

*Youth unemployment.* The Committee notes that the median unemployment rate of persons below the age of 25 years has slightly declined from 10.8 per cent in 2006 to 8.5 per cent in 2007, reaching 7.1 per cent in 2008. In June 2009, the unemployment rate stood at 7.5 per cent, which is still below the overall unemployment rate of 8.1 per cent. The unemployment rates of persons below 25 years differ between the new and old Länder, amounting to 6.4 per cent for the old Länder and 12.1 per cent for the new Länder. To combat this development, the federal Government and the governments of the new Länder continue to support the "Apprenticeshipprogram East", which focuses on additional apprenticeship positions. The Federal Ministry for Economics and Labour has extended until 2010 and further developed the National Education Pact, which includes several employment promotion measures and resulted in 86,500 new

apprenticeship positions and 616,259 new apprenticeship contracts. The costs of all youth-related employment policy measures in 2008 amounted to 1.3 billion euros, benefiting 173,200 apprentices. ***The Committee asks the Government to continue providing detailed information in its next report on the efforts made to improve the employment situation of young persons, and the results achieved in terms of job creation and sustainable employment as a result of the programmes adopted.***

***Women.*** The Committee notes that the employment rate among women increased from 60.6 per cent in 2005 to 64 per cent in 2007 and reached 65.4 per cent in 2008, whereas the respective rates for men stood at 71.3, 74.7 and 75.9 per cent. Women seem to have been less affected by the economic crisis than men. While the men's unemployment rate in May 2009 has increased by 13.4 percentage points as compared to the same month in the previous year, the women's unemployment rate for that period has decreased by 3.1 percentage points. In the same month, the overall unemployment rate of women (7.9 per cent) was below that of men (8.5 per cent). The Government indicates that part-time work does not generally constitute precarious employment but can be an adequate means for securing and fostering workplaces, contributing to equal employment opportunities for men and women in all age groups. The Government is concerned about workers remaining in lowly remunerated employment and sees it as necessary to ensure especially women's shift into employment that is subject to social security contributions. ***The Committee invites the Government to include in its next report information on how recently adopted measures have translated into lasting employment opportunities for women, in particular in the new Länder.***

## Ghana

### ***Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1973)***

***Part II of the Convention. Progressive abolition of fee-charging employment agencies.*** The Committee notes the statement contained in a report received in November 2010 indicating that the Government is mindful of the fact that the provisions of Convention No. 96 remain in force until the ratification of the Private Employment Agencies Convention, 1997 (No. 181) becomes effective. The Committee further notes that the Government would wish to request ILO technical assistance for the full application of the provisions of Convention No. 96 both in law and practice and for the ratification of Convention No. 181. In its previous observations, the Committee drew the Government's attention to the fact that the provisions regarding private employment agencies contained in the Labour Act 2003, and in the Labour Regulations 2007, did not give effect to the obligations set out in the parts of Convention No. 96 that have been accepted by Ghana. ***The Committee notes that technical assistance by the ILO would be particularly useful in helping the Government to address gaps in law and practice in the implementation of Convention No. 96 and might contribute to facilitate ratifying Convention No. 181. It therefore hopes that the Government will soon be in a position to adhere to the obligations of the Private Employment Agencies Convention, 1997 (No. 181), the ratification of which involves the immediate denunciation of Convention No. 96. It invites the Government to report on steps taken in consultation with the social partners, to ratify Convention No. 181.***

*[The Government is asked to reply to the present comments in 2013.]*

## Greece

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1984)***

The Committee notes the detailed report provided by the Government for the period ending in May 2009, including information on the initial measures adopted to overcome the impact of the global crisis on employment.

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy as of May 2010. The Committee notes in particular, that according to the GSEE, the measures adopted in this framework did not constitute a topic of social dialogue but were forwarded to Parliament for adoption with urgent procedures.

The Committee recalls as a general matter, the role to be played by active labour market measures in addressing the human dimension of the financial and economic crisis. In the 2009 Global Jobs Pact, the ILO agreed to "put the aim of full and productive employment and decent work at the heart of the crisis responses". In its concluding remarks of the 2010 General Survey on employment instruments, the Committee further emphasized that social dialogue is essential in normal times and becomes even more so in times of crisis (paragraph 794 of the 2010 General Survey).

***Given the new measures that have been adopted since the Government's last report on the application of the Convention, the Committee requests the Government to monitor carefully the impact of the policy pursued in the framework of the international support mechanism and to provide a detailed report on the application of the Convention when the report is next due in 2011.*** The Committee will examine the comments by the GSEE along with the Government's reply thereto, as well as the Government's report which is due in 2011, at its next session.

## Guatemala

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1988)**

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the detailed information provided by the Government in its report received for the period ending September 2009. The Government includes the General Employment Plan for the period 2008–09, which aims to develop the country's productive potential. The Government indicates in its report that in this time of global crisis, the Government's efforts are geared towards achieving sustainable development based on decent work. In January 2009, the National Emergency and Economic Recovery Programme (PNERE) was launched to mitigate the negative effects of the crisis, which provides for the creation of jobs in both the public and private sectors through the construction of road infrastructure, health centres, hospitals and schools and the promotion of national and foreign investment. The Government's priority sectoral policies are those concerning energy, rural development, housing and micro credit. ***The Committee requests the Government to include information in its next report concerning the impact that the General Employment Plan 2008–09 and the PNERE have had in terms of creating productive and sustainable employment.***

The Committee notes that, according to data from the Economic Commission of Latin America and the Caribbean (ECLAC), the country's GDP grew by 4 per cent in 2008, compared to 6.3 per cent in 2007. According to the Government, the unemployment rate stood at 5.67 per cent in 2008, with 421,451 persons unemployed and the highest unemployment rates found in the municipalities of Guatemala, Huehuetenango and San Marcos. Furthermore, according to the *2009 Labour Overview*, as a result of the economic crisis, 2008 saw a drop in family remittances, which totalled an amount equivalent to 11.3 per cent of the GDP. Furthermore, the reduction in exports had a negative impact on employment. In its General Survey of 2010 concerning employment instruments, the Committee noted that the Government was attempting to estimate the impact of the Central America Free Trade Agreement (CAFTA) on employment. Some workers' organizations had expressed concern that the CAFTA would result in heavy job losses, especially in agriculture and small and medium-sized enterprises, in the first year of its implementation (see paragraph 32 of the General Survey of 2010). ***The Committee requests the Government to include information in its next report on the impact that the trade policy has had in terms of meeting employment demand.***

*Article 3. Strengthening of labour market institutions. Participation of the social partners.* The Government reports the creation of the National Employment System to establish active job creation policies. The Government also indicates that the design and formulation of the National Employment System has been the subject of tripartite validation. The Committee refers to its request concerning the application of the Employment Service Convention, 1948 (No. 88), in which it expressed its interest in receiving further information on the manner in which the social partners cooperate in the activities of the public employment service. In this regard, the Committee once again refers to its 2010 General Survey, in which it emphasized that social dialogue is essential in normal times and becomes even more so in times of crisis. The employment instruments require member States to promote and engage in genuine tripartite consultations (see paragraph 794 of the General Survey of 2010). ***The Committee requests the Government to indicate the manner in which the social partners participated in the design, implementation and evaluation of employment policies to combat the negative effects of the crisis. The Committee requests the Government to include information on the consultations required by the Convention with all sectors concerned, such as representatives of the rural sector, informal economy and workers affected by the drop in exports.***

*Article 2. Collection and use of information on the labour market.* The Committee notes the reactivation of the Labour Market Observatory. In the context of the PNERE, a survey of the employment situation at the national level will be carried out every three months for the purpose of monitoring labour market conditions and identifying productive sectors and geographical areas which require additional stimulus measures to protect jobs. The Ministry of Labour and Social Security's Operational Plan for 2009 provided for the promotion of projects and programmes to assist the most vulnerable sectors, such as young persons, women, older persons and persons with disabilities, to facilitate their integration into the labour market. Despite the increase in the participation of women in the labour market, according to the *2009 Labour Overview*, the rate of active participation among women continues to be significantly lower than among men and stands at 45.2 per cent compared to 82.5 per cent among men. Furthermore, the overall illiteracy rate among persons aged 15 years and over stands at 25.2 per cent, while the rate among females is 32.1 per cent and the rate among males is 18.3 per cent. ***The Committee requests the Government to include up-to-date information in its next report concerning the labour market situation, levels and trends so that it can determine the impact that the new measures adopted have had in terms of promoting the employment of the most vulnerable sectors (women, young persons, older workers, rural workers and workers in the informal economy). With regard to workers with disabilities, the Committee refers to its request concerning the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).***

*Coordination of education and training policy with employment opportunities.* The Government indicates in its report that employers are responsible for expressing their specific needs for the purpose of creating vocational training mechanisms, according to the specific needs of the labour market. Employers are more aware of what training is required to incorporate workers into the productive sector and they express those needs in the context of the activities of the National Employment System. In its General Survey of 2010, the Committee emphasized the increasingly important role

of the social partners and training institutions in defining human resources development strategies. *The Committee requests the Government to indicate in its next report the manner in which the representatives of workers and employers have contributed to developing vocational training mechanisms. The Committee also requests the Government to provide information on the impact of the plans and programmes of the Ministry of Education and the Technical Institute for Training and Productivity (INTECAP), as well as those implemented by the National Employment System, in terms of ensuring that qualified persons are able to “use their skills and endowments in a job for which they are well suited” (Article 1(2)(c) of the Convention).*

## Guinea

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in February 2004. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information in reply to the points raised in the Committee’s 2004 observation, which set forth the following matters:

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* In its report received in February 2004, the Government provided information on the establishment of the “employment” component of the poverty reduction strategy approved in 2002, including its plans to enhance the range of vocational and technical training available, promote small and medium-sized enterprises, promote labour-intensive work and improve access to employment for women. The Committee also noted the objectives of the Labour and Employment Statistical Information Network (RISSET), the establishment of which was already noted in its previous comments. *The Committee requests the Government to provide up to date information on the measures taken to guarantee that employment, as a key component in poverty reduction, is at the heart of macroeconomic and social policies. It asks the Government in particular to provide information on the results achieved by group, such as for young people and for women, by the measures taken to improve the range of vocational and technical training available, on the promotion of small and micro-enterprises and on the jobs created by labour-intensive programmes.*

*Article 3. Participation of the social partners in the formulation and application of policies.* The Committee recalled in 2008 that Article 3 of the Convention requires consultations with all interested parties – in particular, representatives of employers and workers – in the establishment and implementation of employment policies. It is the joint responsibility of the Government and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries. *The Committee trusts that the Government will include detailed information in this regard.*

*Part V of the report form. ILO technical assistance.* *The Committee once again asks the Government to indicate the actions taken to implement an active employment policy within the meaning of the Convention, further to the technical assistance received from the ILO.*

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1995)**

The Committee notes with *regret* 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 matters raised in its previous comments, which read as follows:

The Committee notes the reports provided in June and September 2006. It refers to the direct requests of 2001 and 2005 and reiterates its request to the Government to provide a report containing specific information on the following points.

*Articles 2 and 3 of the Convention.* The Committee recalls that the Community-Based National Rehabilitation Programme (PNRBC), initiated by the Ministry for Social Affairs and the Advancement of Women and Children, provides for vocational rehabilitation measures, including the integration of children with disabilities in schools, vocational training and promotion of the employment of persons with disabilities. *The Committee requests the Government to provide information on the application in practice of the measures adopted in the context of the PNRBC and a copy of the annual report referred to in its previous reports. Please also provide any other document containing statistics, studies or surveys on the matters covered by the Convention (Part V of the report form).*

*Article 4.* The Committee notes that rules are applied to guarantee equality of opportunity and that a Bill has been prepared on the protection and advancement of persons with disabilities. *Please provide information on the content of the acts and to send a copy of the abovementioned text when it has been adopted.*

*Article 7.* The Committee notes the existence of a department responsible for the occupational integration of persons with disabilities in the National Directorate of Technical Education and Vocational Training and that the National Office for Vocational Training and Further Training has established a special section responsible for the training of young persons with disabilities. *The Committee requests the Government to provide information on the action taken in practice by these services for securing, retaining and advancing persons with disabilities in employment.*

*Article 8.* The Committee notes that vocational rehabilitation and employment of persons with disabilities at their place of origin (rural areas and remote communities) is an essential objective of the PNRBC in collaboration with the Guinea Federation of Disabled Persons (FE.GUI.PAH). Furthermore, some measures have been taken, such as the establishment of branches of the National Orthopaedic Centre (CNO) in the interior of the country (Mamou and N’Zérékoré) and the granting of tax and duty exemptions for any enterprise of persons with disabilities. *The Committee requests the Government to continue providing information on the development of services for persons with disabilities in rural areas and remote communities.*

*Article 9.* The Government indicated previously that a CNO has existed since 1973 for the rehabilitation and apprenticeship of persons with disabilities of all ages. *The Committee requests the Government to indicate the number of persons trained and made available to persons with disabilities.*

## Honduras

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1980)**

*Articles 1 and 2 of the Convention. Active policy designed to promote full, productive and freely chosen employment.* The Committee notes the detailed report and the full documentation received in September 2009. The Government lists the measures intended to promote economic growth, increase income and reduce the fiscal deficit and tax burden. The Government's objective is to create high-quality employment; carry out investment in economic and social infrastructure in order to promote productivity, investment and decent work; and strengthen investment in education, training, research and technological development. In the 2010 General Survey concerning employment instruments, the Committee emphasized that Executive Decree No. PCM-05-2007 of 2007 integrates the "National Plan for the Creation of Decent Employment" into the country's poverty reduction strategy and gives it the status of state policy (2010 General Survey, paragraph 57). The Government points out that in its report since 2008 the country is no longer in the category of "heavily indebted poor country", having moved into the category of "lower middle income country". According to the National Institute for Statistics, the percentage of households living in poverty in 2009 was 59.2 per cent and 36 per cent of households were classified as living in extreme poverty. In 2009 the rate of open unemployment was 2.9 per cent and the rate of invisible underemployment was 29.8 per cent. With the implementation of the National Decent Work Programme (PNTD), the Government is seeking to generate some 425,000 jobs during 2006–09 and some 650,000 jobs in the following six years. The PNTD seeks to promote decent work with the emphasis on young people, the development of micro-, small and medium-sized enterprises, reduction of informal work and underemployment, and the improvement of services relating to employment, vocational training and labour market information. The Government also states that monitoring instruments for evaluating the management of comprehensive employment policies are being applied in order to be able to measure their results. ***The Committee requests the Government to supply information in its next report on the results achieved in the creation of productive employment in the context of the PNPD. The Committee requests that up-to-date information be included on the size and distribution of the workforce and on the nature and extent of unemployment, as an essential component of the implementation of an active employment policy within the meaning of the Convention.***

*Article 3. Participation of the social partners. Measures for alleviating the impact of the crisis.* The Committee observes the negative impact of the international financial crisis on public finance, growth in GDP and private, national and foreign investment, causing a drop in income and employment. The Government indicates in its report that efforts are being made to ensure macroeconomic stability and stimulate the creation of productive employment, as well as boosting training of the workforce in priority population groups and sectors of production. The Committee also notes the tripartite commission set up to construct a space for dialogue, coordination, negotiation and consultation with special emphasis on the "National Plan for the Creation of Decent Employment" and the "Support policy for supporting the competitiveness of micro-, small and medium-sized enterprises". In the 2010 General Survey concerning employment instruments, the Committee underlines the importance of ongoing, genuine tripartite consultations for tackling and alleviating the consequences of the global economic crisis (2010 General Survey, paragraph 788). ***The Committee requests the Government to supply information in its next report on the consultations held with a view to formulating and implementing an active employment policy enabling the negative impact of the global crisis to be overcome. The Committee also requests the Government to supply information on the consultations held with representatives of the persons affected by the measures to be taken from other sectors of the economically active population, such as those working in the rural sector and the informal economy.***

The Committee notes Decree No. 230-2010 of November 2010 establishing the National Solidarity Plan for anti-crisis employment which includes the National Programme on Hourly Employment. The Committee notes the opposition expressed by the General Federation of Workers (CGT), the Workers' Confederation of Honduras (CTH) and the Single Confederation of Workers of Honduras (CUTH) towards the draft National Solidarity Plan in a communication sent to the Government in October 2010. ***The Committee requests the Government to indicate in its next report the manner in which account has been taken of the opinions and experience of the representatives of employers' and workers' organizations in the formulation and implementation of the aforementioned Plan. The Committee requests the Government to provide information on the supervision and monitoring of the Programme, the extent to which the beneficiaries have succeeded in obtaining productive employment and details of age, sex, place of residence, training received and any other data enabling a quantitative and qualitative examination to be made of the employment created.***

*Coordination of policies.* The Government states that it is joining forces to improve the employability and competitiveness of the workforce by means of a National Vocational Training Programme which is integrated with the creation of productive work. The Committee also notes that the National Competitiveness Strategy identifies as motors of development the service-oriented *maquila* (export processing) sector, the full development of agri-food potential, promotion of the forestry sector and the full development of tourism. ***The Committee requests the Government to include information in its next report on the steps taken to coordinate occupational education and training policies with prospective employment opportunities and to improve the competitiveness of the economy.***

*Impact of trade agreements.* In its previous comments the Committee referred to the entry into force of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR). ***In view of the importance of***

**exports for sustaining productive employment in the country's economy, the Committee again requests the Government to include information in its next report on the impact of trade agreements on the generation of productive employment.**

*Export processing zones.* The Committee notes that, according to the Honduran Association of Maquila Enterprises, in January 2009 there were 250 enterprises working in the export processing (*maquila*) sector employing nearly 119,000 workers. More than 12,000 jobs have been lost in this sector since 2008. The highest levels of activity remain in textiles, clothing and vehicle parts. **The Committee requests the Government to continue to supply information on the contribution of the export processing zones towards the creation of lasting, high-quality employment.**

*Micro-, small and medium-sized enterprises (MSMEs).* According to the Ministry of Industry and Trade, the 280,000 MSMEs in the country generate approximately 25 per cent of GDP and more than 700,000 jobs. In October 2008 Decree No. 135 approving the Act for the promotion and development of competitiveness of MSMEs was adopted. The Act seeks to promote a favourable environment in which urban and rural MSMEs can develop their competitiveness and establish an enterprise culture, facilitate access to financing, create conditions for the establishment and consolidation of production lines and draw up strategic plans for ensuring the full development of the sector. Funds of 1,000 million lempiras were assigned to the development of the MSMEs. **The Committee requests the Government to supply information on the impact of the new legal framework relating to MSMEs on the creation of employment and the reduction of poverty.**

*Migrant workers.* The Committee notes that migrants account for more than 5 per cent of the population. The destination of 81.1 per cent of migrants is North America. Remittances from the United States to Honduras amount to some US\$2,600,000 annually. The Government states that procedures are being implemented to organize the flow of labour-related remittances and investment and to reduce their utilization in the consumer sphere, ensuring that they are undertaken within proposed plans for the reduction of unemployment and underemployment. **The Committee requests the Government to supply information on the manner in which programmes for sound investment of remittances sent by migrant workers have contributed to the creation of productive employment.**

*Youth employment.* According to the National Youth Forum, the unemployment rate for economically active young persons stands at 5.2 per cent and is even higher in urban areas, especially the city of Tegucigalpa (10.8 per cent), while rural unemployment stands at 2.9 per cent. The rate of open unemployment for young persons who have completed secondary or higher education is 8.6 per cent and 8 per cent respectively. The Committee observes that young persons who have received training face particular problems in finding employment. The Government indicates that it is necessary to eliminate the social problems that represent a real risk for the youth population, including violence, poor access to health care and education, and also exclusion from political, social and economic opportunities. The Committee notes that the National Youth Policy and its Strategic Plan have been approved. The Plan of Action for Youth Employment 2009–11 has been adopted in order to promote the employability of young people by means of access to technical and vocational training. The strategic components of the Plan of Action include promoting the development of young entrepreneurs and increasing access to productive assets to discourage the migration of young persons between 15 and 29 years of age who form a vulnerable section of the population. The Committee also observes that there is a growing problem of unemployment among educated workers, particularly young university graduates, who are unable to find secure employment commensurate with their skill level. This is now an issue for both advanced market economies and developing countries. Not only are their skills underutilized but this pattern of casual jobs can prove detrimental to their lifetime career progression (2010 General Survey, paragraph 800). **The Committee urges the Government to continue to focus on the need to integrate young persons in the labour market. The Committee requests the Government to include information in its next report on the results achieved by the National Youth Policy and the Plan of Action for Youth Employment 2009–11.**

## India

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1998)**

*Articles 1 and 2 of the Convention. General economic policies.* In reply to the 2008 observation, the Government states in a report received in September 2009 that the successive Five-year Plans in India have always stressed realizing high rate of growth in all economic activities with a view to generating additional employment for the unemployed and also to create decent sustainable work for all of those already employed. As part of the 11th Five-year Plan (2007–12), the Government intended to create 58 million new job opportunities. During 2004–05, the workforce of 459.1 million consisted of 261.23 million self-employed (56 per cent), 65.65 million regular workers (14.3 per cent) and 132.68 million casual workers (28.9 per cent). In its General Survey of 2010 concerning employment instruments, the Committee noted that the 11th Five-year Plan 2007–12 provided an opportunity to restructure policies to achieve a new vision based on faster, more broad-based and inclusive growth. The plan aimed at making employment generation an integral part of the growth process and devised strategies to accelerate not only the growth of employment but also the wages of the poorly paid (General Survey, op. cit., paragraphs 41 and 602). **The Committee invites the Government to include in its next report indications on the outcomes or impact of various employment policies and programmes implemented under the 11th Five-year Plan 2007–12. Please also continue to include detailed statistical data on the situation and trends of the**



*active population, employment, unemployment and underemployment disaggregated by state, sector, age, sex and skills, in particular for socially vulnerable groups such as young persons, women jobseekers, scheduled castes and scheduled tribes, ethnic minorities and people with disabilities (Article 1(2) and Article 2(a)).*

*Skills development.* The Government indicates that in the present context of liberalization, globalization and changing economic scenario, the emphasis needs to be on upgrading the skills of the labour force keeping in mind the demand of the labour market. The Committee also notes with *interest* that the Unorganized Workers' Social Security Act, enacted on 30 December 2008, formulates schemes for skill up-graduation of workers in the informal economy. In association with the ILO, the Government has formulated the National Skills Development Policy and has taken steps on the formulation of the National Employment Policy with the objectives of providing remunerative and decent employment. The Committee looks forward to examining the first report on the application of the Human Resources Development Convention, 1975 (No. 142). ***The Committee recalls that Convention No. 142 is critically related to the attainment of full employment and decent work and to the realization of the right to education for all. It invites the Government to include in its next report on Convention No. 122 information on the impact of the initiatives taken for skills up-graduation and reskilling of the workforce in particular of those working in the unorganized sector.***

*Promotion of employment for poor workers in the rural sector.* In reply to the 2008 observation, the Government indicates that the experience under the National Rural Employment Guarantee Act (No. 45 of September 2005) (NREGA) shows that the workforce participation of scheduled caste and scheduled tribe groups was around 55 per cent in 2008–09. Women workforce participation has also surpassed the statutory minimum requirement of one third participation. In the year 2007–08, women participation was 43 per cent, which has increased to 48 per cent in 2008–09. ***The Committee welcomes receiving in the next report updated information on the implementation of NREGA and its impact in creating employment opportunities for the rural sector.***

*Article 3. Consultation of the representatives of the persons affected.* In reply to previous comments, the Government indicates that the 42nd Session of the Indian Labour Conference, the apex national-level tripartite body, held in February 2009, witnessed a comprehensive discussion on the global financial crisis, its effects on large-scale downsizing, lay-offs, wage cuts and job losses (General Survey, op. cit., paragraph 90). ***The Committee welcomes this approach and recalls that consultation with the social partners both at the earliest stages of policy formulation and during the implementation process is essential and enables governments to take fully into account their experience and views. It looks forward to examining in its next report how tripartite mechanisms have contributed to formulate an employment policy and implement active labour market measures.***

## Islamic Republic of Iran

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1972)**

The Committee notes the Government's report received in May 2010 in reply to previous comments. ***It draws the Government's attention to the observation formulated by the International Trade Union Confederation (ITUC) forwarded in September 2010. It also invites the Government to include its own remarks on the matters raised by ITUC when reporting in 2011 on the following issues.***

*Articles 1 and 2 of the Convention. Adoption and implementation of employment policy.* The Government refers to the 20 Year Perspective Plan aiming for full employment by 2015, as well as the numerous challenges experienced in executing the Economic Development Plan, ranging from the chronic mismatch between female labour supply and market demand, to the shrinkage of the export market due to the global economic crisis. It also describes various policies and measures adopted in 2009 to promote employment, including 3 billion dollars allocated to its economic programmes, lower bank loan interest rates, state employment programmes, and better enforcement of employment regulations. The Committee notes the provision of low interest bank loans for small and medium-sized enterprises (SMEs), which has created 938,000 new opportunities as of 2009. The Government also indicates that it has provided financial support to struggling enterprises in 2006 and 2007 to prevent mass lay-offs. ***The Committee invites the Government to provide information on the procedures and mechanisms established to review and assess the results of its employment policy measures. The Committee also asks the Government to provide information on the policies that promote full, productive and lasting employment opportunities to the unemployed and other categories of workers affected by the crisis.***

*Employment trends.* The Government communicates that women's economic participation remains a major issue and that the rate has decreased further from 17 per cent in 2005 to 16.4 per cent in 2006 and 15.6 per cent in 2007. The Government relates that Parliament has addressed this issue by passing a bill promoting home-based work in April 2010, providing a legal basis and financial support to enhance self-employment opportunities for women. According to the Statistical Book for Year 1385 published by the Statistical Centre, the national economic participation rate in the period 2006–07 was 40.6 per cent, while the unemployment rate was 11.2 per cent. The data shows a high youth unemployment rate of 23.3 per cent, as well as a marked disparity between female and male economic participation rates, with the former merely at 16.6 per cent and the latter at 40.6 per cent. ***The Committee invites the Government to provide information on the labour market and employment trends and communicate any difficulties experienced in collecting and disaggregating relevant data.***

*Labour market measures.* The Government indicates that it has established the Workers' Unemployment Prevention Fund in 2006 to provide unemployment benefit and training to workers affected by enterprise restructuring. The Government also mentions an increase in the number of private employment agencies. The Committee further notes that temporary work permits were issued to Afghan workers in 2007. ***The Committee invites the Government to include both data and analysis regarding the effect of measures taken under the Workers' Unemployment Prevention Fund and private employment agencies' intervention in the labour market. It would also appreciate information on the integration of Afghan workers in the local labour market (see Part X of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).***

*Youth employment.* The Committee notes the Government's Training Plan for University Graduates which finances vocational training for persons with university qualifications by its executive departments and other authorized private and public entities. The Government indicates that the State Technical and Vocation Organization's policies have been revisited in 2008 and 2009 to improve the organization's efficiency and market sensitivity. The Government highlights that 67 per cent of the organization's trainees have been women but regrets the lack of data on the training of young persons disaggregated by gender, as requested by the Committee in previous comments. ***The Committee invites the Government to provide information on employment policies and measures adopted to address the needs of young workers including data on the gender of persons benefiting from the Government's Training Plan for University Graduates. It further invites the Government to provide detailed information on how the State Technical and Vocation Organization has been restructured under the 2008 and 2009 policy review to better coordinate education and training policies with prospective employment opportunities.***

*Article 3. Participation of the social partners.* In response to the Committee's request to detail the institutional mechanisms which give effect to the Convention's consultation requirement, the Government describes five such forums: the National Labour Forum, the High Labour Council, the High Council of Technical Protection, the Council of Social Security Organization, and the High Employment Council. All of these forums share a similar organizational composition consisting of government officials, academic experts, and employers' and employees' representatives. The Government indicates that the subject matters of these forums range from broad labour issues to more specific discussions on social security, educational policy and labour culture. ***The Committee invites the Government to provide some specific examples of how discussions resulting from such forums have been used in its employment policy formulation and implementation. In this regard, the Committee asks the Government to focus on the consultative procedures beyond the forums' organizational compositions, which enable the Government to take fully into account the views and experiences of persons affected by employment policy measures.***

## Ireland

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

The Committee notes with *regret* that the Government's report has not been received since 2005. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information on the following matters.

*Articles 1 and 2 of the Convention. Employment trends and labour market policies.* ***The Committee invites the Government to provide an assessment of the impact of its active labour market measures. It would also appreciate receiving information on how the measures taken to promote full and productive employment operate within a "framework of a coordinated economic and social policy".***

*Article 3. Participation of the social partners.* ***The Committee asks the Government to provide information on the consultations held with representatives of the persons affected, both at the stage of the formulation of employment policies and in relation to the implementation of the measures adopted under such policies.***

## Italy

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

The Committee notes the detailed replies provided in the Government's report received in December 2009 to the matters raised in its 2007 observation.

*Articles 1 and 2 of the Convention. Employment policy measures taken in response to the global crisis.* The Committee notes that the unemployment rate rose from a low of 6 per cent in 2007 to 8.2 per cent in 2009: more than 2,200,000 persons were seeking employment in the first trimester of 2010, 1 million persons in the South, more than 800,000 persons in the North and some 440,000 persons in the Centre according to the data published by ISTAT. Employment has decreased the most in the manufacturing sector, which accounted for 60.6 per cent of the total net employment losses from July–September 2008 to the same period of 2009. Other badly affected sectors include wholesale and retail trade, real estate, rental and business services, hotels, restaurants and construction. Three stimulus packages were implemented by the Government since the start of the crisis. The largest component (around 38 per cent) of the 2009 outlay of the combined Italian fiscal stimulus packages was support for business in the form of increased access to credit and subsidies. The next largest item was investment in infrastructure projects (23 per cent). Twenty per cent of the resources were devoted to income support measures, while the remaining 19 per cent was allocated to improve the

functioning of the labour market, including training, job search assistance and subsidized reductions in working hours. The Government indicates that, among the measures taken in response to the global crisis contained in Decree-Law No. 185 of 28 November 2008, those regarding employment include: facilitating the employment of individuals benefiting from income support mechanisms; anticipating the re-employment of workers benefiting from the *Cassa Integrazione Guadagni* (CIG) (Wage Guarantee Fund); strengthening job-security agreements; and stimulating self-employment. Labour market measures focused on the mechanisms which ensure income support in case of risk of unemployment. The Government temporarily broadened the coverage of some of the existing mechanisms, namely the scheme to protect workers' income in firms threatened with financial difficulties due to the crisis or restructuring, by providing unemployment benefits and mobility allowances. At the end of 2009, more than 36,000 enterprises involving 250,000 workers were expected to use those mechanisms. In January 2009, applications for unemployment benefits and mobility allowances increased by 44.2 per cent compared with 2008, reaching 750,000 persons. The Government also reports that, in the framework of the global crisis, various agreements with the social partners signed at the regional level were aimed at facilitating the access to credit of enterprises, reducing working time and broadening the coverage of income support mechanisms. ***The Committee invites the Government to provide information in its next report on how the policies designed and the programmes implemented will translate into productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers affected by the global crisis. It requests the Government to provide information on the effects of the measures adopted to close the gap between the various regions of the country as to the levels of employment.***

***Other labour market measures.*** In reply to previous comments on limits to temporary and part-time employment contracts, the Government indicates that, according to the legislation applicable since 2001, a temporary employment contract cannot exceed 36 months. Act No. 247 of 24 December 2007 amended the previous legislation to impose a permanent employment contract after 36 successive months of work under contracts for a specified period of time. The only exception provided for in Act No. 247 is the possibility of a single further renewal of up to eight months subject to certain conditions. ***The Committee invites the Government to provide information in its next report on the impact of new legislation regulating the limitation of temporary employment contracts in satisfying the employment needs of workers whose contracts of employment have ended.***

***Youth employment.*** The Government indicated in its report that it launched the plan of action Italia 2020, which is mainly designed to facilitate the entry into the labour market of young persons under 25 years. This plan, among others, aims to: strengthen career service networks in high schools and universities; enhance vocational training, training within the workplace and apprenticeship; promote continuous learning; and stimulate an offer of universities in line with the labour market needs. Following the distribution of the funds from the Youth Policy Fund for the period 2007–08 to regions, provinces and municipalities, framework agreements were signed with all regions in order to stimulate creativity, entrepreneurship and employment of young persons while fostering regional productivity and creating stable and qualitative employment. Various other initiatives were carried out especially to promote entrepreneurship among youth and to foster youth employment. The Committee notes that the youth unemployment rate between 2007 and 2009 rose by almost 6.5 per cent points for a total of 26.3 per cent. In its 2010 General Survey concerning employment instruments, the Committee noted that there was a growing problem of unemployment among educated workers, particularly young university graduates who are unable to find secure employment commensurate with their skill level. This is an issue for advanced market economies as well as developing countries. Not only are their skills underutilized but this pattern of casual jobs can prove detrimental to their lifetime career progression (see paragraph 800 of the 2010 General Survey). ***The Committee invites the Government to continue to provide detailed information in its next report on the efforts made to improve the employment situation for young persons and the results achieved in terms of job creation and sustainable employment as a result of programmes adopted.***

***Women and other specific categories of vulnerable workers.*** The Government indicated in its report that Ministerial Decree of 13 November 2008 identified the regions in which the employment rate for women was less than 20 per cent of men's or in which the unemployment rate for women was more than 10 per cent of men's. The Government also indicated that the Programme of Action for the Re-employment of Vulnerable Workers (PARI), aimed at re-employing vulnerable workers, was continued and enhanced. The direct beneficiaries of the programme are workers benefiting from income support or other benefits linked to unemployment and particular categories of workers including young persons, women and workers over 50 years old. PARI relied on individual training plans as well as on economic incentives to enterprises willing to re-employ the beneficiaries of the programme and incentives to individuals choosing self-employment. PARI has been carried out in 18 regions. As of 30 June 2009, more than 18,000 workers were employed in the framework of PARI. ***The Committee invites the Government to provide in its next report information on the impact of PARI and other measures designed to encourage and support the employment of women and other specific vulnerable categories of workers such as older workers.***

***Educational and training policies.*** In its 2010 General Survey on employment instruments, the Committee noted that the reform of the education system introduced by Act No. 133 of 2008 is aimed at the rational and effective use of funds giving priority to the planning and implementation of a new territorial governance of education and training. It also noted that, in order to align training more closely to the needs expressed in the labour market, the system of higher technical education and training is being reorganized to offer higher technical specialization as an alternative to university

studies (see paragraphs 120 and 583 of the 2010 General Survey). The Government in its report provides information on training policies and inter-professional joint funds. The Committee notes the Government's statement indicating that investing in human capital is likely to increase productivity and reduce the risk of unemployment. The inter-professional joint funds, which are established by employers' and workers' organizations through specific agreements, are mechanisms for financing company, sectoral and regional training plans that enterprises decide to run for their own employees. For the period 2004–08, inter-professional joint funds for continuing training approved more than 6,000 training plans involving 35,000 enterprises and almost 764,000 workers. ***The Committee would appreciate receiving information on how the educational and training measures are coordinated with employment policies. It would also welcome information on how the regional authorities and the social partners participate in the design and implementation of training policies and programmes.***

*Cooperatives.* The Committee recalls that in its 2010 General Survey concerning employment instruments, it noted that the cooperative legislation in Italy offers a good example in terms of innovation and development (see paragraphs 464, 474 and 478 of the 2010 General Survey). ***The Committee invites the Government to provide in its next report information on the measures taken to promote productive employment through cooperatives in line with the Promotion of Cooperatives Recommendation, 2002 (No. 193).***

## Japan

### **Employment Service Convention, 1948 (No. 88) (ratification: 1953)**

*Organization and functions of the employment service.* The Committee notes the Government's reports supplied in November 2009 and September 2010, which included observations by the Japanese Trade Union Confederation (JTUC–RENGO). The National Confederation of Trade Unions (ZENROREN) also supplied observations in September 2010. In reply to the 2008 observation, the Government's report included an evaluation of the 2006 model project for market testing aimed at securing recruitment in three regions with difficult employment conditions. It further provided an evaluation of the performance of other projects for career interchange for middle- or advanced-aged white-collar jobseekers and other long-time unemployed persons. The Committee also notes that the retained employment rate in those regions, where the career interchange project was implemented by the Government stood at 44.6 per cent and exceeds that of those regions in which the project was implemented through private intermediaries and only resulted in 39.6 per cent. JTUC–RENGO reiterates that the Public Employment Security Offices are the core local institutions concerning employment measures and the front-line agencies for directly contacting jobseekers and employers. In 2010, the Government indicated that the Public Employment Security Offices are a basis of various employment measures of the Government and that they should not be transferred to local municipalities. Also, the service system of the national network should be maintained firmly and continuously. ***As in its previous observation, the Committee invites the Government to include in its next report updated information on the ability of the public employment service to ensure the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources.***

*Development of employment offices throughout the country.* In its previous observation, the Committee noted that, in April 2007, 466 Public Employment Security Offices, 100 branch offices and 18 local offices existed throughout the country. In 2009, the Government reported that, in April 2009, 437 Public Employment Security Offices existed, including 95 branch offices and 13 local offices. The Committee notes that in 2009 JTUC–RENGO indicated that any specific plan for the reorganization and winding up of public offices should be not only explained to local trade unions, employers' associations and local governments, but also be subject to approval by the Labour Policy Council. In 2010, the Government added that in reviewing the geographical distribution and the local needs, including the workload and changes in local demand, new Public Employment Security Offices have been established in areas with relatively high workloads and others have been consolidated in areas with relatively low workloads. This has resulted in a review of 58 offices between 1 June 2005 and 31 May 2010. As a result, one new office has been newly established and 57 offices have been consolidated. ***The Committee requests the Government to continue to report on the process based on which the organization of the network of employment offices is reviewed, and the extent to which the social partners participate in such process. The Committee would also welcome receiving information on the steps taken to ensure that such offices are sufficient in number to serve each geographical area of the country and that they are conveniently located for employers and for workers (Article 3).***

*Participation of the social partners.* The Committee notes JTUC–RENGO's request asking that, if the Government was to revise the structure of the Employment Bureau, such should be subject to the approval of the Labour Policy Council, the tripartite advisory body comprising representatives of the public, unions and employers' organizations. In this regard, the Committee notes the Government's intention to respect ILO Conventions and the discussion that already had taken place twice in the Council's framework. The Government reiterates that, taking into account *Article 4(1) of the Convention*, the Government will continue to make use of the framework of the Labour Policy Council. ***The Committee welcomes this approach and invites the Government to include in its next report information on the contribution made by the Labour Policy Council or any other tripartite framework in the formulation of recommendations in the matters related to the public employment service (Articles 4 and 5 of the Convention).***

## **Employment Policy Convention, 1964 (No. 122) (ratification: 1986)**

The Committee notes the information provided by the Government in the report received in November 2009 and the attached comments from the Japanese Trade Union Confederation (JTUC–RENGO).

*Article 3 of the Convention. Participation of the social partners in the formulation of policies.* In reply to the 2008 observation, the Government indicated that consultations covered by the Convention are implemented in the Labour Policy Council. The Committee notes that the Council on Economic and Fiscal Policy formulates the basic policies for economic and fiscal management and structural reform, which determines the fundamental orientation of policy measures, including employment measures. In this regard, JTUC–RENGO expressed its concern about the Government giving serious attention to recommendations made within the Council on Economic and Fiscal Policy, the Council for Regulatory Reform and other forums that do not include worker representation. JTUC–RENGO considers that discussions at the Labour Policy Council tend to be conducted within the framework set by these councils. The Committee notes JTUC–RENGO’s call to respect the Labour Policy Council as one of the pillars of the decision-making process for employment and labour policies. ***The Committee invites the Government to provide information in its next report on how discussions resulting from the Labour Policy Council, as well as other councils, have been used in the formulation and implementation of the employment policy. In this regard, the Committee asks the Government to focus on the consultative procedures which enable to take fully into account the views and experiences of persons affected by employment policy measures.***

*Articles 1 and 2. Measures taken in response to the global crisis.* The Committee notes that the total unemployment rate increased from 3.8 per cent in October 2008 to 5.7 per cent in July 2009 due to the economic deterioration, equivalent to about 1.3 million more individuals unemployed. Among the measures implemented to improve the employment situation, the Government has created funds in prefectures to create short- and medium-term employment and to provide workers not eligible to receive unemployment insurance with income to secure living costs. The Government has also extended grants to firms to compensate decreased business and to support employment without dismissing workers. In April 2008 the “Job-Card System” was set up in order to provide training opportunities for workers with limited opportunities to find employment. The Committee also notes the increase of staff levels at the public employment services as a consequence to the rise in jobseekers that required services. According to JTUC–RENGO, with the rising unemployment among non-regular workers following the economic turndown, the Government has been working with the social partners to adopt the Tripartite Agreement toward Employment Stabilization and Job Creation. JTUC–RENGO also considers that job creation and employment mismatches continue to pose a challenge. ***The Committee invites the Government to provide information in its next report on how the policies designed and the programmes implemented will translate into productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers affected by the crisis such as non-regular workers.***

*Implementation of an active employment policy.* In reply to previous comments, the Government indicates in its report that Japan is progressing with structural adjustments to resolve the surpluses in employment, facilities and debts in order to rebuild a healthy economic environment. The Committee notes that revitalization grants have been established to facilitate small and medium-sized enterprises contributing to regional employment creation and expand employment in regions where unemployment is higher. The Committee also notes from the documentation available in the ILO that a New Growth Strategy (Basic Policies) was approved by the Cabinet in December 2009, focusing on generating demand and jobs by implementing measures to improve people’s livelihoods. The Government aims to create new demand and jobs in fields such as the environment, health and tourism, with the target of generating millions of jobs and ¥100 trillion in demand in these three sectors by 2020. Under the new strategy, the Government set a target for GDP growth of more than 2 per cent a year for the coming decade. Following a contraction of 1.2 per cent in 2008 and 5 per cent in 2009, real GDP growth is projected by the Bank of Japan to be about 2.1 per cent in the fiscal year 2010. The Government also seeks to reduce the unemployment rate from 5 per cent to about 3 per cent in the medium term. ***The Committee invites the Government to state in its next report whether special difficulties have been encountered in attaining the objectives of the Convention and how far these difficulties have been overcome.***

*Employment of women.* In reply to the previous observation, the Government indicates that female participation in the labour market has increased for six consecutive years, with 23,120,000 female workers as of 2008. The Government informs that approximately 70 per cent of female workers leave their jobs when their first child is born, and a large number of women leave their jobs due to childcare and that the percentage of women in managerial posts continues to be low. The Committee notes the efforts to encourage employment of women workers with the Positive Action Support Site by disseminating information to companies of examples of good practices implemented by different firms and therefore raising public awareness. The Equal Employment Opportunity Law was revised in 2007 to further develop and strengthen the provisions including invalidating dismissals due to pregnancy and childbirth. The Committee notes that the Draft Act for Partial Amendment to the Child Care and Family Care Leave Act, which includes provisions for obliging business operators to establish a reduced work hour system for workers raising children under three years old and promotional measures for male workers to take childcare leave, was approved in June 2009. The Government also reports to be increasing efforts to improve day-care services. ***The Committee invites the Government to report on the impact of the new legislation and on how these measures have created further productive employment opportunities for women.***

Regarding the career-tracking system, the Government recalls that the Equal Employment Opportunity Law prohibits employers to classify workers into certain careers according to sex. In order to ensure opportunities for women to have access to the “main career track” more effectively, the revised Equal Employment Opportunity Law prohibits employers from applying, without legitimate reason, a criterion concerning the worker’s availability for reassignment that results in the relocation of the worker’s residence on the grounds that applying such a criterion is considered as indirect discrimination. ***The Committee invites the Government to provide further information on the measures taken to ensure that in practice companies are not using the two-track system for recruiting graduates, where men are assigned to managerial tracks and women to clerical tracks where upward mobility is very limited, and thus to ensure that each worker shall have the fullest possible opportunity to qualify for and use his or her skills, in accordance with Article 1(2)(c) of the Convention.***

***Youth employment.*** The Government states in its report that the employment situation of the second semester of 2008 resulted in problems such as enterprises cancelling informal job offers made in March 2009 to new graduates. Measures have been adopted to prevent such cancellations through the amendment of the Ordinance for Enforcement of the Employment Security Act. The Government introduced measures to assist young people in temporary or part-time jobs, known as freeters. In April 2008, the Freeters Regular Employment Promotion Plan was promoted to support stable employment and has resulted in the regular employment of 268,000 freeters. Programmes have also been implemented relating to the one-stop service centre for young workers and the promotion of vocational training and career development in collaboration with universities and technical colleges. The Government states that the situation has been improving as the number of freeters has decreased over five consecutive years, with the number of freeters 1,700,000 in 2008. According to the OECD, the unemployment rate for 15–24 year olds rose by 2.4 percentage points, reaching 9.9 per cent in July 2009. In its 2010 General Survey concerning employment instruments, the Committee noted that in Japan one third of young workers are in non-regular employment. The Committee observed that there was a growing problem of unemployment among educated workers, particularly young university graduates, who are unable to find secure employment commensurate with their skill level. This is an issue for the advanced market economies as well as developing countries. Not only are their skills underutilized, but this pattern of casual jobs can prove detrimental to their lifetime career progression (see paragraphs 576 and 800 of the 2010 General Survey). ***The Committee encourages the Government to report on how it is enhancing vocational training and career development for young workers, as well as on the impact of the measures taken to support re-employment of young workers.***

***Older workers.*** The Government reports that as of June 2008, 96.2 per cent of enterprises with 51 or more workers have implemented employment security measures for older people. Thirty-nine per cent of them have allowed workers to remain working until age 65 or more if they wish, while 12.4 per cent have implemented employment security measures for people up to age 70. The Government also states that strong guidance will continue to be provided to enterprises that have not implemented employment security measures for older people. ***The Committee invites again the Government to provide detailed information on the measures implemented as part of an active policy intended to address the employment situation caused by an ageing workforce and a slowing rate of population growth.***

The Japan Postal Industry Workers’ Union (YUSANRO) supplied observations on the Convention in October 2010. ***The Committee invites the Government to provide its own remarks on the matters raised therein for its forthcoming session.***

### ***Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)***

The Committee notes the Government’s detailed report received in September 2010, including the comments formulated by the Japanese Trade Union Confederation (JTUC–RENGO). The report contains replies to the 2005 direct request formulated by the Committee, as well as to matters raised in the report of the tripartite committee established to examine a representation made under article 24 of the ILO Constitution alleging non-observance by Japan of this Convention, which was approved by the ILO Governing Body at its 304th Session (March 2009).

***Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the Constitution of the ILO).*** The Committee recalls that it was entrusted to follow up on the application of the Convention with respect to the questions raised in the representation (document GB.304/14/6, adopted by the Governing Body at its 304th Session in March 2009).

***Articles 1(3) and 3 of the Convention.*** *National policy aimed at ensuring appropriate vocational rehabilitation for all categories of persons with disabilities.* (a) *Criteria used to determine whether a person with disabilities is considered to be able to “work under an employment relationship”.* In paragraph 73 of the tripartite committee report, it was noted that the objective of type-A and type-B programmes under the support programme for the continuation of work (SPCW) was to provide persons with difficulties to be employed at ordinary workplaces with opportunities for work as well as training for improving their knowledge and skills to enter the workforce. However, while type-A facilities “employed” persons with disabilities under an employment contract, type-B facilities offered “opportunities for productive activities” without establishing an employment relationship and accordingly, the labour legislation did not apply. As a result of this situation, persons with disabilities involved in type-B programmes were not yet considered as able to work under an employment relationship. Considering the difficulty of ascertaining how in this case, the distinction between

work under an employment relationship and other work would operate in practice, the tripartite committee concluded that further information was required on the criteria used to determine whether a person with disabilities is considered to be able to “work under an employment relationship”. The Committee notes the indications provided by the Government in its report pointing out that criteria used to decide whether a person with disabilities is considered to be able to “work under an employment relationship” have been set forth by the “Ministerial Circular concerning the application of Labour Standards Law to persons with disabilities engaging in activities under the support programme for continuation of work provided by SSPDA”, No. 100204 of 2 October 2006 (Ministerial Circular No. 100204). The Committee notes that Ministerial Circular No. 100204 states that persons with disabilities engaging in activities under the SPCW fall into one of three categories: (1) those who work in type-A facilities under an employment contract; (2) those who work in type-A facilities without an employment contract; and (3) those who work in type-B facilities without an employment contract. The municipal authority shall decide under which category a person with disabilities falls, taking into account the level of her/his disability and her/his wishes. In principle, those who fall under category (1) are considered to be workers under the Labour Standards Law and those who fall under categories (2) and (3) are not considered to be workers since they are not subject to subordination and supervision. **The Committee invites the Government to specify in its next report how many persons fall under categories that do not allow them to be covered by an employment relationship and the measures taken to ensure that they may also benefit from employment opportunities in the open labour market.**

(b) *Bringing work performed by persons with disabilities in sheltered workshops within the scope of the labour legislation.* In paragraph 75 of the report, it was considered that standards applicable to work performed in sheltered workshops should be in line with the principles of the Convention, including the principle of equality of opportunity and treatment. The Government refers to the “Ministerial Circular concerning the application of article 9 of the Labour Standards Law to persons with disabilities engaging in activities at welfare workshops, small-scale workshops, etc.”, No. 0517002 of 17 May 2007 (Ministerial Circular No. 0517002). The Committee notes that Ministerial Circular No. 0517002 fixes the criteria for which persons with disabilities engaging in activities, especially training, at welfare workshops and small-scale workshops can be considered to be workers. The Committee recalls that from the perspective of the Convention’s objective of the social and economic integration of persons with disabilities into the community and wider society and with a view to the full recognition of the contribution made by persons with disabilities, bringing work performed by such persons in sheltered workshops within the scope of labour legislation, to the extent appropriate, would appear to be crucial. **The Committee invites the Government to further clarify the measures taken to ensure that the treatment of persons in sheltered workshops is in line with the principles of the Convention, including the principle of equality of opportunity and treatment (Article 4).**

(c) *Low pay for persons with disabilities carrying out activities under the type-B programmes under the SPCW.* In paragraph 76 of the report, it was noted that recipients of type-B programmes under the SPCW received a particularly low level of pay. The Government was requested to provide information on any progress to bring workshop pay to an adequate level. The Government indicates that, in the framework of the Five-Year Plan to Double Workshop Pay, prefectural governments provide support to service providers in an effort to increase the level of workshop pay through measures which include training programmes for raising management consciousness of service providers and human resources development among their staff. **The Committee invites the Government to continue to provide information on measures taken or envisaged in bringing workshop pay to an adequate level in the framework of the Five-Year Plan to Double Workshop Pay.**

(d) *Service fees for participants in type-B programmes under the SPCW.* In paragraphs 77 and 79 of the report, it was noted that persons with disabilities were entitled, free of charge, to vocational rehabilitation and employment services through the Public Employment Security Office. The tripartite committee expressed its concern at the introduction of a fee for participants in type-B programmes under the SPCW for the services received under such programmes, including vocational rehabilitation. The Government indicates that recipients of type-B programmes under the SPCW, while engaging in productive activities also receive welfare support. Therefore, they pay service fees in the same way as recipients of other welfare services. It adds that, in addition to reducing service fees in October and April 2008, the Government abolished service fees for persons with disabilities in low-income households in April 2010. The Committee notes with interest the measures taken by the Government to further reduce service fees for recipients of type-B programmes. **The Committee hopes that the Government will pursue its efforts to ensure that persons with disabilities are not discouraged or excluded from becoming involved in such programmes and gaining eventual access to open employment. In this regard, the Committee recalls that Paragraph 22(2) of the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), recommends the provision of free vocational rehabilitation services.**

*Promotion of employment for persons with disabilities.* The Committee notes that the “Basic policy on employment measures for persons with disabilities” was adopted by the Ministry of Health, Labour and Welfare in 2009 and was followed by a Cabinet decision of 29 June 2010, regarding the “Basic direction with promoting reform of the system for persons with disabilities”. The Government intends to adopt domestic legislation with the aim of ratifying the United Nations Convention on the Rights of Persons with Disabilities. In this regard, JTUC–RENGO states that it will pay close attention to discussions at meetings held in the framework of the proposed reform as well as to the promotion and implementation by the Government of comprehensive policy measures which include the employment of persons with disabilities. **The Committee invites the Government to provide in its next report information on the impact of the**

*measures taken in the framework of the reform of the system for persons with disabilities on promoting employment opportunities for these persons in the open labour market. It asks the Government to continue to provide information on the manner in which the Convention is being applied and to include, for example, statistics and other relevant data disaggregated, as much as possible, by age, sex and the nature of the disability, extracts from reports, studies and inquiries concerning the matters covered by the Convention (Part V of the report form).*

*Articles 3, 4 and 7. Equality of opportunity between persons with disabilities and workers generally.*

*(a) Implementation of the Five-Year Plan for Implementation of Priority Measures (2008–12).* In paragraph 80 of the report, it was noted that the number of persons with disabilities that obtained employment through the Public Employment Security Office increased in recent years. It was further noted that the Government sought to enhance cooperation and coordination between welfare and employment institutions in an effort to bring about an increased transition of persons with disabilities “from welfare to employment”. The Government was requested to provide further and updated statistical information to assess the impact of these measures against the targets set by the Five-Year Plan for Implementation of Priority Measures (2008–12) (Five-Year Plan), adopted in the framework of the Basic Programme for Persons with Disabilities 2003–12, with particular regard to the number of men and women with disabilities who moved from type-B programmes under the SPCW to sheltered work protected under the labour legislation and eventually to open employment. The Committee notes the information provided by the Government which indicates that the Five-Year Plan includes the target to increase the number of recipients of the Support Programme for Transition to Employment (SPTE) and the SPCW to 2,770,000 by 2011. Moreover, this Plan aims to increase the rate of transition from trial to regular employment for persons with disabilities to 80 per cent or more by 2012, the number of “job coaches” to 5,000 by 2011 and the employment rate for persons with disabilities, after the termination of support from job coaches, to 80 per cent or more by 2012. The Government provides comprehensive information, including statistical data, on the concrete measures implemented in the framework of the Five-Year Plan. In 2008, 448,000 persons with disabilities were estimated to be employed. The number of employment and vocational life support centres for persons with disabilities increased by 235 locations (from 36 locations in 2002 to 271 locations in 2010). The number of special subsidiary companies for the employment of persons with disabilities increased to 265 in 2009. These measures contributed to the increased private sector employment for persons with disabilities throughout Japan (197,388 in 2005 to 246,480 in 2009). The Government further indicates that in 2008, transitions from type-B programmes under the SPCW to type-A programmes were 103, from type-B to open employment were 697 and from type-A to open employment were 101. In total, transitions from welfare institutions to open employment were 3,376. ***The Committee invites the Government to include in its next report updated information on the impact of the Five-Year Plan for Implementation of Priority Measures (2008–12) and to provide relevant data on the transition of persons with disabilities from welfare institutions to open employment.***

*(b) Quota system for the employment of persons with disabilities.* In paragraphs 81–82 of the report, the Government was invited to examine the impact of the quota system’s current limitation to persons with physical and intellectual disabilities on the employment opportunities of persons with other disabilities. Furthermore, while observing that the practice of double-counting of persons with severe disabilities in relation to the quota system did not appear to run counter to the objectives and principles of the Convention, the tripartite committee invited the Government to examine the impact of this practice in order to ascertain its effectiveness. The Government indicates that persons with mental disabilities have been included in employment quota calculations for persons with disabilities since 2006. Since this inclusion, the employment rate of persons with mental disabilities increased significantly more than that of persons with physical or intellectual disabilities, showing that the quota system proved to be effective. The Government further indicates that the number of employed persons with disabilities increased from 113,420 in 1977, when the practice was established, to 238,770 in 2009. Moreover, the number of employed persons with severe disabilities in 1977 was 15,009, compared with 92,420 in 2009. The Government observes that, since the figure also increased for persons who have no severe disabilities, the practice of double counting is not likely to have any effect on preventing the employment of these persons. ***The Committee invites the Government to also include updated information in this regard.***

*(c) Reasonable accommodation.* In paragraph 83 of the report, it was emphasized that reasonable accommodation is indispensable in promoting and ensuring respect for the principle of equality of opportunity and treatment between workers with disabilities and workers generally. While noting that the Government had provided guidance and financial assistance to employers regarding the management of disability in the workplace, including workplace adaptation, the tripartite committee welcomed the planned study group on the issue of reasonable accommodation and expressed its hope that this initiative would contribute to the strengthening of the Convention’s application. In this regard, it was considered important to clarify employers’ obligations with regard to providing reasonable accommodation. ***The Committee invites the Government to provide information on this point.***

The National Union of Welfare and Childcare Workers supplied new remarks and documents in October 2010, which were forwarded to the Government in November 2010. ***The Committee invites the Government to provide its own observations on the matters raised therein for the forthcoming session.***

***[The Government is asked to reply in detail to the present comments in 2011.]***



## Jordan

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the information provided by the Government in November 2009 in reply to the 2008 direct request. The Government has adopted the National Agenda (2006–15), which includes three action phases, the first of which, “Employment opportunities for all” (2007–12) emphasizes the intensive development of manpower, the growth of export industries, the eradication of structural unemployment and support for employment and vocational training. The National Agenda sets the objective of reducing the unemployment rate by half (from 12.7 per cent in 2008 to 6.8 per cent in 2017), creating 600,000 new vacancies and increasing the activity rate of persons with disabilities and of women. In the document *Kulluna Al Urdun* (“We are all Jordanians”) adopted in 2007, the representatives of Jordanian civil society expressed support for the objectives of the National Agenda. The document contains recommendations, particularly in relation to taxation, human resources development and the evaluation of enterprise performance. It also emphasizes the importance of reforming labour legislation with a view to promoting openness and flexibility in the labour market. The Committee also notes the document on the national employment policy, of October 2008, which provides a detailed analysis of the labour market situation, identifies the causes of unemployment and proposes a framework for action based on several approaches including: the coordination of vocational training policy with employment policy with a view to reducing the mismatch between labour supply and demand; the implementation of special measures to remove administrative obstacles to the creation of small and medium-sized enterprises; the promotion of a conducive environment for the integration of informal economy enterprises into the formal economy; and the reduction of disparities in regional development and the promotion of labour mobility. The Government indicates in its report that the number of jobseekers reached 24,029 in 2008, of whom 8,668 have been integrated into the labour market. ***The Committee invites the Government to provide detailed information in its next report on the results achieved in the implementation of the National Agenda (2006–15) in terms of the creation of productive and lasting employment. The Government is also invited to supplement its report with updated statistical data on the situation, level and trends of employment, unemployment and underemployment.***

*Coordination of education and training policy with employment policy.* The Government indicates that the Vocational Training Institute has implemented a restructuring project with a view to establishing a vocational and technical education and training system offering high-quality training opportunities which respond to the needs of employers. This restructuring project will enable the Vocational Training Institute to achieve the objectives of the National Agenda, which envisages the establishment of two new vocational training bodies, the Employment and Vocational and Technical Training Council and the Higher Council for Human Resources Development. ***The Committee invites the Government to provide information on the measures adopted or envisaged to ensure that vocational training policies respond to the needs of the labour market. It invites the Government to include further information on the role of the training bodies and on the coordination established between the measures adopted in the context of education and training policies and of employment policy.***

*Youth employment.* The Committee notes the statistics on the number of graduates who entered the labour market in 2005 and their distribution over three regions. According to the data contained in the national employment policy document of October 2008, each year between 70,000 and 80,000 young persons need to be integrated into the labour market, with the unemployment rate among young persons aged between 20 and 24 years amounting to 38 per cent of the active population. According to the information gathered in the General Survey of 2010 concerning employment instruments, the Committee noted that the unemployment rate is very high among educated workers, and particularly young university graduates, who are unable to find employment commensurate with their skill levels. This is now an issue for the advanced and developing countries, with the skills of young graduates being underutilized so that they have to accept casual jobs. Such a situation can prove detrimental to their lifetime career progression. The Committee therefore encourages governments to develop job creation and career guidance policies targeted in particular at this new category of the educated unemployed (General Survey, op. cit., paragraph 800). ***The Committee invites the Government to provide information in its next report on the impact of vocational training programmes and on the results achieved in terms of the integration of young educated workers. In particular, the Committee would be grateful to examine information disaggregated by gender on the training provided to young persons entering working life, and particularly those with a university qualification, and on its impact in terms of their integration into lasting employment.***

*Women’s employment.* According to the information provided by the Government in July 2009, the Vocational Training Institute implemented a programme intended to increase the participation rate of women in training programmes. According to the National Agenda, the expected results would involve vocational education and training systems which respond more effectively to the needs of the labour market and active participation by the private sector in vocational education and training systems. According to the data contained in the national employment policy document of October 2008, the unemployment rate of women amounted to 26.1 per cent of the active population in 2007, and graduates of higher education were those most affected by unemployment. ***The Committee requests the Government to provide detailed information on the measures adopted or envisaged to improve and facilitate the integration of women into the labour market.***

*Article 3. Participation of the social partners.* The Government indicates that consultations have been held in the context of the meetings organized within the Ministry of Employment, with the participation of representatives of employers' and workers' organizations and members of civil society. ***The Committee hopes that the Government will be in a position to provide precise information in its next report on the consultations held with the representatives of the social partners concerning employment policy. The Committee invites the Government to indicate whether consultations have been held with the most vulnerable categories of the population, and particularly with representatives of workers in rural areas and the informal economy, with a view to securing their collaboration in the design and implementation of employment policy programmes and measures.***

*Part V of the report form. ILO technical assistance.* The Committee notes the technical cooperation projects established by the ILO in Jordan, and notes that the final phase of the handicraft promotion project was signed in September 2008. The project is intended to improve the training system in the field of handicrafts by promoting partnerships with the private sector and establishing networks of sales points, an Internet site and brochures to improve the marketing of handicraft production. The Committee also notes the Better Work project and its objective of reducing poverty by broadening opportunities for decent work in global supply chains through the improvement of the competitiveness of Jordanian enterprises, the development of their economic performance and the promotion of international labour standards. ***The Committee invites the Government to provide information in its next report on the action taken as a result of the technical assistance received from the Office with a view to ensuring the implementation of an active employment policy within the meaning of the Convention. It also invites the Government to provide information on the progress achieved in relation to the employment priorities of the Decent Work Country Programme.***

## Kyrgyzstan

### Employment Policy Convention, 1964 (No. 122) (ratification: 1992)

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in June 2005. The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the Committee's 2005 observation, which sets forth the following matters.

*Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction.* The Government enumerated the aims of the National Employment Policy, which was established in the context of the national poverty reduction strategy 2003–05, and was approved by Decree No. 126 on 14 March 2005. The objectives of the employment policy aimed, among others, at assisting unemployed citizens in choosing an occupation and placement; improving vocational training and retraining of the unemployed; organizing temporary employment and voluntary work; preventing the rise of unemployment by eliminating or reducing the effect of the factors which lead to mass unemployment; and supporting entrepreneurship and self-employment. ***The Committee asks the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies.*** Indeed, the Committee considers that it is essential from the outset for employment objectives to be included "as a major goal" in the formulation of economic and social policy if these objectives are truly to be an integral part of the policies that are adopted. ***The Committee requests the Government to provide detailed information on the results and progress achieved with the implementation of the measures envisaged by the National Employment Plan, including information on the employment situation of socially vulnerable groups such as women, young persons and older workers.***

***The Committee also requests the Government to include in its next report information on the following matters that were raised in its 2004 observation:***

- ***training and retraining measures for workers affected by structural reforms (such as the declining of the Kumtor gold mine);***
- ***the impact of the different programmes adopted by the Government concerning specific groups of workers, such as the "National programme 'Zhashtyk' on youth development until 2010" and the "State programme 'New Generation' for the protection of children's rights".***

*Article 3. Participation of the social partners in the formulation and application of policies.* The Government reported that a tripartite committee has been created to regulate issues of employment promotion, which held its first session on 17 May 1999. The basic tasks of the tripartite committee: were the preparation of the National Employment Policy up to 2010; the development of corresponding measures to determine future directions in reducing tensions in the labour market; and the development of proposals to introduce amendments in Kyrgyz legislation on employment promotion and other regulatory acts in application of employment policy. ***The Committee asks the Government to provide specific information about the operation of the abovementioned tripartite committee, as well as the involvement of social partners in the formulation and implementation of the National Employment Plan. It also requests information regarding the measures taken or contemplated to involve in the consultations required by the Convention.***

## New Zealand

### Employment Policy Convention, 1964 (No. 122) (ratification: 1965)

The Committee notes the Government's detailed report for the period ending in May 2010, including comments from Business New Zealand and the New Zealand Council of Trade Unions – Te Kauae Kaimahi (NZCTU). In reply to previous comments, the Government indicates that the Better work working better – Labour market and employment strategy is no longer in place. The Government reported in detail on the response to the recession, the Medium-term

Economic Agenda, the careers strategy, the five-year action plan and labour market reform. Business New Zealand emphasised that anyone seeking employment in New Zealand is free to apply for any job for which he or she is qualified or for which he or she feels capable of performing. No one is directed to take up employment even though the person concerned may have been unemployed for a considerable period. The Committee further notes concerns expressed by the NZCTU for changes to employment legislation, policies and economic approaches by the Government to meet its obligations under the Convention. In this respect, the Committee recalls the concerns expressed by the NZCTU in the 2010 General Survey concerning employment instruments that measures to encourage competitive business success should not be taken at the expense of workers' rights. The NZCTU reiterates in the report on Convention No. 122 that new employment legislation allowed businesses with fewer than 20 employees to dismiss new employees during their first 90 days of employment without cause or recourse to standard employment protections, such as personal grievance provisions. According to the NZCTU, this legislative reform undermines workers' rights. The NZCTU emphasizes again that minimum labour rights should apply to SMEs as well as to larger employers. The Committee refers to paragraphs 397–399 of the 2010 General Survey and reiterates that any measures designed to promote full employment and encourage the creation of productive and sustainable jobs, particularly in small and medium-sized enterprises, should be adopted in consultation with the social partners, under conditions that are socially adequate for all concerned and in full conformity with the international instruments ratified by the respective countries. Within this framework, the Committee also recalls that, in its 2007 conclusions concerning the promotion of sustainable enterprises, the Conference urged all enterprises, regardless of their size, to apply workplace practices based on full respect for fundamental principles, rights at work and international labour standards. The Committee again expresses its appreciation in receiving information and data on successes, problems encountered and lessons to be learned from the experience of the social partners in New Zealand with regard to the application of the Convention.

*Articles 1 and 2 of the Convention. Employment trends and active labour market measures.* The Government indicates that a period of economic recession began in early 2008 and as a result, efforts to minimize its negative effects were initiated by maximizing employment opportunities for those most affected and by implementing a plan for sustained economic growth. The Committee notes that in response to the economic recession, government agencies are working closely with businesses to help maximize the potential for economic development across sectors and regions. The Government recalls a Summit on Employment hosted by the Prime Minister on 27 February 2009 which included participants from business, industry, trade unions, Maori groups and local and central government agencies (paragraph 84 of the 2010 General Survey). The Summit produced 20 initiatives to alleviate the effects of the economic crisis on those made redundant and at a higher risk of long-term unemployment due to the recession. The Committee notes that in March 2010, the unemployment rate fell from 7.1 per cent to 6 per cent while employment increased by 1 per cent, its largest increase since June 2008. The Government indicates that this result combined with high business and consumer confidence and rising employment intentions demonstrated that the labour market had reached a turning point and was beginning to recover. The Government also indicates that in March 2010 the number of people employed rose by 1 per cent, or 22,000 people and subsequently stood at 2,177,000. The Committee notes concerns raised by the NZCTU stating that unemployment has remained high over the last nine months and further indicates the unemployment rate during June 2010 was 6.8 per cent, not far below its peak in December 2009 of 7.1 per cent. The NZCTU reports support for government fiscal stimulus measures to be increased in light of continuing unemployment, a stalling recovery and the economic outlook internationally. The Government reports on overall policy initiatives aimed at achieving economic growth and development, raising the levels of living and meeting manpower requirements through two aspirational goals: to catch up with Australia's GDP per capita (the New Zealand figure was 76 per cent of Australia's) and for exports to be 40 per cent of the GDP (previously reported at 31 per cent). The Government indicates an economic plan to achieve these objectives through the following six main policy drivers: growth-enhancing tax system, better public services, innovation and business support, better regulation, including regulations around natural resources, investment in infrastructure and improved education and skills. The NZCTU indicates concern that the Government's response in 2008–09 to the recession caused by the global economic crisis was inadequate and poorly targeted and mainly consisted of tax cuts. The NZCTU further expressed concern regarding the possible impact of free trade agreements on manufacturing jobs in New Zealand and the potential for such policy to restrict freedom of choice of employment. The Committee notes the Government response to incorporate labour issues into a framework to guide trade negotiations with other countries. ***The Committee invites the Government to provide in its next report information on the impact of the schemes implemented to alleviate the effect of the economic crisis (the ReStart assistance package, the job support scheme, the youth opportunities package and the small business relief package). It also invites the Government to indicate the extent to which the employment objectives included in the medium-term economic agenda have been or are being attained and further information on the employment-related issues to guide trade agreements.***

*Education and training policies.* The Committee notes the detailed information provided in the Government's report on education and training policies and its ongoing commitment to raise workforce literacy, language and numeracy skills in order to support productive employment. The NZCTU has highlighted the recent research by the Government Human Rights Commission which determined youth unemployment to be a top priority and identified high unemployment of young Maori and Pacific people and a current bias against hiring some young people as issues. The Committee also notes the statement by Business New Zealand for ensuring that many Maori and Pacific peoples are better served by the education and training system so that they have the skills required to do the jobs available. In this respect, the Committee

notes the Tertiary Education Strategy 2010–15 which seeks to achieve higher levels of education and provide for better employment opportunities among vulnerable categories of workers and in particular, the Maori and the Pasifika. The Government states that this initiative includes a long-term view for tertiary education which includes both institutional and workplace based education for increased employment opportunities among disadvantaged young people and people with low level skills. ***The Committee invites the Government to continue to provide information on the results achieved by the Tertiary Education Strategy and other measures implemented to coordinate education and training policies with prospective employment opportunities.***

***Workplace productivity and entrepreneurship.*** The Committee notes the measures taken to ensure productive work through a targeted review of New Zealand's tertiary qualifications in order to reduce the duplication of skills training, to improve education and training quality and to create better employment outcomes for employers and employees. The Government further indicates measures taken to promote small and medium-sized enterprises through the Government's small business relief package which aims to improve the business environment by reduced impact of taxes and firms' cash flow, improving firms' access to credit and reducing business compliance costs. The Committee also notes a government allowance which is paid to businesses facing temporary difficulties due to the recession. The Government indicates that this initiative was initially made available to employers with more than 100 staff, though, as of April 2009, it was extended to cover employers with 50 to 100 employees. ***The Committee invites the Government to include information on the results obtained in increasing workplace productivity and further information on the measures taken to create employment by the promotion of small and medium-sized enterprises.***

## Nigeria

### **Employment Service Convention, 1948 (No. 88) (ratification: 1961)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation which read as follows:

***Contribution of the employment service to employment promotion.*** In its 2004 observation, the Committee requested the Government to report in detail on the application of the Convention. In June 2006, the Government reported that a total of 6,640 applicants were registered in the Employment Exchange and Professional and Executive Registries in 2005. Of these, 1,516 applicants were placed in employment, while a total number of 1,989 vacancies were notified. In reply to a request by the Office for supplementary information, the Government provided, in August 2006, figures on the impact of the National Economic Empowerment and Development Strategy (NEEDS) concerning the training of youth under the Vocational Skills Development Programme between 2002 and 2005. The Committee notes that NEEDS covers small-scale enterprise programmes, rural employment promotion programmes, assistance for self-employment, special public work programmes and women's cooperatives. The Committee notes again, as pointed out by NEEDS, that since manufacturing is stagnant there are few jobs for the growing urban population, and urban unemployment was estimated at 10.8 per cent in 2004. NEEDS policies are expected to create about 7 million new jobs by 2007, by making it easier for private enterprises to thrive by training people in skills relevant for the world of work and by promoting integrated rural development in collaboration with the States. The Committee hopes that the Employment Exchange and Professional Executive Registries will effectively perform their essential task within the meaning of the Convention, that is, of ensuring, in accordance with *Article 1(1) of the Convention*, the best possible organization of the employment market for the achievement and maintenance of full employment and for the development and use of productive resources. ***The Committee therefore requests the Government to report on the measures taken, in cooperation with the social partners, so that the public employment service is run efficiently and free of charge, and that it comprises a network of offices sufficient in number to meet the specific needs of jobseekers and employers countrywide. It also asks the Government to describe in its next report the activities of the employment service and the effects noted or expected on employment as a result of implementing its poverty reduction strategy.***

***The Committee further requests the Government to include in its next report statistical information published in annual or periodical reports on the number of public employment offices established, applications for employment received, vacancies notified and persons placed in employment by such offices (Part IV of the report form). Please also provide information on the following matters:***

- ***consultations held with representatives of employers and workers on the organization and operation of the employment service and the development of employment policy (Articles 4 and 5);***
- ***the manner in which the employment service is organized and the activities which it performs in order to carry out effectively the functions listed in Article 6;***
- ***the activities of the public employment service concerning the various occupations and industries, as well as particular categories of jobseekers that are in socially vulnerable positions, in particular workers with disabilities (Article 7);***
- ***measures proposed by the employment service to assist youth in finding suitable employment (Article 8);***
- ***measures proposed by the employment service, with the cooperation of the social partners, to encourage the full use of employment service facilities (Article 10);***
- ***measures taken or envisaged by the employment service to pursue cooperation between the public employment service and private employment agencies (Article 11).***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Pakistan

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1952)**

The Committee notes with *concern* that the Government has not provided information on the application of the Convention since its last report received in February 2006. The Committee recalls that in 1977 it noted the enactment of the Fee Charging Employment Agencies (Regulation) Act, 1976, which provided for the licensing of fee-charging employment agencies and empowered public authorities to prohibit the establishment of fee-charging employment agencies in any area where the public employment service was operating. According to section 1(3), the Act would enter into force when the federal Government made an official notification in the *Official Gazette*. The Committee has requested several times that the Government take the necessary steps to bring the Act into force in order to achieve the aim of *Part II of the Convention*, which is the progressive abolition of fee-charging employment agencies conducted with a view to profit.

The Committee recalls the comments made by the All Pakistan Federation of Trade Unions (APFTU) on the application of the Convention, which were forwarded to the Government in June 2005. The APFTU stated that agencies are allowed to charge fees for recruitment abroad and that some of them were involved in human trafficking. The Committee notes the Pakistan Workers Federation's (PWF) new observations, forwarded to the Government in August 2010, indicating that recruiting agencies have been exploiting prospective migrant workers. The PWF also urges the Government to ensure that the Fee-Charging Employment Agencies (Regulation) Act 1976, enters into force in order to protect prospective migrant workers against exploitation and to set up free public employment exchange facilities for jobseekers.

*Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.* In its 2006 observation, the Committee noted that in relation to the abolition of fee-charging employment agencies, as required by *Part II of the Convention*, the Government reiterated that draft rules have been framed to regulate the operation of fee-charging employment agencies. The Government also confirmed that the licences for overseas employment promoters were granted for a period of one, two or three years. In relation to *Article 9* of the Convention, the Government indicated that, due to the economic conditions of Pakistan, levies have been established for migrant workers. Therefore, the Government was not in a position to adopt a policy for abolishing fee-charging employment services for migrant workers. It also added that punitive action was taken against those overseas employment promoters that were involved in violations of the Emigration Ordinance, 1979, and the Emigration Rules, 1979. *The Committee refers to its previous comments, noting again the lack of progress in achieving the abolition of fee-charging employment agencies. The Committee asks the Government to report on the following issues:*

- *the measures taken to abolish fee-charging employment agencies;*
- *the numbers of public employment offices and the geographical areas they serve (Article 3(1) and (2));*
- *the consultations of employers' and workers' organizations on the supervision of all fee-charging employment agencies (Article 4(1)(a), (2) and (3));*
- *with regard to overseas employment promoters, the measures taken to ensure that these agents may only benefit from a yearly licence renewable at the discretion of the competent authority (Article 5(2)(b)) and charge fees and expenses on a scale submitted to, and approved by, the competent authority (Article 5(2)(c));*
- *with regard to placing and recruiting workers abroad, the conditions established by the laws and regulations in force for the operation of fee-charging employment agencies (Article 5(2)(d)).*

*Revision of Convention No. 96.* The Committee refers to its General Survey 2010 concerning employment instruments in which it recalled that public employment services and private agencies are both actors in the labour market. They should therefore mutually benefit from cooperation as their common aim is to ensure a well-functioning labour market and the achievement of full employment. In Chapter III of the General Survey, the Committee noted that if private employment agencies operate in a particular labour market, this operation has to be regulated. Therefore, governmental action is required, either directly through a system of legislation, licensing or certification or, indirectly, by authorizing an existing national practice or one that is to be established (paragraph 237 and subsequent of the 2010 General Survey). In its previous observations on Convention No. 96, the Committee has already highlighted the role that the Private Employment Agencies Convention, 1997 (No. 181), and Private Employment Agencies Recommendation, 1997 (No. 188), play in the licensing and supervision of placement services for migrant workers and the role that Convention No. 181 attributes to private employment agencies for the functioning of the labour market (see paragraph 730 of the 2010 General Survey). *Taking into account that the present situation is not in conformity with the provisions of Part II of Convention No. 96, the Committee hopes that the Government and the social partners will contemplate adhering to the obligations of the Private Employment Agencies Convention, 1997 (No. 181), the ratification of which involves the immediate denunciation of Convention No. 96. It invites the Government to report on steps taken, in consultation with the social partners, to ratify Convention No. 181.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1994)**

*Promotion of employment opportunities for persons with disabilities.* The Committee notes the remarks made by the Pakistan Workers Federation (PWF) in the comments forwarded to the Government in August 2010. PWF indicates that the vocational education and training facilities allocated by the State to the rehabilitation of workers with disabilities are very meagre. PWF also suggests that the Government should allocate more quotas for the employment of persons with disabilities in the public and private sectors so that they can be rehabilitated and obtain gainful employment after receiving vocational education and training. *The Committee recalls its 2005 and 2009 direct requests and again asks the Government to provide information on measures taken in the context of its policy on vocational rehabilitation and employment of persons with disabilities, both at federal and provincial levels (Articles 3 and 7 of the Convention). The Government is invited to include relevant information on the application of the Convention in practice, particularly on the activities of the National Council for the Rehabilitation of Disabled Persons (NCRDP) (Part V of the report form).*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## **Peru**

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1986)**

*Articles 2 and 3 of the Convention. National policy on vocational rehabilitation.* The Committee notes the report received in September 2009 which indicates that for the National Council for the Integration of Persons with Disabilities (CONADIS), increasing the levels of employment of persons with disabilities and their access to decent work is a major goal and a priority. According to the General Confederation of Workers of Peru (CGTP), the extent to which persons with disabilities have been integrated into the labour market is not known exactly. The Committee notes the adoption of Act No. 29392 of August 2009 defining offences and establishing penalties for breach of the General Act on Persons with Disabilities. In December 2008, CONADIS and the Ministry for Women and Social Development approved an Equal Opportunities Plan for Persons with Disabilities 2009–18. According to the data sent with the report, the *RED Cil Proempleo* programme succeeded in placing a total of 85 persons with disabilities in jobs during the period 2007–09, and 50 “enterprises for the advancement of persons with disabilities” were created in the period from 2007 to April 2009. The Government states that there is no sign of the results awaited from the development of policies to include persons with disabilities in production. *The Committee again asks the Government in its next report to include an evaluation of the results obtained in the context of the Plan for Persons with Disabilities 2009–18 in both the public sector and the private sector in terms of integrating persons with disabilities into the open labour market. The Committee invites the Government to send further information on the application in practice of the penalties established in Act No. 29392 along with other data allowing an evaluation of the employment created for persons with disabilities by the “enterprises for the advancement of persons with disabilities” and as a result of incentives offered for hiring persons with disabilities. The Committee again asks the Government to provide extracts from studies or other assessments of vocational rehabilitation and employment policies and programmes for persons with disabilities, together with up-to-date statistics on the number of participants, the number of placements, public expenditure and other data showing the results of the legislative and policy measures adopted for persons with disabilities (Part V of the report form).*

*Services in rural areas and remote communities.* The Committee notes that the services of the National Institute for Rehabilitation do not extend to rural areas but that these areas are covered by a community-based vocational rehabilitation project. *The Committee asks the Government in its next report to provide information on the measures planned to establish and develop vocational rehabilitation and employment services for persons with disabilities in rural areas and remote communities (Article 8), and on the training of suitably qualified staff responsible for the vocational guidance, vocational training, placement and employment of persons with disabilities (Article 9).*

## **Romania**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1973)**

*Articles 1 and 2 of the Convention. Employment trends and active labour market policies.* The Committee notes the detailed statistical data provided in the Government’s report received in August 2010. The Government indicates that, due to the effects of the economic and financial crisis, the unemployment rate increased significantly and rapidly from 4 per cent in 2008 to 6.3 per cent in 2009. As a result, 572,974 persons were unemployed in 2009 compared to 362,429 persons in 2008. In the first trimester of 2010, the unemployment rate reached 8.2 per cent (756,214 persons unemployed). The Government indicates that the Programme for Employment 2008–10 has been launched, which among its general objectives entails labour market flexibility, an employment rate increase and the promotion of social inclusion. Specific objectives of the programme include: combating effects of unemployment, inclusion of disadvantaged groups in the labour market, increasing the adaptability of workers to labour market needs and ensuring non-discrimination in the labour market. *The Committee requests the Government to provide further information on the impact of the Programme for*

**Employment 2008–10 on ensuring the objectives of the Convention. It also invites the Government to include an evaluation of the efficiency and effectiveness of policies and measures adopted, especially in the crisis context, for promoting full employment and how they will translate into productive and lasting employment for the unemployed and other categories of vulnerable workers.**

*Vulnerable categories of workers.* The Government indicates that including disadvantaged groups and ensuring non-discrimination in the labour market are amongst the Programme for Employment 2008–10 objectives. Data provided by the Government regarding results of the Programme for Employment 2008–10, shows that the third most common category of employed individuals were persons with disabilities (1,061 persons employed in 2008, 582 in 2009 and 164 in 2010). Approximately 25 per cent of persons with disabilities were employed by enterprises which benefited from subsidies for employing this category of workers. The Government also provides statistics on other vulnerable categories such as older workers, unemployed heads of households and socially marginalized groups employed by enterprises which received subsidies or as a result of their participation in job fairs specifically designed for vulnerable categories of workers. **The Committee would appreciate continuing to receive information on the results achieved with respect to the sustainable integration of vulnerable categories of workers, such as persons with disabilities and older workers, into the open labour market.**

*Youth employment.* The Government indicates that, in the framework of the implementation of the National Programme for Employment 2008–10, young persons had the highest employment rate among all target groups. Young graduates (generally having completed higher education) accounted for 1.5 per cent of the total number of persons employed as a result of financial incentives to enterprises that support student employment. **The Committee invites the Government to provide information on the impact of measures designed to increase opportunities for young people to find lasting employment, in particular those experiencing the highest level of multiple disadvantage, e.g. coming from poor households, with low levels of education and being socially excluded.**

*The Roma minority.* The Government indicates that, in the framework of the Programme for Employment 2008–10, 6,686 individuals belonging to the Roma minority (3,660 persons in 2008, 2,322 in 2009 and 704 in 2010) obtained employment through the subsidized programme for temporary employment in community services. As a consequence of orientation and guidance services, 3,009 Romas were employed in 2008, 1,274 in 2009 and 431 in 2010. As a result of their participation in job fairs specifically designed for individuals belonging to the Roma minority, 683 Romas obtained employment in 2008 and 113 in 2009. In its 2010 General Survey concerning employment instruments, the Committee noted that active labour market policies now occupy centre stage in employment policies among industrialized countries. They are now deployed to achieve multiple objectives: to increase the employed labour force and thereby reduce dependence on unemployment benefits and other forms of social support, to increase social cohesion (or reduce social exclusion) and to ensure greater equality of opportunities in the world of work. The Committee observed that social exclusion is harmful to those directly affected and breeds negative social consequences across generations (paragraphs 554 and 566 of the General Survey). **On this important issue, the Committee asks the Government to report in detail on the impact of the action taken within the framework of active employment policies and measures to increase social cohesion of the Roma minority.**

*Education and training policies.* In its previous comments, the Committee noted that the main objective of the strategy for continuing vocational training 2005–10 was to raise the participation rate in education and training programmes for the working population in the 25–64 age group to 7 per cent. It noted that adult participation in education and training was still low. The Committee notes that only about 5 per cent of newly employed young workers and approximately 10 per cent of the long-term unemployed (including young persons and adults) obtained employment as a result of their participation in vocational training programmes. **The Committee requests the Government to include in its next report information on the impact of the measures adopted in collaboration with the social partners to enhance the quality and labour market relevance of the education and training system. It again requests the Government to supply information on the impact of training programmes on creating job opportunities for the unemployed, young persons, the Roma and other categories of vulnerable workers.**

*Promotion of small and medium-sized enterprises.* The Committee noted that the national legislation for small and medium-sized enterprises was in line with the provisions of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). The Government indicates that 458 persons were employed between 2008 and the first trimester of 2010 by small and medium-sized enterprises which received subsidies for creating employment. Furthermore, 593 individuals in 2008, 869 in 2009 and 168 in 2010, started businesses as a result of orientation and guidance services for self-employment and entrepreneurship. **The Committee invites the Government to continue to supply information on the sustainable impact of the measures adopted with a view to supporting the development of small and medium-sized enterprises for employment creation.**

*Article 3. Participation of the social partners in the formulation and application of policies.* The Committee previously noted the Government's information that under the existing legal framework, the social partners are to be consulted on the preparation of bills, strategies, policies and programmes for employment and human resources development issues through the National Commission for Employment Promotion, the governing body of the National Employment Agency and the National Council for Adult Vocational Training and its sectoral committees. Furthermore, a National Observatory for Employment and Vocational Training was set up within the Ministry of Labour to foster

cooperation between social partners, public institutions, universities and professional associations in the collection and analysis of labour market information. ***The Committee invites the Government to supply information on consultations held with the social partners, including concrete examples on the manner in which the views of the social partners are sufficiently taken into account in the development, implementation and review of employment policies and programmes.***

## Russian Federation

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

*Measures taken in response to the global crisis.* The Committee notes the Government's report received in September 2009. The Government indicates that, in order to overcome the economic crisis, it adopted a set of revival measures aimed at reducing tensions in the employment market in the regions and giving social support to the persons affected. The measures include Decree No. 915 of 8 December 2008 concerning unemployment benefits, which increased to 4,900 roubles; Federal Act No. 287-03 of 25 December 2008 amending the Public Employment Act, which awards unemployment benefit to persons who have been dismissed and allows the regions of the Federation the possibility of taking direct action in the employment market in times of crisis. Decree No. 1089 of 31 December 2008 allows the withdrawal of allocations from the federal budget for injection into the budgets of the regions in order to facilitate the adoption of supplementary measures aimed at alleviating the effects of the economic crisis on the labour market. These additional measures focus mainly on vocational training for workers threatened by mass redundancy plans, on the establishment of community work and the promotion of geographical mobility, making removal grants available to persons appointed to posts situated in other localities in the context of targeted federal programmes and investment projects. In its General Survey of 2010 concerning employment instruments, the Committee emphasizes that the employment Conventions and Recommendations taken together provide a framework for realizing the human right to work and to education for all, for confronting and mitigating the effects of the global economic crisis, and for ensuring continuing and genuine tripartite consultations (General Survey, op. cit., paragraph 788). ***The Committee requests the Government to supply information in its next report on the results, in terms of the creation of productive and lasting employment, of the revival measures to overcome the crisis adopted by both the federal and regional governments.***

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Government indicates that regional programmes for employment promotion constitute the principal instrument for implementation of public policy for regulating the labour market and creating employment in the regions. These programmes aim to inform workers and employers on the situation of the labour market, particularly through reception centres specializing in providing advice. In 2009, these reception centres enabled 3.39 million persons to receive vocational guidance. Facilitating the re-entry of unemployed persons into the job market, through the acquisition of new qualifications and skills, is also part of the programmes. This enabled 113,600 persons to receive training in 2009. Furthermore, regional programmes have resulted in the provision of paid community work for 676,000 long-term unemployed persons and persons without work experience, while 117,000 workers particularly at risk were placed in temporary jobs. The Government also indicates that the number of persons registered as unemployed with the employment services increased from 1.4 million in 2008 to 2.2 million in 2009. The total number of unemployed persons came to 7 million, out of a total active population of 66.2 million. ***In view of this difficult situation, the Committee hopes that the Government will supply information in its next report on the strategic outlines of its employment policy and indicate the manner in which employment policy is reviewed regularly as part of a coordinated economic and social policy. It also requests the Government to supply detailed information on the results achieved by the recently established programmes in terms of the creation of jobs for particular categories of workers, such as women, young persons and older workers. With regard to persons with disabilities, the Committee is formulating a direct request this year in relation to the application of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).***

*Coordination of education and training policy with employment policy.* The Government indicates that, in the context of the regional programmes for employment promotion and in order to guide people in their occupational choices, taking account of individual needs, skills and the situation of the labour market, vocational guidance sessions were held in 2009 for 2.4 million unemployed persons. The Government also indicates that, in order to promote occupational mobility, 1,903,000 workers received allowances in connection with vocational training, retraining and further training. ***The Committee requests the Government to continue to supply information on the measures taken in the area of education and training policies, and also on their impact in terms of vocational integration.***

*Article 3. Participation of the social partners in the formulation of employment policy.* The Government indicates that public employment promotion policy aims, in particular, to coordinate the action of the public authorities, trade unions and other representative workers' and employers' bodies during the implementation of measures to promote public employment. ***The Committee requests the Government to indicate the manner in which the representatives of employers' and workers' organizations are consulted on employment policy. It hopes that the next report will contain information which will enable an examination of the manner in which the experience and views of the social partners have been taken into account into the formulation and implementation of an active employment policy.***



*Part V of the report form. ILO technical assistance.* The Committee notes that a programme of cooperation between the Russian Federation and the ILO was drawn up for the 2010–12 period, taking into consideration the new circumstances of the economic crisis and basing itself on the Global Jobs Pact, which calls for measures aimed at maintaining levels of employment and avoiding reductions in wages and any deterioration in conditions of work. **The Committee requests the Government to supply information on the action taken further to the implementation of the programme of cooperation with the ILO for promoting the creation of productive employment.**

## Sao Tome and Principe

### **Employment Service Convention, 1948 (No. 88) (ratification: 1982)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2007 observation which read as follows:

*Contribution of the employment service to employment promotion.* The Committee notes the Government's report received in April 2007 in reply to its 2006 observation, which includes a brief statement that there is no formal cooperation between the public employment services and representatives of employers' and workers' organizations and that the public employment services have not yet been properly organized to act in accordance with the Convention. The Committee understands that human resources development and access to basic social services are one of the five principles set out in the National Strategy for Poverty Reduction (NSPR – *Estratégia Nacional De Redução de Pobreza*), which was validated in December 2002 and approved in January 2003. From the information contained in the update of the NSPR published in January 2005, urban and rural unemployment in the country is still a matter of serious concern. **In this context, the Committee emphasizes the need to ensure the essential function of employment services, which is to achieve the best possible organization of the labour market, including its adaptation to meet the new needs of the economy and the active population (Articles 1 and 3 of the Convention). It requests the Government to provide the statistical information available in published annual or periodical reports concerning the number of public employment offices established in the district of Agua Grande and in rural areas, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment, disaggregated by gender and the location of the offices concerned (Part IV of the report form).**

*Cooperation of the social partners.* The Committee refers once again to the provisions of *Articles 4 and 5* of the Convention and asks the Government to report on the manner in which the representatives of the social partners have been associated with the operation of the public employment service. The Committee recalls that for many years, it has been pointing out that the above provisions of the Convention require the establishment of advisory committees to secure the full cooperation of representatives of employers and workers in the organization and operation of the employment service.

The Committee recalls again that the Office is available to provide the Government with technical advice and assistance for the implementation of a public employment service within the meaning of the Convention.

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**

## Senegal

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1962)**

*Revision of Convention No. 96 and prospects for the ratification of Convention No. 181.* In reply to the observation of 2009, the Government confirms in a report received in March 2010 that the procedure for the adoption of the decree defining the obligations of employment agencies and the protection of workers employed by temporary work agencies is still in progress. The Government indicates that the draft decree has been adopted by the National Advisory Council for Labour and Social Security. Furthermore, the Government confirms that the issue of the ratification of the Private Employment Agencies Convention, 1997 (No. 181), is receiving close consideration. In its 2010 General Survey concerning employment instruments, the Committee noted an observation from the National Union of Autonomous Trade Unions of Senegal, indicating that the competent authority did not apply satisfactory controls to private employment agencies and that illicit practices had proliferated as a result (paragraph 739 of the General Survey). **The Committee again requests the Government to send a copy of the decree adopted pursuant to section L226 of the Labour Code. It also requests the Government to supply information on the developments which have taken place, in consultation with the social partners, with a view to ratifying Convention No. 181.**

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

In reply to the observation of 2007, the Committee notes the Government's report received in March 2010 and the comments from the National Federation of Independent Trade Unions of Senegal (UNSA).

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Government states that the draft employment policy drawn up in 2006 has not been implemented but that its key strategies have been incorporated into the Growth and Poverty Reduction Strategy Paper (GPRSP) 2006–10. The Government considers that the GPRSP in itself carries insufficient weight to reduce poverty and that this explains the weak performance of the GPRSP as regards the creation of decent and productive employment. The Committee notes that, in order to rectify this situation, a new national employment policy is being finalized. According to available data, the employment rate is

38.7 per cent, which means that, out of 100 persons of working age, less than 40 have a job. The national unemployment rate is estimated at 10 per cent, with a higher rate in the urban areas of the Dakar region (16 per cent compared with 6.3 per cent in rural areas) and for women (13.6 per cent compared with 7.9 per cent for men). Nearly 23 per cent of workers are underemployed. Poverty continues to have a strong impact on 75 per cent of the rural population. The Committee recalls that the first key stage on the way to achieving full, productive and freely chosen employment is demonstrating the political will to do so. The Committee observes that *Article 2* of Convention No. 122 requires member States to adopt a clearly defined, coordinated economic and social policy as a framework (General Survey of 2010 concerning employment instruments, paragraphs 785–787, which provide further guidelines for ensuring the application of Convention No. 122). ***The Committee therefore requests the Government to provide detailed information in its next report on the progress made in the adoption and implementation of a national employment policy. The Committee hopes that the Government will be in a position in its next report to indicate the results achieved by the measures taken in the context of the poverty reduction strategy in order to promote full, productive and freely chosen employment.***

*Article 2. Collection and use of employment data.* The Government indicates that the various projects such as the Operational Directory of Occupations and Jobs (ROME), the National Employment Agency, and the National Employment and Vocational Qualifications Observatory (ONEQP) have not been developed as much as expected because the 2006 draft employment policy was not adopted. The Government points out that, with the National Agency for Statistics and Demography (ANSD), a draft master plan for the compilation of statistics has been drawn up which will enable more reliable information on employment to be available. UNSAS, for its part, emphasizes the lack of coordination between the different structures managing employment programmes and policies and refers to delays in the compilation of employment data going back to 1997. UNSAS also refers to the urgent need to establish a procedure to regulate supply and demand and to monitor job placement programmes. ***The Committee stresses the importance of the establishment of a system for the compilation of labour market data in order to be able to decide on and periodically review the measures to be adopted in order to achieve the objectives of the Convention. The Committee requests the Government to supply information in its next report on progress made in this area.***

*Article 3. Participation of the social partners in the design and formulation of policies.* The Committee notes the setting-up of a Higher Employment Council, an inter-ministerial structure responsible for monitoring the implementation of guidelines defined by the Government with regard to employment and training. The Government indicates that the social partners are represented within the inter-sectoral national committee for monitoring implementation of the Declaration on Employment and Poverty Alleviation issued by Heads of State and Government at the Ouagadougou Summit in 2004 and that they are actively participating in all phases of the design, implementation and evaluation of employment policies. The Government also indicates that, regarding the new draft national employment policy, the terms of reference and the memorandum of guidance have been shared with all the social partners and that, once the interim report has been filed, it is planned to hold sectoral meetings with the administration, the representative organizations of employers and workers, NGOs and occupational organizations in the rural and informal sectors before the meeting of the inter-sectoral committee responsible for approving the document which will be submitted to the Government for adoption. ***The Committee requests the Government to supply detailed information on the activities of the Higher Employment Council, stating the contribution of the social partners with regard to employment policies. It hopes that the Government's next report will contain information which will enable it to evaluate the manner in which the experience and opinions of the social partners have been taken into account in the formulation and implementation of national employment policy.***

*Part V of the report form. Technical assistance from the ILO.* The Government indicates that in November 2008 it received ILO support in connection with discussion of a strategy to formalize the informal economy, and that a draft plan of action for improving the informal economy has been drawn up. The Government also indicates that in September 2009 the ILO gave technical and financial support in connection with updating the draft new national employment policy. ***The Committee requests the Government to indicate in its next report the results achieved as a result of these technical assistance activities in terms of job creation and improved access to the labour market.***

## Spain

### **Employment Service Convention, 1948 (No. 88) (ratification: 1960)**

*Contribution of the employment service to employment promotion. Skills and training of employment service staff.* In its observation of 2009 the Committee noted the communication from the Independent Federation of Civil Servants (CSI-F), which expressed concern at the lack of skills among staff responsible for occupational guidance in the Autonomous Community of Galicia. The CSI-F referred to the provisions of *Article 9 of the Convention*, and stated that the Executive of Galicia, through the Labour Council, had hired staff who had no specific qualifications for guidance work. This, in the CSI-F's view, had serious consequences, such as the de-professionalization of the public service in Galicia, poor quality in the supply of these services to the public, and the demotivation of those who do have proper qualifications. In addition, the Committee noted the comments by the Trade Union Confederation of Workers' Commissions (CC.OO.) of Andalucía, appended to the Government's report which was received in September 2009. This organization alleges failure to implement the agreements signed by the Government of Andalucía concerning the increase

in staff for the offices of the Andalusian Employment Service and the lack of any provision to fill vacant posts, to the detriment of delivery and quality of the services. In the opinion of the CC.OO. of Andalucía, poor human resources management and the lack of professionalism are causing great dissatisfaction among the users of employment offices because the quality of the public service is declining. In August 2010 the Government sent a new report including information from the Labour Council of the Executive of Galicia. According to the Executive of Galicia, a proposal was made in 2009 to establish an occupational category of “occupational guidance for placement in employment”, which is being considered by the Autonomous Community. Furthermore, a copy was sent of the training programme given to vocational advisers which was combined with two months of practical experience in employment offices. The Government refers in its report to Royal Decree No. 10/2010 of 16 June 2010 concerning urgent measures for the reform of the employment market and to the Special Plan of April 2008 concerning guidance, occupational training and job placement measures. The Government adds that, as part of the Special Plan, the network of employment offices has been strengthened with the recruitment of 1,500 vocational advisers and their recruitment has been extended in order to deal with the sharp increase in the number of jobseekers and provide a more effective response. The Committee notes the conclusion of agreements concerning the training of persons who will perform guidance, advice and evaluation duties in relation to the accreditation of occupational skills, and also notes the implementation of activities designed to inform potential candidates about features of the procedure for the recognition of experience. *The Committee refers to its observation on the application of Convention No. 122 and, in view of the current circumstances of the employment market in Spain, it requests the Government to report on the measures adopted to ensure the functioning of employment offices sufficient in number to meet the needs of employers and workers throughout the country. Furthermore, the Committee requests the Government to supply further information on the manner in which it is ensured that the staff of the employment service in the Autonomous Communities of Andalucía and Galicia have the requisite skills to perform the duties required by the Convention and have received the appropriate training in this respect. The Committee recalls that the part of the report referring to Article 9 of the Convention also requires information to be supplied on the arrangements made for subsequent training of employment service staff, so as to enable an evaluation of the application of the aforementioned provision in each of the Autonomous Communities.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

*Articles 1 and 2 of the Convention. Measures to mitigate the impact of the crisis.* The Committee notes the detailed information supplied by the Government in the report received for the period ending in June 2010. The Government states that the most serious consequence of the economic crisis was large-scale job destruction with the attendant increase in unemployment. The year 2009 saw the destruction of nearly 1,400,000 jobs, in particular affecting young and adult male workers in the construction sector and to a lesser extent in industry. More than 73 per cent of the jobs destroyed were held by temporary workers. By the end of 2009, the unemployment rate had reached 18.1 per cent of the active population (more than 4,000,000 persons), the highest since 1998. The Government provides information on various packages of measures to cope with the crisis. In November 2008, the Spanish Plan to Stimulate the Economy and Employment (“Plan E”) was adopted and included initiatives such as tax breaks and easier access to credit for enterprises. Plan E also included a programme to modernize the economy and foster medium- and long-term sustainable economic growth. Furthermore, in November 2008 a State Fund for Local Investment was established to maintain and create jobs, prevent exclusion from the labour market, set up cooperation agreements between the central Government and the municipalities and to build the institutional administrative capacity of the municipalities. In January 2010, a new State Fund for Local Investment was created to address the downturn in the labour market and achieve a more balanced economy. In addition, Act No. 27/2009 of 30 December was adopted setting out urgent measures to promote and maintain employment and protect the unemployed, providing also for measures to create jobs. *The Committee requests the Government to provide information in its next report on the impact of the anti-crisis packages in terms of creating productive and lasting employment.*

In its previous comments, the Committee referred to Act No. 43/2006 of 24 December to improve growth and employment, which sought to promote job stability. The Government states in its report that the system of incentives set out in the Act caused a drop in temporary employment from 2006 to 2009. Because of the crisis, the percentage of indefinite contracts has now reverted to the figures prevailing prior to the 2006 reform. In its General Survey of 2010 concerning employment instruments, the Committee made the point that labour market reforms in Spain had resulted in significant growth in the use of non-regular contracts of employment associated with inferior social benefits and less employment security (General Survey of 2010, paragraph 575). The Committee understands in this connection that the labour reform launched by Act No. 35 of 17 September 2010 establishing urgent measures for labour market reform seeks to: (1) reduce labour market dualism by promoting the creation of stable and quality employment; (2) strengthen instruments for internal flexibility in the development of industrial relations and, in particular, implement measures to shorten the working day, reducing recourse to terminations and providing alternatives to temporary contracts; and (3) increase opportunities for the unemployed, focusing on young people in particular. *The Committee requests the Government to indicate in its next report the manner in which the legislative measures in force have contained job instability and reduced labour market dualism.*

*Article 3. Participation of the social partners.* The Government recalls that in July 2008 a new Social Dialogue Declaration was signed with the social partners, the aim of which was to boost the economy and further social progress by modernizing the labour market. In February 2010 the Government submitted to the Social Dialogue Committee a proposal on labour market measures for discussion between the social partners. It furthermore announced its intention of concluding these negotiations with a tripartite agreement between the employers' organizations and the unions that would pave the way to a modern and functional labour market consonant with the development of a sustainable economy. According to comments made in September 2008 by the Trade Union Confederation of Workers' Commissions (CC.OO.), the production model is based on low productivity work that is highly intensive in cheap labour with little demand for qualifications, and it is proving unsound in the short term. In its General Survey of 2010, the Committee also pointed out that social dialogue is essential in normal times and becomes even more so in times of crisis. The employment instruments require member States to promote and engage in genuine tripartite consultations (General Survey of 2010, paragraph 794). ***The Committee requests the Government to indicate in its next report the manner in which the social partners have taken part in devising, implementing and evaluating employment policies to counter the negative effects of the crisis.***

*Integrated labour market policies.* The Government states that it grants subsidies to the Autonomous Communities to develop their Comprehensive Employment Plans, which are financed out of the budget of the Public Employment Service. The Comprehensive Employment Plans should allow significant improvements in terms of activity and occupation in the labour markets of the Autonomous Communities and, through actions and measures to promote employment, should narrow the gaps between the Communities and the national average. Comprehensive Employment Plans have been carried out in the Canary Islands, Castilla La Mancha, Extremadura and Galicia, and a special employment plan has been implemented for the bay of Cádiz. In 2009, the highest employment rates were in Madrid (55.7 per cent) and Navarra (54 per cent), and the lowest in Extremadura (42.8 per cent) and Ceuta and Melilla (43.2 per cent). The Autonomous Communities with the highest unemployment rates are the Canary Islands (26.2 per cent) and Andalucía (25.4 per cent), and those with the lowest are Navarra (10.9 per cent) and the Basque country (11 per cent). ***The Committee invites the Government to include information on the measures taken to reduce regional disparities so as to attain a better balance in the labour market.***

*Long-term unemployment.* The Government states that in 2008 long-term unemployment stood at over 21 per cent and in 2009 rose to 28.4 per cent. The Government indicates that as a group affected by the most negative consequences of the current economic situation, the long-term unemployed are targeted for priority action under employment policies. In 2009, the number of long-term unemployed stood at 1,181,700, an increase of 114 per cent (629,600 new jobless) over 2008. Specific measures are being adopted for this group through the development of vocational training and retraining programmes and incentives to offer stable employment in the form of subsidies for employers' social security contributions. ***The Committee invites the Government to include in its next report information on the impact of the measures taken to enable the long-term unemployed to secure stable jobs.***

*Youth employment.* The Government states that young people have seen a considerable decline in their position in the labour market, with a significant drop in their employment level and a notable increase in their unemployment rates. Youth employment posted a significant decline in 2008, falling 23.9 per cent (433,000 unemployed young people) as compared to 2008. At the same time, unemployment rose by 41.9 per cent (250,000 new unemployed). As a result of these trends the number of young persons in employment stood at around 1,400,000 and the number of those unemployed, at 841,500. The Committee notes that in order to encourage the employment of young people, Act No. 27/2009 of 30 December on urgent measures to promote and maintain employment and protect the unemployed, provides for an evaluation of the current system of hiring subsidies with a view to making young people of 16 to 30 years of age with special employability problems a priority target group for the new subsidies. ***The Committee asks the Government to include information on the measures set forth in Act No. 27/2009 to improve the quality of employment for young people with little training. It also invites the Government to send information on other measures taken to afford young graduates the opportunity of finding lasting employment in which they can use their training and skills.***

*Education and vocational training policies.* The Committee notes the CC.OO.'s remarks that there has been no drop in the school failure rate and no suitable measures to provide students with guidance on vocational training or to improve the education system. The Government states that Plan E included a series of initiatives for education and vocational training. As regards vocational training, a roadmap was approved to promote and improve vocational training through measures to accelerate reform and increase the number of persons with qualifications. The aim is to set up a system that accommodates the needs of students, workers and employers, improve the social image of vocational training and put Spain on a par with the other European countries in terms of student numbers in vocational training. The Committee further notes that the Sustainable Economy Act of November 2009 has a chapter on vocational training. Its four main objectives are: match training with the needs of the economy, broaden the scope of the training on offer, integrate the various vocational training curricula into the education system and set up cooperation between the public education system and the social partners in designing and carrying out training initiatives. ***The Committee invites the Government to continue to provide information on the measures taken to improve qualification standards and coordinate education and training policies with potential employment opportunities.***

## Thailand

### **Employment Service Convention, 1948 (No. 88) (ratification: 1969)**

The Committee notes the information provided by the Government in February 2010, in reply to its previous direct requests.

*Article 6(b)(iv) of the Convention. Measures to facilitate the movement of migrant workers across borders.* The Government recalls that since 2004 seven strategies for the management of foreign workers were defined with the ultimate goal of “employing alien workers legally”. The implementation of the strategy was divided into three phases: Phase 1 is the registration of Burmese, Laotian and Cambodian migrant workers in Thailand. These registered workers are allowed to temporarily work for a period not exceeding one year while awaiting repatriation. The number of foreign workers with work permit renewal reached, in 2007, 535,732 persons and, in 2008, 510,570 persons. Phase 2 seeks to adjust registered alien workers’ status to that of legal migrant workers. This phase implies that the nationalities are verified and the workers have to apply for the visa with the Thai authority in order to further apply for the work permit. This situation concerned some 41,000 Laotian and 33,856 Cambodian workers as of September 2008, while Burmese workers are still under the registration process; Phase 3 aims for the recruitment of alien workers with regard to Memoranda of Understanding (MOU) signed between the Thai Government and Cambodia, Lao People’s Democratic Republic and Myanmar. The Government further indicates that the strategy prescribed under the policy on overseas employment services emphasizes extending overseas labour market and maintaining the existing presence of Thai workers abroad. New labour markets in Europe and South Africa are promoted; Thai workers abroad are located mostly in the Republic of Korea and other Asian countries. MOUs have been concluded with receiving countries, mainly Japan, Republic of Korea, Israel, Malaysia and the United Arab Emirates. In its 2010 General Survey concerning employment instruments, the Committee highlighted the importance of public employment services in the facilitation of occupational and geographical mobility for the achievement of full employment (see paragraph 269 of the 2010 General Survey). ***On this important issue, the Committee refers to its observations on the application of the Employment Policy Convention, 1964 (No. 122). It requests the Government to provide information on the effect of the measures taken by the public employment service to prevent abuse in the recruitment of labour and the exploitation of migrant workers in Thailand and facilitate their registration. As indicated in the 2010 General Survey concerning employment instruments, action at the national and international levels is essential to eradicate abuses by intermediaries that engage in human trafficking or otherwise violate rights enshrined in the fundamental Conventions.***

*Strengthening public employment services to adequately protect migrant workers.* The Committee notes the efforts made to provide greater protection for migrant workers by introducing measures to verify the nationalities of migrant workers in order to regularize their employment status. The Government further indicates that the Department of Employment has informed employers to register their demand for workers in positions experiencing labour shortages and their need for migrant workers from Myanmar, Cambodia and Lao People’s Democratic Republic in support of government-to-government cooperation and the respective MOUs. ***The Committee asks the Government to provide further information on the impact of the measures adopted to strengthen employment services for adequate protection of migrant workers.***

*Effective cooperation between the public employment service and private employment agencies.* The Government states that no measures are taken at present regarding cooperation between the public employment service and private employment agencies. The Committee notes the data provided by the Government in its report indicating that 161,852 Thai workers were placed overseas (and 137,940 workers were placed abroad between January and November 2009). ***The Committee refers to its 2010 General Survey concerning employment instruments and invites the Government to adopt an appropriate legal framework regulating private employment agencies. It also invites the Government to include in its next report information on measures adopted to ensure cooperation between the public employment service and the private employment agencies.***

*Part IV of the report form. Information on public employment services.* The Committee notes the detailed information provided by the Department of Employment on job applicants, job vacancies and job placement. ***The Committee invites the Government to continue to provide statistical information on the number of public employment offices established, the number of applications for employment received, the number of vacancies notified, and the number of persons placed in employment by such offices.***

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in April 2007.

*Follow-up of the discussion at the 99th Session of the International Labour Conference (June 2010).* Subsequent to its 2007 observation, the Committee notes the conclusion of the tripartite discussion that took place at the Conference Committee in June 2010. The Government indicated that it has adopted an economic stimulus and recovery package in line with the Global Jobs Pact, with the aim of reviving the Thai economy and protecting the poorest in the country by building a better safety net for the most vulnerable groups. The Committee also noted the information by the Government that it had implemented human resources development schemes which provided adequate access to lifelong learning,

sought to enhance the overall quality of education and improve national competitiveness. In 2010, the Department of Labour Protection and Welfare had taken measures to mitigate the impact of lay-offs on workers and their families affected by the crisis.

The Conference Committee invites the Government to provide further information on the following matters:

- results achieved in the framework of the Tenth National Economic and Social Development Plan for the period 2007–11 in terms of generation of decent, productive and freely chosen employment;
- measures taken to include the most vulnerable categories of workers in the labour market, such as workers with disabilities, rural women and workers in the informal economy;
- promotion of an enterprise culture, entrepreneurial initiatives and small and medium-sized enterprises, in line with the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189);
- measures taken to register alien workers with the goal of ensuring their legal employment;
- how tripartite mechanisms have contributed to the formulation of a specific employment policy and to the implementation of active labour market measures in order to overcome the crisis and ensure a sustainable recovery.

The Committee also notes that the Government was requested by the Conference Committee to provide a report for the present session. ***The Committee asks the Government to supply a report for examination at its next session and to reply to the matters raised by the Conference Committee as well as those already indicated in its 2007 observation.***

*Articles 1 and 2 of the Convention. Employment policy and social protection.* The Committee recalls that an unemployment insurance scheme was launched in 2004. The Government's report indicated that, between July 2004 and February 2007, out of a total of 403,403 persons registered under the scheme, 111,568 persons – representing 27 per cent of the beneficiaries – were re-employed within six months following registration and a remaining 722 persons were referred for further skills training. The Committee also noted a communication forwarded by the National Congress of Thai Labour in April 2007, which insisted that there were many workers in the informal sector including the service industry and self-employed persons who were not covered by the social security system. In a communication received in October 2007, the Government indicated that concrete measures and plans would soon be introduced to better serve and protect workers in the informal economy. ***The Committee requests the Government to include in its next report information on the extent, terms and type of coverage for workers in the informal economy under the revised scheme as well as any other steps taken to coordinate employment policy measures with unemployment benefits.***

*Coordination of employment policy with poverty reduction.* The Committee noted that the Government established a policy on employment promotion to increase income, as shown by the priority given to three strategies in its development plan – development of human potential and social protection strategy, sustainable restructuring of rural and urban development strategy and upgrading national competitiveness strategy. ***The Committee requests the Government to indicate in its next report, how the measures taken to promote employment under the three abovementioned strategies operated within the framework of a coordinated economic and social policy. It also requests the Government to include information on labour market programmes implemented to match labour supply and demand.***

*Labour market and training policies.* The Committee noted that the skills training offered by the Department of Skills Development (DSD) focused on pre-employment training, upgrading training and retraining. ***The Committee asks the Government to provide information on the results achieved by the measures taken by the Ministry of Labour and the Ministry of Education to coordinate education and training policies with prospective employment opportunities.***

*Article 1(2)(c). Prevention of discrimination. Women.* The Government indicated that employers were encouraged to appoint female labour advisers in their establishments. In addition, female workers have also been provided with equal opportunities to the same extent as male workers in accessing services of the DSD. ***The Committee requests the Government to provide detailed information in its next report on the impact of the measures adopted to ensure that progress is achieved in raising the participation rate of women in the labour market. Please also indicate the gender distribution of trainees in the training courses of the DSD.***

*Persons with disabilities.* According to Government statistics, the relative number of persons with disabilities that found job placements increased in 2006. Other interventions included providing vocational training courses for persons with disabilities, occupational development services to help those that have completed vocational training to develop practical skills and family and community welfare services to provide care and support for children with disabilities. ***The Committee requests the Government to report on the impact of the training programmes for persons with disabilities, in particular, the number of persons with disabilities that completed the programme and were able to find employment in the open labour market.***

*Migrant workers.* In the context of employment policies, the Committee underlines the need to ensure fair treatment to all migrant workers. The Committee recalls that the protection of migrant workers has been a matter of concern in the tripartite discussions held in June 2006 and June 2010. ***On this important issue, the Committee refers again to the tripartite discussion that took place during the Conference in June 2010 and asks the Government to report in detail on the impact of the action taken within the framework of an active employment policy to prevent abuse in the recruitment of labour and the exploitation of migrant workers in Thailand.***

*Workers in the rural sector and the informal economy.* The Government indicated that homeworkers in the informal sector can register at provincial employment offices to receive basic training to enhance their skills. It also initiated a project in 2006 to reach agricultural sector workers, improve working and living conditions and to raise awareness for labour protection. **The Committee requests the Government to provide information in its next report on the implementation of rural employment policies and programmes and on any other measures it has taken to promote employment and improve the quantity and quality of employment opportunities for homeworkers, with special attention to the situation of women. It also asks the Government to include information on the measures taken to reduce the decent work deficit for male and female workers in the informal economy and to facilitate their absorption into the labour market.**

## Uganda

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in June 2004. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information in reply to the points raised in the Committee's previous observations, which set forth the following matters:

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee recalls that the draft National Employment Policy was to be submitted by the Ministry of Labour and Social Welfare to Cabinet in July 2004 for consideration and adoption. **The Committee requests the Government to provide detailed information in its next report on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies. It asks the Government to report on the status of the draft National Employment Policy and the Poverty Eradication Action Plan, as well as any evaluation on the impact of its programmes to combat unemployment focusing on university graduates.** The Committee emphasizes the importance of establishing a system for compilation of labour market data and requests the Government to report on any progress made in this field. **It asks the Government to provide in its next report disaggregated data on trends in the labour market, including information on the situation, level and trends of employment, underemployment and unemployment throughout the country and the extent to which they affect the most vulnerable categories of workers (such as women, young persons and rural workers).**

*Article 3. Participation of the social partners.* The Government indicated that during the development of the draft National Employment Policy, the views of all affected persons were taken into account through the various workshops held. The Committee recalls that Article 3 of the Convention requires consultations with representatives of all persons affected, and particularly representatives of employers and workers, in the formulation and implementation of employment policies. It is the joint responsibility of the Government and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries. **The Committee would appreciate receiving information on the involvement of the social partners in the matters covered by the Convention.**

## Ukraine

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1968)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee recalls that in its 2009 observation, it requested the Government to report on the measures implemented as a part of an active policy intended to promote full, productive and freely chosen employment. In the report received in October 2010, the Government indicates that the strategic goal of the state employment policy is the promotion of productive employment. In order to achieve this goal, the Government aims at ensuring the implementation of priorities which include: enhancement of labour market competitiveness; promotion of job creation; reorientation of education and training to match labour market needs; improvement in the employability of the labour force; strengthening productive employment and avoiding undeclared work; and increased social protection for the unemployed. The Government also reports that the draft Decision of the Cabinet of Ministers of Ukraine on the approval of the Basic Lines of the State Employment Policy 2010–11, has been agreed upon with the representatives of workers' and employers' organizations. Its priorities include the promotion of entrepreneurship and self-employment and the enhancement of labour market quality and competitiveness. The Committee notes that one of the goals of the Decent Work Country Programme 2008–10 is improving employment policy formulation and promoting equal opportunities in the labour market. **The Committee invites the Government to provide in its next report an assessment of the effectiveness and relevance of the measures implemented in the framework of the Basic Lines of the State Employment Policy 2010–11. It further requests the Government to provide information on the impact of the Decent Work Country Programme 2008–10 on improving employment policy formulation and review, and the involvement of the social partners in this process.**

*Measures taken in response to the global crisis.* The Committee notes that the economic crisis resulted in GDP falling by 15 per cent in 2009. The crisis also accentuated the vulnerabilities of the banking sector. Since October 2008, the national currency has lost about 40 per cent of its value against the US dollar. Ukraine's economy resumed growth in 2010 and provided moderate improvements in external demand. Real GDP grew by 4.9 per cent year-on-year in the first quarter of 2010, and by 6 per cent year-on-year in the second quarter. The International Monetary Fund concluded in July 2010 a standby arrangement for Ukraine in support of the authorities' economic adjustment and reform programme. The

Committee further observes that the number of persons employed decreased from 21 million in 2008 to 20,190,000 in 2009. In light of the financial constraints, the Government decreased expenditures for active labour market measures. There was a sharp increase in registered unemployment between November 2008 and May 2009 and a considerable increase in unemployment benefit expenses. The Committee notes that one of the priorities of the State Employment Policy is to minimize the negative impact of the financial and economic crisis on the labour market. In this context, the Government adopted, among other legislative measures, Law No. 799-VI of 25 December 2008 to amend certain legislative texts in order to minimize the negative impact of the global financial crisis on employment, to strengthen social protection against unemployment and to ensure a dynamic response to the effects of the financial and economic crisis on the labour market. ***The Committee invites the Government to provide information in its next report on how the measures adopted have succeeded in mitigating the impact of the crisis on the labour market and have been translated into the generation of productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers such as those who were laid off as a result of restructuring in the mining sector.***

*Coordination of education and training policies with employment policy.* The Government indicates in its report that the development of a flexible and employment-oriented system of vocational guidance and training is among the priorities of the State Employment Service. In 2009, 80,800 unemployed persons underwent vocational training on referral of the State Employment Service. Nevertheless, the Committee understands that in 2009 the number of participants in available training programmes, decreased by 36 per cent compared to 2008, when there were 49 per cent fewer people participating in paid social work and 35 per cent fewer jobseekers placed. It further notes that the Ukrainian economy suffers from a severe skills mismatch which hampers business growth, may limit job creation and gives rise to structural unemployment. Many of the unemployed lack the skills that employers require. Excess demand for some skills coexist with excess supply of other skills. The Committee notes that one of the priorities of the Ukrainian employment policy is the reorientation of education and training to match labour market needs. In its 2010 General Survey concerning employment instruments, the Committee reiterated its conviction that broad social dialogue is the best guarantee of the effectiveness of employment policies and human resources development. Increased involvement of the representatives of employers' and workers' organizations is not only essential to ensure the successful implementation of the necessary measures, but can also contribute to improving the quality of social dialogue (paragraph 166 of the 2010 General Survey). ***The Committee therefore invites the Government to provide an assessment in its next report on the efficiency and relevance of training programmes and other initiatives undertaken in collaboration with the social partners, in promoting the return of unemployed persons to productive employment. In this context, the Committee would appreciate information on the impact of specific mechanisms and measures for improving the quality and labour market relevance of training in lifelong learning perspective, as well as tools for skills analysis and forecasting, especially at the sector level. It further invites the Government to include information on the measures taken to improve coordination of employment and education and training policies with a view to enhancing the employability and competitiveness of the labour force.***

*Youth employment.* The Government indicates that, out of 542,800 registered unemployed persons in 2010, 214,100 were persons less than 35 years of age. It further indicates that one of the objectives of the draft Basic Lines of the State Employment Policy 2010–11 is strengthening youth employment. The Committee observes that it is youth and, above all, school leavers who are massively experiencing unemployment due to the crisis. In its 2010 General Survey concerning employment instruments, the Committee noted that there was a growing problem of unemployment among educated workers, particularly young university graduates who are unable to find secure employment commensurate with their skill level. This is an issue for advanced market economies as well as developing countries. Not only are their skills underutilized but this pattern of casual jobs can prove detrimental to their lifetime career progression (see paragraph 800 of the 2010 General Survey). ***The Committee invites the Government to provide information on the efforts made to improve the employment situation for young persons and the results achieved in terms of designing targeted programmes and incentives for promotion of sustainable job creation for the youth.***

## Uruguay

### **Private Employment Agencies Convention, 1997 (No. 181) (ratification: 2004)**

*Protection of workers covered by the Convention.* With reference to the comments made in 2006 and 2007, the Committee notes the Government's detailed report for the period ending in May 2009. The Government refers to the provisions of Act No. 18.099 of January 2007 establishing standards for the protection of the rights of workers in relation to company decentralization, as amended by Act No. 18251 of January 2008. The Committee notes with **interest** that section 7 of Act No. 18251 defines the joint responsibility shared by subcontractors, intermediaries and labour providers regarding labour obligations towards contracted workers. Labour obligations are those concerning the employment relationship which derive from ratified international conventions, laws, decrees, awards, decisions on wage agreements or registered collective agreements, or from information contained in the staff register. The report also refers to provisions of the collective agreement for enterprises that supply labour for work in green areas, call centres, shopping centres and IT companies, which came into force at national level by means of Decree No. 707/008 of 22 December 2008. The Committee notes with **interest** provisions 17 and 18 of the collective agreement signed in November 2008 which urge the parties to adhere to the gender mainstreaming established in various national legal texts, in Conventions Nos 100, 111 and



156, and in the Mercosur Social and Labour Declaration. Labour supply companies have undertaken to promote gender equality in all employment relationships. To this end, they undertake to respect the principle of non-discrimination at the time of fixing wages, arranging promotions or assigning tasks (*Article 5 of the Convention*). Furthermore, the Committee notes the new approach included in provision 21 of the collective agreement, in which the parties declare that the supply of workers through companies registered with the National Employment Directorate (DINAE) constitutes a means of combating informal employment as well as contributing to decent work. **The Committee requests the Government to send in its next report the text of any court decisions interpreting Act No. 18251 and ensuring the effective protection that must be afforded to workers covered by Convention No. 181 (Part IV of the report form). The Committee also requests the Government to supply information on the number of workers protected by the Convention, the number and nature of infringements recorded and any other relevant information on the practical application of the Convention (Part V of the report form).**

*Regulation of private employment agencies. Controls and penalties.* The Committee notes that, by means of section 343 of Act No. 18362 of October 2008, new duties were assigned to DINAE giving it the power to register, authorize, keep information on and control private employment agencies. The Government indicates that, even though the employers and workers have been consulted, the decree implementing section 343 of Act No. 18362 has not yet been approved. DINAE is therefore in the process of restructuring in order to implement the assigned duties. **The Committee hopes that the Government will be in a position in its next report to announce that an implementing decree has been approved ensuring that DINAE can effectively supervise the operation of companies that supply labour and also regulate the services that are still provided by former employment agencies (Article 3).** The Government recognizes in its report that in practice there are problems of supervision when an agency that has been penalized closes down and the persons involved set up a new company which applies to DINAE to receive new authorization. **The Committee therefore hopes that steps will be taken to ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies (Article 10). DINAE and other competent public authorities (such as the labour inspectorate) should have sufficient resources to take remedial action to ensure the application of the relevant national legislation (Article 14).**

*Exceptions.* The Government points out that the categories of workers and types of services in respect of which exceptions are authorized have not yet been determined in view of the fact that the implementing decree has not yet been approved. **Should the exceptions provided for in Article 7(2) of the Convention be authorized, the Committee requests the Government to provide the relevant information and give the reasons therefor (Article 7(3)).**

*Migrant workers.* The Committee notes the general legislation that ensures the right to work and equality of treatment of migrant workers. The Government also mentions the agreement against the illegal traffic in migrants between the Mercosur States Bolivia and Chile, signed in Belo Horizonte on 16 December 2004. **The Committee requests the Government to provide further information in its next report on the manner in which penalties are laid down against agencies covered by the Convention which engage in fraudulent practices and abuses (Article 8(1)). The Committee also requests the Government to include information on labour agreements outside the Mercosur area in relation to the matters covered by the Convention (Article 8(2)).**

*Cooperation between public services and private agencies. Compilation and dissemination of information.* **The Committee hopes that the Government will include information in its next report on the progress made in ensuring cooperation between the public employment service and private employment agencies (Article 13(1)). It also requests the Government to provide examples of the information communicated by private employment agencies to the competent authorities and information on the operation of private employment agencies which is made publicly available (Article 13(3) and (4)).**

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Zambia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1979)**

*Articles 1 and 2 of the Convention. Active employment policy and poverty reduction strategy.* The Committee notes the replies provided by the Government in August 2009 to its 2008 observation. The Committee recalls that the Government formulated the Fifth National Development Plan (FNDP) for the period 2006 to 2010. The Committee notes that in the report provided on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), the Government explained that the decision to develop a National Development Plan was to enhance national ownership as FNDP was considered “home grown” because it was not driven by donor agencies. The National Development Plan also included other sectors which were integral parts of poverty reduction strategy such as governance and public safety. The Government indicates that since the life span of the FNDP will end in 2010, the process of formulating a Sixth National Development Plan (SNDP) has commenced. **The Committee invites the Government to supply a report on Convention No. 122 containing detailed information on the principal policies pursued and measures taken with a view to ensuring that there is work for all who are available for and seeking work, including particular reference to policies and measures implemented under the National Development Plan.**

*Measures for workers infected with HIV.* The Government indicates in its report that it has adopted policy measures to resolve challenges associated with HIV and AIDS in the workplace and to ensure that there is work for all who are available for and seeking work. The Government also states that workers' representative organs are encouraged to play a leading role in the fight against HIV and AIDS. The Committee also notes with *interest* various Government efforts envisaged to encourage the development of HIV and AIDS policies at the workplace which includes: workplace-based HIV and AIDS prevention and care programmes throughout the country; ensuring protection from harassment and discrimination for HIV-positive employees; proscribing compulsory HIV and AIDS testing at places of work; integrating HIV and AIDS support services in collective bargaining; and facilitating the establishment of voluntary counselling and testing facilities to enable employees to know their status. The Committee recalls that the Conference adopted the HIV and AIDS Recommendation, 2010 (No. 200), which invites Members to promote the retention in work and recruitment of persons living with HIV. Members should consider extending support through periods of employment and unemployment, including, where necessary, income-generating opportunities for persons living with HIV, or persons affected with HIV or AIDS (Paragraph 22 of Recommendation No. 200). ***The Committee would welcome receiving further information on the implementation of its HIV/AIDS policy and how it takes into consideration the effects of HIV and AIDS on employment generation.***

*Article 3. Participation of the social partners.* The Government indicates in its report that it celebrates consultations with those working in the rural and informal sectors through initiatives such as the Private Sector Development Programme (PSD), which engages the private sector to help identify legislation that impedes rural and informal business. During the formulation of the National Employment and Labour Market Policy, the Government embarked on nation-wide consultations with their social partners. ***The Committee invites the Government to include in its next report further explanation on the participation of social partners in ongoing decision-making for national employment policy and poverty reduction strategy as well as the involvement of the Tripartite Consultative Labour Council and the National Employment and Labour Sector Advisory Group in this process. The Committee would also welcome more indications of the involvement of representatives for those working in the rural sector and the informal sector in the consultations required by the Convention.***

*Youth employment.* The Government indicates that in response to youth employment challenges, strategies have been incorporated into the National Employment and Labour Market Policy to increase youth access to practical skills training and employment. These efforts include the promotion of specialized skilled trades through various youth skills training centres. The Committee notes the inter-governmental collaboration and efforts to support societal integration of especially vulnerable groups such as orphans and street children. ***The Committee asks the Government to report on the impact of the measures and programmes implemented to respond to the employment needs of young workers along with an assessment of their success for increasing their employment opportunities and participation.***

*Education and vocational training.* The Government indicates that training of vulnerable groups is addressed through inter-governmental collaboration between the Ministry of Science Technology and Vocational Training and the Ministry of Gender and Women in Development. Women have been most affected by the erosion in employment opportunities, especially in the formal sector. Programmes targeting women and other vulnerable groups are being undertaken by the Ministry of Labour and Social Security to facilitate and enhance accessibility to employment and to reduce the gender imbalance in employment. ***The Committee invites the Government to include in its next report the impact of training measures taken to meet the needs for productive employment of vulnerable groups of workers and specifically for women and older people.***

*Article 2. Collection and use of employment data.* In its reply to the previous observation, the Government indicates that it has developed and strengthened the Labour Market Information System (LMIS). A Labour Market Information Steering Committee has been established. The last Labour Force Survey (LFS) was conducted in 2008 as a follow-up to the 2005 LFS. The Committee notes that a database comprising all key Labour Market Indicators (including the Decent Work and Millennium Development Goals Employment Indicators) has been put in place. The Government also intends to improve quality and availability of labour market information through collaborative efforts between the Ministry of Labour and Social Security and the Central Statistics Office. ***The Committee invites the Government to continue to provide information on the implementation and success of the employment measures adopted from the collaboration of the Ministry of Labour and Social Security and the Central Statistics Office.*** In this respect, the Committee stresses the importance of compiling and analysing statistical data and trends as a basis for deciding measures of employment policy. The Committee intends to follow up on progress made for the development of labour market information systems, for the purposes of ensuring that policy-makers have up-to-date and accurate information to guide their decisions (see paragraphs 69–70 of the 2010 General Survey on employment instruments). ***The Committee therefore requests the Government to describe the measures taken to collect and analyse statistical data disaggregated by age and gender, and other data concerning the size and distribution of the labour force, the nature and extent of unemployment and underemployment and trends therein, as a basis for deciding on measures of employment policy.***

## Zimbabwe

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1998)**

The Committee notes the Government's report received in September 2008, which includes brief replies to the matters raised in the previous direct requests, as well as a communication from the Zimbabwe Congress of Trade Unions (ZCTU) forwarded to the Government in November 2009.

*Article 2 of the Convention. National policy on vocational rehabilitation and employment of persons with disabilities.* The Committee notes that the Government intends to carry out a survey in 2010 to identify the number of persons with disabilities and their needs and that a new national policy will be based on the survey. **The Committee invites the Government to provide a general description of the existing national policy on the vocational rehabilitation and employment of persons with disabilities, as well as any available information on the new policy based on the national survey.**

*Article 3. Promotion of employment opportunities in the open labour market.* The Committee notes the Government's indication that there are no available statistics on the number of participants benefiting from vocational training or on the number of persons placed in employment. The ZCTU expressed its concerns about the lack of legislation mandating a quota system for persons with disabilities linked to a penalty regime that funds rehabilitative education and training. The ZCTU also communicates that rehabilitation services suffer from lack of funding and that access to medical assistance remains difficult. **The Committee asks the Government to provide in its next report updated information on the measures and services established to promote employment for persons with disabilities, as well as any available information regarding the number of participants in the vocational rehabilitation programmes.**

*Article 4. Equal opportunity and treatment.* The Government indicates that while the Disabled Persons Act prohibits discrimination, there is no legislation aimed at effective equality of opportunity and treatment for persons with disabilities. The ZCTU communicates that anti-discrimination legislative protections are indeed in place through section 9 of the Disabled Persons Act and section 5 of the Labour Act, which prohibits discrimination in the advertisement, recruitment, creation, and classification of jobs. **The Committee reiterates its request for some examples of court cases, or other relevant administrative decisions, which apply the abovementioned provisions against discrimination.**

*Article 7. Vocational rehabilitation and employment services.* The Committee notes that the National Employment Services Department under the Ministry of Public Service, Labour and Social Welfare, continues to offer a general employment service without any special adaptation for persons with disabilities. **The Committee asks the Government to indicate whether any consideration has been given to adapting the existing employment services to suit the needs of workers with disabilities. The Committee further invites the Government to describe how the existing employment service provides vocational guidance, training and employment placement to workers with disabilities.**

*Article 8. Access to services in rural areas and remote communities.* **Emphasizing the requirement under this Convention to promote vocational rehabilitation and employment services in rural areas and remote communities, the Committee once again asks the Government to describe what steps have been taken to implement this provision.**

*Article 9. Suitably qualified staff.* **The Committee awaits the Government's information regarding the various training programmes for rehabilitation counsellors and other suitably qualified staff, as well as the number of such instructors in each of the three national rehabilitation centres.**

**[The Government is asked to reply in detail to the present comments in 2012.]**

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 2** (Colombia, Egypt, Estonia, Guyana, Iceland, Seychelles, South Africa, Sudan); **Convention No. 88** (Algeria, Bahamas, Canada, Central African Republic, China: Macau Special Administrative Region, Colombia, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, Egypt, Ethiopia, Georgia, Greece, Guatemala, Guinea-Bissau, Indonesia, Kazakhstan, Lebanon, Libyan Arab Jamahiriya, Madagascar, Netherlands: Aruba, Philippines, San Marino, Sierra Leone, Slovakia, Syrian Arab Republic, United Republic of Tanzania: Tanganyika, Tunisia, Turkey); **Convention No. 96** (Argentina, Bangladesh, Plurinational State of Bolivia, Costa Rica, Djibouti, Egypt, Gabon, Guatemala, Ireland, Israel, Luxembourg, Malta, Mauritania, Syrian Arab Republic); **Convention No. 122** (Azerbaijan, Belgium, Central African Republic, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Croatia, Denmark, Denmark: Greenland, Djibouti, Ecuador, El Salvador, Estonia, Finland, France: French Polynesia, France: New Caledonia, Hungary, Iraq, Israel, Kazakhstan, Lebanon, Libyan Arab Jamahiriya, Mauritania, Netherlands: Aruba, Papua New Guinea, Slovakia, Suriname, Tajikistan, Tunisia, Turkey, United Kingdom: Guernsey, Yemen); **Convention No. 159** (Argentina, Bahrain, Burkina Faso, China, Colombia, Côte d'Ivoire, Cyprus, Egypt, Ethiopia, Fiji, Germany, Guatemala, Ireland, Jordan, Republic of Korea, Kuwait, Kyrgyzstan, Lebanon, Lithuania, Madagascar, Malawi, Mali, Mauritius, Mongolia, Netherlands, Norway, Philippines, Russian Federation, Sao Tome and Principe,

*Serbia, Tajikistan, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, Yemen, Zambia); Convention No. 181 (Albania, Algeria, Belgium, Bulgaria, Ethiopia, Georgia, Hungary, Panama, Portugal).*

## Vocational guidance and training

### Brazil

#### **Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1992)**

The Committee notes with *regret* 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 matters raised in its previous comments:

*Definition of paid educational leave. Please indicate the terms on which paid educational leave is granted for vocational training, general, social and civic education, and trade union education, with an indication in each case of the conditions to be fulfilled by workers in order to be granted such leave, the length of the leave and the level of financial entitlements (Articles 2, 3 and 10 of the Convention).*

*Coordination of the policy to promote the granting of paid educational leave with general policies. Please state what steps have been taken to coordinate the national policy on paid educational leave with general policies on employment, education and training and hours of work (Article 4).*

### Guinea

#### **Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1976)**

The Committee notes with *regret* 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 2006 direct request, which read as follows:

*Policy for the promotion of paid educational leave and its application in practice. The Committee asks the Government to provide detailed information to demonstrate that it has formulated and that it applies, in accordance with Article 2 of the Convention, a policy designed to promote the granting of paid educational leave for the various purposes of training and education specified. The Committee also asks the Government to describe the manner in which public authorities, employers' and workers' organizations, and institutions providing education and training are associated with the formulation of the policy for the promotion of paid educational leave (Article 6). Lastly, the Committee invites the Government to communicate all reports, studies, inquiries and statistics which will allow it to assess the extent of the application of the Convention in practice (Part V of the report form).*

#### **Human Resources Development Convention, 1975 (No. 142) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observations, which read as follows:

*Formulation and implementation of education and training policies. In reply to its previous comments, the Government indicates that there are no coordination structures linking the three ministries responsible for the implementation of vocational guidance and training policies and programmes. The Government's report received in June 2004 enumerates the technical and vocational training institutions that exist. It also provides information concerning the implementation of the "employment" component of the Poverty Reduction Strategy approved in 2002. The Committee refers, in this respect, to the comments on the Employment Policy Convention, 1964 (No. 122), and asks the Government to indicate the manner in which the measures adopted or envisaged in the context of the Poverty Reduction Strategy reinforce the links between education, training and employment, particularly through the employment services. It asks the Government to provide information in its next report on the efforts being made to secure coordination among the various institutions responsible for developing comprehensive and coordinated policies and programmes of vocational guidance and vocational training. It draws attention once more to the importance of social dialogue in preparing, implementing and reviewing a national human resources development, education and training policy. It would be grateful if the Government would also provide practical information on levels of instruction, qualifications and training activities so that it can assess the application of all the provisions of the Convention in practice.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### Guyana

#### **Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1983)**

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 matters raised in its 2003 direct request:

*The Committee requests the Government to provide detailed information on the manner in which the various training programmes and plans implement paid educational leave, as provided for by the Convention. It also hopes that the Government will be in a position to provide statistics on the number of workers in both the public and private sectors who have benefited from paid educational leave during the period covered by the next report (Part V of the report form).*

*The Committee requests the Government to indicate the arrangements for the participation of employers' and workers' organizations in the formulation and application of the policy for the promotion of paid education leave (Article 6 of the Convention).*

## **Human Resources Development Convention, 1975 (No. 142)** (ratification: 1983)

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in 2003.

*Article 1 of the Convention.* The Committee recalls the Government's reply to its direct request of 1999 regarding proposed amendments to draft legislation for the creation of a National Council for Technical and Vocational Education and training. ***The Committee requests the Government to report on any progress achieved in adopting and developing comprehensive and coordinated policies of vocational guidance and vocational training, closely linked with employment, in particular through public employment services, as provided in Article 1 of the Convention.***

*Article 1(5).* The Committee refers to its previous comments regarding projects and programmes by the Government to encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society. ***The Committee requests the Government to include in its next report information on the implementation of projects and programmes in line with Article 1(5) of the Convention and relevant information on initiatives to encourage the vocational training of women, the type of training used and the percentage of their participation.***

*Article 5.* ***The Committee requests that the Government indicate the manner, procedure or consultative machinery instituted to ensure the cooperation of employers' and workers' organizations and other interested bodies in the formulation and implementation of policies and programmes for vocational guidance and training.***

***The Committee requests the Government to provide any extracts, reports or other available material relating to policies and programmes of vocational training which targets specific areas or particular branches of economic activity or specific population groups, as requested in Part VI of the report form.***

## **Russian Federation**

### **Human Resources Development Convention, 1975 (No. 142)** (ratification: 1979)

*Articles 1 and 2 of the Convention. Formulation and implementation of education and training policies.* The Committee notes the Government's report received in September 2009. The Government describes systems of general, technical and vocational education, referring to the Education Act of 10 July 1992. The Government indicates that approved general education establishments may conclude vocational apprenticeship agreements with enterprises in order to provide the recipients with vocational education. Vocational training may be followed both in approved education establishments and in an enterprise or with a specialist qualified in the provision of individual training. In its 2010 General Survey concerning employment instruments, the Committee emphasizes that Convention No. 142, together with Recommendation No. 195, forms part of the framework for the pursuit of the objective of full employment, decent work and the achievement of education for all. ***In this regard, the Committee requests the Government to supply information in its next report on the policies and programmes of vocational guidance and vocational training which have been adopted, indicating the manner in which it ensures effective coordination between these policies and programmes, on the one hand, and employment and the public employment services, on the other (Article 1(1) of the Convention).***

*Measures to overcome the economic crisis.* The Government indicates that, in order to prevent the negative consequences of long-term unemployment and to provide the public with better information on the services available for promoting and finding employment, measures have been taken to extend periods of vocational and further training from three to six months and increase allowances for vocational training (from 5,400 to 10,800 roubles per unemployed person). Moreover, a programme of vocational and further training has been launched primarily targeting workers threatened with redundancy. From February to July 2009, a total of 12,800 agreements were concluded in the regions of the Russian Federation, with the aim of providing training for 83,900 persons. ***The Committee refers to the comments which it is making this year on Convention No. 122 and requests the Government to indicate the way in which vocational training activities designed to tackle the economic crisis contribute towards the placement in employment of the workers affected. The Committee also requests the Government to indicate the manner in which the social partners cooperate in the formulation and implementation of policies and programmes of vocational guidance and vocational training (Article 5).***

*Article 3. Information for vocational guidance purposes.* The Government indicates that, as at 1 January 2008, a total of 3,207 establishments were recorded as providing initial vocational training for 1,413,000 recipients. In 2006, there were 630,000 recipients compared with 783,000 in 2004. In 2006, a total of 680,000 persons had completed training compared with 708,000 in 2004. Initial vocational training establishments provide skills training in 291 occupations and propose accelerated training courses. The Government indicates that institutes for specialist studies and intermediate education faculties provide basic vocational education as preparation for intermediate vocational training from an advanced level. As at 1 January 2008, a total of 2,847 establishments were registered as providing intermediate vocational education, comprising 2,631 public establishments and 216 private establishments, catering for a total of

2,514,000 students. These establishments provide skills training in 260 specialist areas. *The Committee requests the Government to supply further information in its next report enabling an examination of the results achieved as regards the occupational integration of the recipients of these activities provided by various vocational establishments.*

## Zimbabwe

### ***Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1998)***

The Committee notes the Government's report received in September 2008, which includes brief replies to the matters raised in the previous direct request, as well as a communication from the Zimbabwe Congress of Trade Unions (ZCTU) forwarded to the Government in November 2009.

*Granting paid educational leave.* The Government indicates that the provisions of the Convention are given effect through collective bargaining agreements under the auspices of the National Employment Councils, which cover various sectors of private and quasi-governmental enterprises. The Government further explains that paid educational leave is partly incorporated into individual companies' rules, regulations, or individual employment contracts and that for the public sector, such leave is guaranteed under the Statutory Instrument No. 1 of the 2000 Public Service Regulations. The ZCTU, however, expresses its concerns about the lack of minimum standards regarding paid educational leave in the private sector, since the Labour Regulations Act has no relevant provisions on the subject. Although collective bargaining agreements in some industries provide for paid educational leave, ZCTU observes that some employers refuse to grant such leave to their employees. The Committee recalls that the Convention requires the formulation and application of a "policy designed to promote, by methods appropriate to national conditions and practice and by stages as necessary, the granting of paid educational leave" (*Articles 2–5 of the Convention*). Accordingly the Committee reiterates its hope that in its next report the Government will include relevant documents related to the formulation of such policy in association with employers' and workers' organizations (*Article 6*). ***In particular, the Committee asks the Government to provide practical information on the availability of paid educational leave in the private sector (Article 9).***

*Article 4. Formulation and coordination of the policy.* The Government indicates that the coordination of the national policy on paid educational leave with other employment policies will be subjected to a tripartite consideration in the near future. ***The Committee invites the Government to provide in its next report information on effective tripartite consultations held to coordinate the national policy and their results.***

*Article 7. Financial arrangements.* The Government communicates the difficulty of surveying all workplaces in order to determine the amount of available funds for paid leave in a given period. ***The Committee invites the Government to indicate the measures envisaged so that it will be in a position to submit in its next report the requested information on the financing of arrangements for paid educational leave.***

*Article 8. Discrimination.* The Government recalls that section 5(i) of the Labour Relations Act of 2000 ensures that workers have equal access to paid educational leave, irrespective of race, sex, colour, creed, religion, political opinion, national extraction or social origin. ***The Committee refers to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and asks the Government to provide in its next report on Convention No. 140, information on measures taken to ensure that all workers have equal access to paid educational leave.***

***[The Government is asked to reply in detail to the present comments in 2012.]***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 142 (Central African Republic, Tajikistan).**

## Employment security

### Democratic Republic of the Congo

#### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1987)**

The Committee notes the Government's report received in June 2010. In its previous comments the Committee expressed concern at the fact that the Government had not provided information on the application of the Convention since July 2004 and had emphasized that technical assistance might be useful to rectify the situation. The ILO undertook a mission to Kinshasa in May 2010 precisely for this purpose. The Committee notes with *interest* the provisions of the Labour Code, adopted in October 2002, and of the Ministerial Orders adopted in October 2005 and August 2008 implementing the Convention. The Government also indicates that some 250 cases of termination of employment are examined each month by the General Labour Inspectorate. Approximately 100 cases are the subject of conciliation, 100 cases have been brought before the courts, and the other cases remain pending. ***The Committee requests the Government to continue to supply information on the practice of the labour inspectorate and the courts on matters of principle relating to the application of Articles 4, 5 and 7 of the Convention. The Committee hopes that the next report will contain further information on the number of appeals against termination, the outcome of such appeals, the nature of the remedy awarded and the average time taken for an appeal to be decided (Parts IV and V of the report form). In view of the circumstances of the country, it would also be important to know the number of terminations for economic or similar reasons (Articles 13 and 14).***

*Article 2(4). Exclusions.* The Committee previously noted that career civil servants were excluded from the scope of the 1967 Labour Code. These particular categories of employees were made subject to special regulations determined by Act No. 81/003 of 18 July 1981. The Committee notes that section 1 of the 2002 Labour Code excludes from its scope judges and magistrates, career civil servants governed by the general employment regulations and those governed by special employment regulations, and also certain members of the Congolese armed forces, the Congolese national police and the National Service. The Committee notes Organic Act No. 06/020 of 10 October 2006 establishing employment regulations for judges and magistrates, which states that judges are irremovable (section 14) and contains provisions on their dismissal (section 48 ff.). ***The Committee requests the Government to supply information in its next report on the protection afforded against wrongful dismissal to other categories of public sector employees such as officials in the armed forces and the national police.***

*Article 7. Procedure prior to or at the time of termination.* The Government indicates in its report that the possibility for workers to defend themselves before termination is provided for in collective agreements. ***The Committee requests the Government to send copies of the collective agreements which provide for this possibility and to indicate in its next report the manner in which the application of this provision of the Convention to workers not covered by collective agreements is ensured.***

*Article 12. Severance allowance and other income protection.* The Committee recalls its previous comments and notes that the 2002 Labour Code does not provide any indication on the severance allowance to be paid to workers. The Committee recalls that *Article 12* provides that a worker whose employment has been terminated is entitled to a severance allowance or any other form of income protection or benefit. ***The Committee trusts that the Government will provide information on how it gives effect to this provision of the Convention.***

### Turkey

#### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1995)**

The Committee notes the Government's report received in March 2010 in reply to the previous observations. The Committee also appreciates the ongoing contribution of information and views by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employers' Associations (TİSK) on the application of the Convention.

*Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 Constitution of the ILO).* The Committee recalls that in the conclusions adopted in November 2000 by the committee set up by the Governing Body to examine the representation made by TÜRK-İŞ it was noted that the laws regulating the employment of seafarers and journalists did not require a valid reason related to capacity, conduct or operational requirements for termination. The Committee notes with *interest* that the Government states in its report received in March 2010 that it has amended the Act on Relations between Employees and Employers in Media Profession (No. 5953) to give journalists the same protections afforded other employees under the Labour Law (No. 4857). It notes with *regret* however that the Maritime Labour Law (No. 854) has not yet been amended to bring it into compliance with the Convention. ***The Committee urges the Government to take the necessary steps to ensure that seafarers are given the protections afforded by the Convention and to provide information on the steps taken in this regard in its next report.***

*Article 2(2) and (3) of the Convention. Adequate safeguards against recourse to contracts of employment for a specified period of time.* The Government indicates that the Labour Act No. 4857 has two safeguards against the abuse



of fixed-term, temporary, and seasonal contracts and contracts lasting less than six months with the aim of evading the Convention. First, even though section 18 of the Labour Act limits the application of valid reason requirement to workers with indefinite contracts with at least six months of service, the first paragraph of section 11 requires fixed-term contracts to meet the “objective” standard of a specified term, completion of a certain work, or materialization of a certain event to be recognized as such under the Act. Second, the Government indicates that the second paragraph of section 11 of the Act treats successive fixed-term contracts as an indefinite contract unless there is “an essential reason which may necessitate repeated (chain) contracts”. The Committee notes TİSK’s view that the objective reason requirement affords a stringent protection against the potential abuse of fixed-term contracts. ***The Committee would appreciate receiving in the Government’s next report updated information on the efficacy of these two safeguards in ensuring the protection resulting from the Convention.***

*Article 2(4)–(6). Categories of employees excluded from the Convention.* The Committee recalls its previous observation that the Government did not list any category of workers for exclusion under *Article 2(6)* in its first report in December 1997. The Committee notes that under *Article 4* of the Labour Law (No. 4857), the Law does not apply to a range of businesses such as those in sea and air transport, in agriculture and forestry employing less than 50 workers, in domestic services, in the production of handicrafts by family members, in sport, etc. The Committee recalls that the Convention applies to all branches of the economy and to all employed persons but that it can be given effect to by different means including laws, collective agreements, arbitration awards or court decisions. ***The Committee requests the Government to indicate in what way the protections afforded by the Convention are available to the categories of workers contemplated by the exclusions in Article 4 of the Labour Law.*** The Committee recalls its previous observation that section 18 of the Labour Law that requires a valid reason relating to conduct, capacity and operational requirements for the termination of employment, specifically excludes a business employing less than 30 employees. In the same observation, the Committee also noted that the last paragraph in section 18 of the Labour Act excludes employers’ representatives who manage the enterprise and their assistants from the protections enumerated in sections 18, 19 and 21 of the same Act. In response to the Committee’s request to explain how these two categories of workers are afforded protection under *Articles 4, 5, 6 and 7* of the Convention, the Government refers to section 17 of the Labour Act, which entitles these employees to a compensation of three times the applicable notice period. The Government further indicates that this compensation is in addition to the amount paid in lieu of notice. The Committee notes that section 18 of the Labour Act lists the reasons contained in *Article 5* of the Convention as invalid reasons for dismissal under the Labour Act such as reasons relating to discrimination, maternity leave, filing complaints and participating in proceedings regarding alleged violation of laws, trade union membership and activities, etc. Given that termination on some of these grounds constitutes an infringement of the fundamental Conventions such as those regarding discrimination and freedom of association, a penalty of three times the notice pay is substantially less than the remedies afforded other workers under the Labour Act and might be considered inadequate compensation for the purposes of *Article 10* of the Convention. ***The Committee accordingly invites the Government to reconsider this aspect and to afford appropriate protection against invalid dismissal for this category of employees.***

The Committee understands that the fourth paragraph in section 18 of the Labour Act, which previously determined the calculation of six-month and 30-worker thresholds required for the application of valid reason standard, has been deleted. The Committee further notes TÜRK-İŞ’ concern that the 30-worker threshold excludes a significant number of workers from the Convention’s coverage, given the ubiquity of small and medium-sized enterprises. ***The Committee invites the Government to indicate in its next report how the resulting change in the threshold calculation ensures the application of the Convention.***

*Article 4. Valid reason for termination.* The Committee notes that the Convention’s valid reason protection is being implemented through domestic court decisions based on the Labour Act, especially by the Court of Cassation’s rulings on which facts related to workers’ competence and conduct, or employers’ business necessity constitute valid grounds. TİSK indicates that the number of cases in the Ninth Chamber of the Supreme Court of Appeals, dedicated to labour disputes other than social security issues, has increased from 20,000 to 43,000 per year since the Labour Act came into force in June 2003, with reinstatement lawsuits making up a bulk of the increase. TİSK and TÜRK-İŞ both communicate difficulties arising from the prolonged period of adjudication lasting more than two years, since employers cannot leave a vacancy open for long and employees suffer from delayed reinstatement. TİSK indicates that the Court of Cassation distinguishes “valid reason” terminations under section 18 of the Labour Act from dismissals based on “justified grounds” under section 25 by applying the principle of termination as the last resort in the former, and the standard of serious misconduct in the latter. ***The Committee invites the Government to continue providing information on the decisions of the tribunals on the abovementioned matters covered by the Convention (see Part V of the report form).***

*Article 10. Remedies in case of invalid termination.* The Government indicates that under section 21 of the Labour Act, courts and arbitrators have the power to declare a termination invalid and determine the amount of compensation in lieu of reinstatement. Employees must apply for reinstatement within ten days of judgement, and employers must choose between reinstatement and compensation. Workers are entitled to up to four months of one’s wages during the appeals process, which must be paid back upon reinstatement or deducted from the final amount of compensation. TÜRK-İŞ indicates that employers frequently choose compensation over reinstatement under this legal

framework. TÜRK-İŞ suggests that the statutory compensation amount of between four and eight months of wages is inadequate and hinders one's reinstatement, since adjudication takes more than two years in practice and employees must pay back the initial compensation to be reinstated. TÜRK-İŞ also indicates that the Turkish Employment Agency (İŞKUR) requires workers who win their lawsuits to pay back the unemployment benefits they have received during adjudication, even though employment security and unemployment insurance are distinct entitlements. TİSK expresses the view that the remedy of either reinstatement or compensation combined with an expedited system of financial aid during adjudication exceeds the Government's obligation under the Convention. The Committee notes the 1995 General Survey on protection against unjustified dismissal, which states that the wording of *Article 10* of the Convention gives preference to reinstatement but is flexible in allowing other remedies and that, when compensation is paid, it should be adequate (paragraph 219 of the General Survey of 1995). ***In this respect, the Committee invites the Government to provide information in its next report regarding the adequacy of compensation for unjustly dismissed workers who are not reinstated.***

## Uganda

### ***Termination of Employment Convention, 1982 (No. 158) (ratification: 1990)***

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its report received in June 2004, which indicated that the draft Employment Bill which, according to the Government, would give effect to the Convention, had still not been adopted. The Committee understands that the Employment Act was adopted and came into force in 2006. In this context, the Committee considers it particularly regrettable that the Government has still not provided the relevant information on the application of the Convention. ***The Committee trusts that the Government will be in a position to provide a detailed report containing full particulars on the application of each of the provisions of the Convention in both law and practice.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 158** (*Central African Republic, Ethiopia, Malawi, Montenegro, Niger, Saint Lucia, The former Yugoslav Republic of Macedonia*).

## Wages

### Argentina

#### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1956)**

*Articles 1 and 12 of the Convention. Definition of the term “wages” and regular payment of wages.* The Committee notes the Government’s reply to the comments of the Confederation of Workers of Argentina (CTA), dated 21 October 2009, concerning section 103bis of Act No. 20.477 on labour contracts and Decree No. 1347/03 of 12 December 2003. The CTA, and the Federation of Professionals of the Government of the Autonomous City of Buenos Aires, indicated that under section 103bis, referred to above, certain benefits in kind, classified as “social benefits”, are not considered to form part of the wage. Furthermore, Decree No. 1347/03 provides for a wage rise which is not classified as remuneration.

With regard to section 103bis of Act No. 20/477, the Committee notes that clauses (b) and (c) were repealed by Act No. 26.341 of 12 December 2007 and that, under section 3 of the latter Act, certain benefits enumerated in section 103bis have acquired the nature of remuneration. It further notes the Government’s indication that the benefits enumerated in the current version of section 103bis, although they are paid in the context of a professional relationship, are not related to the work performed or the service provided by the worker and are considered to be social security benefits intended to improve the living standards of workers and their dependants. The Committee also notes the ruling of the Supreme Court of Justice of 1 September 2009 which, based among other factors on the comments made by the Committee for many years, indicated that: (i) section 103bis(c), repealed during the course of the procedure, is unconstitutional; and (ii) that food vouchers are part of wages.

With regard to Decree No. 1347/03, the Committee notes the adoption of Decree No. 2005/2004 of 29 December 2004 which provides: (i) that the wage increase envisaged by Decree No. 1347/03 has acquired the nature of remuneration (section 6); and (ii) a new wage increase which is not classified as remuneration (section 1).

The Committee takes this opportunity to recall that, as indicated by the ILO Governing Body in 1997 when examining a representation on the “desalarization” policy pursued by a member State, the fact that a wage benefit, however it is termed, does not enter into the definition of wages contained in the national legislation, does not ipso facto constitute a violation of the Convention, provided that the remuneration or earnings due, payable under a contract of employment by an employer to a worker, whatever term is used, are covered by the provisions of *Articles 3 to 15* of the Convention. ***With reference to paragraph 47 of its General Survey of 2003 on the protection of wages, the Committee therefore requests the Government to indicate the measures taken to ensure that any allowance which is of a non-wage nature under the national legislation is, in application of the Convention, covered by the protection afforded by national laws and regulations concerning wages.***

Finally, the Committee notes that the Government has not provided any further information on the other points raised in its previous comments, namely: (i) the progress made in the negotiations to resolve the dispute between the Ministry of Health of the Government of Buenos Aires and the Federation of Professional Employees of the Government of the autonomous city of Buenos Aires; (ii) the situation with regard to the Bill to amend sections 120 and 147 of the Act on labour contracts on the elements of wages which cannot be attached; (iii) any changes in the situation concerning the payment of wages in the form of locally issued vouchers; and (iv) the current situation regarding wage arrears and other difficulties in the regular payment of wages which may persist in certain sectors or provinces. ***The Committee therefore requests the Government to provide detailed information on these points.***

### Comoros

#### **Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1978)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(1) of the Convention. Minimum wage fixing machinery.* Further to its previous observation, the Committee notes the Government’s explanations that confirm that no progress has been made either with respect to the promulgation of the decree fixing the guaranteed inter-occupational minimum wage (SMIG) at 35,000 KMF (approximately US\$110) per month or as regards the reactivation of the Higher Council of Labour and Employment (CSTE). The Government indicates that the draft decree establishing the SMIG rate for the entire private sector, including agriculture, has not yet received the final approval of the President and that the Ministry of Labour is currently taking steps to successfully complete this process. The Government also indicates that tripartite consultations within the CSTE are expected to resume after the adoption of the revised Labour Code which, in turn, is scheduled to be discussed at the next ordinary session of the National Assembly. Regrettably, the Committee is once again obliged to observe that the Convention is presently not applied in either law or practice. ***The Committee urges the Government to take the necessary action without further delay with a view to: (i) establishing and implementing the guaranteed inter-occupational minimum wage rate; and (ii) initiating tripartite consultations within the CSTE on its periodic review and adjustment. It also asks the Government to transmit a copy of the revised Labour Code as soon as it is adopted.***

Finally, the Committee wishes to draw the Government's attention to the conclusions of the ILO Governing Body as regards the relevance of the Convention following the recommendations of the Working Party on Policy regarding the Revision of Standards (GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). In fact, the Governing Body has decided that Conventions Nos 26 and 99 are among those instruments which may no longer be fully up to date but remain relevant in certain respects. The Committee therefore suggests that the Government should consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which contains certain improvements compared to older instruments on minimum wage fixing, for instance, as regards its broader scope of application, the requirement for a comprehensive minimum wage system and the enumeration of the criteria for the determination of minimum wage levels. *The Committee requests the Government to keep the Office informed of any decision taken or envisaged in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Congo

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 12(1) of the Convention. Payment of wages at regular intervals.* The Committee has been commenting for some time on the problem of accumulated wage arrears in the public sector and the need to put an end to practices of delayed payment of wages that clearly contravene the letter and the spirit of the Convention. According to information provided in 2004, the wage debt was estimated at 187.6 billion CFA francs (approximately US\$440 million) corresponding to the wage bill of 23 months. The Committee subsequently asked for detailed and documented information on the evolution of the situation, but no report was submitted for three consecutive years. Regrettably, in its last report, the Government does not communicate any updated figures on the progress made regarding the settlement of outstanding payments but limits itself to enumerating the provisions of the Labour Code that ensure legislative conformity with the Convention. The Committee understands that problems of unpaid wages persist, for instance in public education, and that in certain cases wage arrears hinder the Government's privatization programme in the energy, oil, banking, agricultural, forestry, transport and hotel sectors. *The Committee therefore once again asks the Government to give a detailed account of the current situation regarding the payment of wages to public employees on time and in full and also to describe any new measures taken with a view to resolving the wage crisis that continues to affect a large number of them.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Costa Rica

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)**

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* The Committee notes the information sent by the Government in reply to its previous comment, particularly concerning the connection between Executive Decree No. 11430-TSS of 30 April 1980 and Executive Directive No. 34 of 8 February 2002. It notes the Government's indications that the latter does not depart from the terms of Executive Decree No. 11430-TSS but actually complements it. The Committee observes that, under the terms of the Executive Decree, public contracts must contain clauses explicitly requiring the bidder to comply with legal or "conventional" provisions regarding wages, hours of work, occupational health and safety and, more generally, conditions of employment which are not less favourable than those established for work of the same character in the same sector of activity and the same geographical area. It notes the report sent to the Ministry of Labour and Social Security by the legal service of the Office of the Comptroller-General of the Republic on 2 June 2010, which confirms that the expression "conventional provisions" means collective agreements.

The Committee recalls, however, that its previous comments referred to Executive Directive No. 34, which merely requires the inclusion in public contracts of a clause establishing the obligation of contractors to comply strictly with labour and social security obligations. While noting the Government's indications that this Directive does not restrict the scope of Executive Decree No. 11430-TSS of 30 April 1980, the Committee considers that, in order to avoid any possible misunderstanding, to guarantee legal certainty and to ensure the full application of the Convention, the wording of the Directive should be aligned to that of the aforementioned Executive Decree. *The Committee therefore hopes that the Government will take steps towards this end in the very near future and requests it to keep the Office informed of any developments in this respect.*

The Committee further notes that, according to the abovementioned report of the legal service of the Office of the Comptroller-General of the Republic, it is rare for labour clauses to be included in public contracts in practice, even though there are no obstacles to their inclusion, but the omission of these clauses from public contracts makes no difference to the obligation of contractors to comply with the rights established by the social legislation. In this respect, the Committee has examined, by way of example, a public contract awarded in March 2009 by the National Insurance Institute, which contained clauses regarding the responsibility of the contractor to respect the obligations incumbent on him with regard to the social rights of his workers, in conformity with Executive Decree No. 11430-TSS. These clauses, however, did not contain any further details of the legal or "conventional" provisions which had to be observed with regard to wages and other conditions of work. As the Committee emphasized in its 2008 General Survey on labour clauses in public contracts (paragraph 128), the labour clause must be included as an integral part of the public contract signed by

the selected contractor. *The Committee therefore urges the Government to take the necessary steps to ensure the actual inclusion in all public contracts to which the Convention applies of clauses ensuring conditions of work to the workers involved in the execution thereof which are not less favourable than those established by national laws or regulations, collective agreement or, if applicable, arbitration awards for work of the same character in the same branch of activity, in conformity with Article 2(1) of the Convention.* Furthermore, the terms of these labour clauses and any variations thereof must be determined by the competent national authority after consultation with the employers' and workers' organizations concerned, in accordance with *Article 2(3)* of the Convention.

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Articles 6, 8 and 9 of the Convention. Freedom of the workers to dispose of their wages – Deductions from wages.* The Committee notes the information contained in the Government's report regarding the obligation for certain officials to take out an insurance policy (*póliza de fidelidad*) designed to ensure that they duly fulfil their obligations. It notes that a total of 1,313 public servants are subject to this obligation and notes the Government's indications regarding the legal basis thereof. The Committee also notes the decision handed down by the Constitutional Chamber of the Supreme Court on 26 June 2008 further to the appeal lodged by the Union of Workers of the Ministry of Finance and the National Customs Service (SITRAHSAN), which refers in particular to *Articles 8 and 9* of the Convention and to the 2003 General Survey on protection of wages. In its decision, the Constitutional Chamber notes that the Convention does not contain any definition of the term "deductions from wages" and does not list the types of deduction that are authorized, merely prohibiting those made with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment made by a worker to an employer or his or her representative or to any intermediary. As the Committee emphasized in the aforementioned General Survey (paragraph 222), "Member States therefore enjoy full freedom ... when regulating the types of permissible deductions through legislation".

In the light of the information supplied by the Government, the Committee recognizes that the obligation on certain public officials to take out an insurance policy as referred to above was established in the public interest, namely to ensure the proper management of public funds. This cannot be considered equivalent to the deductions prohibited by *Article 9* of the Convention. The Committee wonders, however, about the potentially large sums that the officials concerned may be required to pay under this obligation to take out insurance. It recalls in this regard that *Article 8* of the Convention provides that deductions from wages shall be permitted only under conditions and within the limits prescribed by national laws or regulations or fixed by collective agreement or arbitration award. Furthermore, Paragraph 1 of the Protection of Wages Recommendation, 1949 (No. 85), indicates that "all necessary measures should be taken to limit deductions from wages to the extent deemed to be necessary to safeguard the maintenance of the worker and his family". In this regard, the Committee notes that, in the abovementioned decision, the Constitutional Chamber considered that the regulations concerning the obligation to take out insurance do not authorize the administration to make deductions from wages and that it is the worker himself or herself who pays the due amount directly. Although it is true that the obligation to take out insurance that has been the subject of comments from SITRAHSAN does not constitute a deduction from wages in the strict sense of the term, in practice the situation is identical for the workers concerned, in as much as part of their wages has to cover the payment of the compulsory guarantee. Moreover, the Constitutional Chamber has recognized this, since it devoted substantial parts of its decision to *Articles 8 and 9* of the Convention. It would therefore be contrary to the spirit of the Convention to consider that, since the payment of the compulsory guarantee is made directly by the worker, it is not subject to the limits which *Article 8* of the Convention prescribes. It is the Committee's understanding in this regard that the amounts owed by public servants who are subject to this obligation may amount to as much as several months' wages. *The Committee therefore requests the Government to provide further information on the limits set by the national legislation with regard to the payments due in relation to this guarantee. The Committee requests the Government to provide detailed statistics on the amounts due in this regard from the officials concerned and on the proportion of such amounts in relation to their wages.*

*Articles 3 and 4. Payment of wages in legal tender and value attributed to allowances in kind.* The Committee notes that the Government has requested technical assistance from the Office with regard to the draft amendment to sections 165 and 166 of the Labour Code. *The Committee hopes that the Office will be in a position to provide this assistance in the near future in order to facilitate bringing the national legislation into conformity with the Convention on this point. It requests the Government to supply information on any new developments in the process of adoption of these amendments.*

*Articles 8 and 12. Deductions from wages and payment of wages at regular intervals. The Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including, for example, extracts from reports of the inspection services indicating the number and nature of recorded infringements of the provisions of the Labour Code concerning protection of wages, and on the steps taken to deal with such infringements, particularly concerning unjustified deductions from wages and the delayed payment of wages in certain enterprises, as referred to in its previous comments.*

## Democratic Republic of the Congo

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1960)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes with *regret* that, despite the observations that it has been making on this matter since 1991, legislation has still not been adopted to give full effect to the Convention.

The Committee recalls in this respect that the essential purpose of the Convention is to ensure that, through the insertion of appropriate labour clauses in public contracts, the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise. Such protection is deemed to be necessary because this category of workers may not be covered by collective agreements and other measures regulating wages, and is often more exposed than others because of the competition between firms tendering for public contracts. Furthermore, the Committee deems it important to emphasize that the protection provided through labour clauses in public contracts cannot normally be ensured through the application of the general labour legislation only. This is due first of all to the fact that there are many countries in which the minimum standards fixed by law are improved upon by means of collective bargaining or otherwise. Thus, even where fairly extensive labour legislation exists and is properly applied, the inclusion of labour clauses in public contracts can serve a very useful purpose in ensuring fair wages and conditions of labour for the workers concerned. Secondly, it is due to the fact that the provision of penalties, such as the withholding of contracts, as envisaged in the Convention, makes it possible to impose sanctions in case of violations of the labour clauses in the public contracts which may be more directly effective than those applicable for infringements of the general labour legislation.

*The Committee therefore urges the Government to take all the necessary measures to bring the national legislation into conformity with the provisions of the Convention and reminds it of the possibility of seeking the technical assistance of the International Labour Office for this purpose.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Djibouti

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1978)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. Establishment of minimum wage fixing machinery.* Further to its previous comments on the abolition of the system of the guaranteed interoccupational minimum wage (SMIG), the Committee notes the Government's explanations to the effect that this decision was taken under pressure from the International Monetary Fund (IMF), which required the Government to adopt a raft of measures, including liberalization of the labour market, to be the beneficiary of a Structural Adjustment Programme (SAP). The Government adds that it made the choice of deregulation rather than leave the SMIG in place, since the balance of public finances would have been seriously jeopardized and wages would not have been guaranteed, thereby threatening the social peace and stability of the country. In this regard, the Committee recalls that the establishment of minimum wage fixing machinery outside the system of collective bargaining is essential for ensuring effective social protection for workers who are not covered by the rules of collective agreements, and that the Government must take the necessary steps to ensure that collectively agreed minimum wage rates are binding and the application thereof is linked to a system of supervision and effective penalties.

The Committee therefore concludes that the situation remains unchanged. Apart from the Government's indication that the matter would be studied by the new National Council for Labour, Employment and Vocational Training (CNT), the Convention is no longer applied either in law or in practice. The CNT was set up pursuant to Decree No. 2008-0023/PR/MESN of 20 January 2008 as a tripartite structure to enable the Government and the social partners to exchange ideas in a free and open manner. In this regard, the Government points out that there is increasing talk of the possibility of reintroducing the SMIG for each branch of economic activity. *The Committee requests the Government to supply detailed information on the planned meeting of the CNT and any decisions regarding the reintroduction of the national minimum wage rate. It also requests the Government to send its comments in reply to the observations made by the General Union of Djibouti Workers (UGTD) sent to the Government in September 2007.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1978)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous observations, the Committee notes with *regret* that the Government is still not in a position to report any meaningful progress in putting in place the appropriate legal framework for the implementation of the Convention. The Committee notes that for over ten years, the Government has been stating that it is planning to examine the necessary measures to give effect to the Convention in the overall context of the forthcoming revision of labour laws and regulations which it hopes to undertake with the Office's assistance as soon as the conditions have been fulfilled for the organization of a national tripartite consultation. Despite those reassurances, however, the Committee observes that major legislative exercises, such as the adoption of the new Labour Code of 2006, have

been completed without any effort having been made to address the issue of labour clauses in public contracts. Moreover, the Committee understands that the Government is involved in a public procurement reform project initiated by the Common Market for Eastern and Southern Africa (COMESA) with a view to improving public procurement practices and harmonizing rules and procedures at the regional level.

*The Committee recalls that the Government may draw upon the advisory services of the Office, should it so wish, for the purpose of revising its public procurement legislation and aligning it with the requirements of the Convention, and urges the Government to take long overdue action in order to ensure conformity with the provisions of the Convention. The Committee also asks the Government to keep the Office informed of any progress made in the preparation of new procurement laws and regulations under COMESA's public procurement reform project and transmit copies of any new texts as soon as they are adopted.*

The Committee also notes the observations made in 2007 by the General Union of Djibouti Workers (UGTD) concerning the application of the Convention. According to the UGTD, the absence of legislation implementing the Convention creates a legal vacuum which is prejudicial to the workers employed under public contracts. In this connection, the UGTD hopes that the National Commission of Labour, Employment and Vocational Training will soon be established so that it can take measures to bring the national legislation into conformity with the Convention. *The Committee requests the Government to transmit its comments in reply to the points raised by the UGTD.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 8 and 12 of the Convention. Deductions from wages and payment of wages at regular intervals.* The Committee has been commenting for a certain number of years on the provision of the Labour Code permitting wage deductions on the basis of individual agreement and also on difficulties experienced in the public sector concerning the timely payment of wages. *The Committee requests the Government to provide up to date information on both issues, in the light of the provisions of the Labour Code (Act No. 133/AN/05/5èmeL).*

Moreover, the Committee notes the communication of the General Union of Djibouti Workers (UGTD) received on 23 August 2007 concerning the application of the Convention. The UGTD states that whereas Chapter IV of the Labour Code, in particular section 152, provides for the protection of wages in the strict sense of the word, the absence of wage guarantees such as the guaranteed minimum inter-occupational wage (SMIG), which was abolished in September 1997, has deprived the workforce of real income protection. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the UGTD.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Ecuador**

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1970)**

*Article 4(2) and (3) of the Convention. Full consultation and direct participation of the social partners in the establishment and operation of the minimum wage fixing machinery.* Further to its previous comment, the Committee notes the information provided by the Government in reply to the observations of the International Organisation of Employers (IOE) dated 30 August 2009.

The IOE indicated that a new constitutional text had been drawn up and then adopted by referendum without the effective participation of the main actors in the world of work and that article 328, paragraph 2, and transitional provision No. 25 of the new constitutional text, which provide for the annual progressive adjustment of the minimum wage so as to cover the cost of the household basket of goods (*canasta familiar*) do not take into account the direct participation of the employers and workers concerned, as required by this provision of the Convention.

In its reply dated 3 February 2010, the Government indicates that, under the terms of section 117(2) of the Labour Code, the minimum wage is adjusted annually with the participation of the National Wage Council (CONADES), a tripartite advisory body. It emphasizes in this respect that wages are only adjusted by the Minister of Labour and Employment in cases where a consensus decision has not been adopted by the CONADES. As the CONADES did not achieve consensus in the meetings prior to the adjustment of the minimum wage in 2009, the Minister of Labour and Employment, in accordance with section 118(3) of the Labour Code, increased the minimum wage on the basis of the consumer price index established by the competent authority.

In this respect, the Committee wishes to refer to paragraphs 233 and 234 of its 1992 General Survey on minimum wages, in which it indicates that the party responsible for carrying out the consultation should take into consideration what is stated or proposed by the party it consults, without this meaning that the Government has to comply with all the requests of the organization consulted, still less that it should enter into negotiations. The consultation must take place before decisions are taken and must be effective, that is to say that it must enable employers' and workers' organizations to have a useful say in matters that are the subject of consultation.

Furthermore, with reference to its previous observations concerning the current rate of the minimum wage, namely US\$240 a month, and whether it allows workers a decent standard of living, the Committee notes that, according to the data of the National Institute of Statistics (INEC) concerning the cost of the household basket of goods (*canasta familiar vital y básica*), the minimum wage covers the cost of the so-called "subsistence" household basket of goods (US\$382.64 out of a monthly income, for two persons, of US\$448), but does not cover the cost of the so-called "basic" household

basket of goods (US\$535.56 out of a monthly income, for two people, of US\$448). An increase of around 16 per cent would still be necessary to cover the needs of a family of five persons. ***While noting the increase of 10 per cent in the minimum wage in 2010, the Committee requests the Government to pursue its efforts to ensure a minimum wage rate that is sufficient to allow workers to cover their needs and those of their family. It also requests the Government to continue providing information on the minimum wage rates that are applicable and their adjustment through the CONADES, in full and effective consultation with employers' and workers' organizations.***

## Greece

### ***Protection of Wages Convention, 1949 (No. 95) (ratification: 1955)***

*Article 11 of the Convention. Wages as privileged debts.* The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy. The GSEE refers to important reductions and cuts in the wages of all workers under private law contracts employed in the public and private sectors and draws specific attention to section 41 of Act No. 3863/2010, by which claims of social security institutions in insolvency proceedings are granted the same rank of privilege as workers' wage claims. These institutions are now considered equally and proportionally as privileged creditors with regard to their right to be paid out of the liquidated assets of the insolvent employer. According to the GSEE, such preferential treatment of claims of social security institutions does not correspond to the State's obligation to secure full payment of workers' claims that derive from their employment, before other ordinary creditors establish any claim to a proportionate share of the employer's assets. Reference is made, in this respect, to the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), which requires workers' claims to be given a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system and which, according to the GSEE, constitutes an international minimum standard that must be respected. In addition, the GSEE refers to section 75 of Act No. 3863/2010, which provides that, upon termination of employment, severance pay may be paid in bi-monthly instalments each corresponding to two months' wages, and considers that the payment of an amount with such a critical survival function for workers and their families becomes uncertain and precarious. The Committee will examine the comments by the GSEE along with the Government's reply thereto at its next session.

***[The Government is asked to reply in detail to the present comments in 2011.]***

## Guinea

### ***Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1959)***

The Committee notes with ***regret*** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 3 of the Convention. Introduction of a minimum wage and consultation of the social partners.* The Committee notes with ***regret*** that, according to the information contained in its last report, the Government is maintaining its decision not to introduce the guaranteed interoccupational minimum wage (SMIG) at the present time in view of the economic situation of the country. It also notes that, as acknowledged by the Government, the introduction of a minimum wage is an important claim of national trade union organizations. The Committee notes in this respect that in November 2005 a 48-hour general strike was called by the National Confederation of Workers of Guinea (CNTG), and that the claims included the establishment of a minimum wage. In this context, it notes with ***concern*** that the inflation rate in Guinea appears to be particularly high, which makes it all the more necessary to ensure workers a minimum wage permitting them and their families to benefit from a satisfactory standard of living.

The Committee ***deplores*** the fact that, despite its repeated comments on the subject, the Government has still not been able to adopt the decree determining the minimum guaranteed wage rate for one hour of work, as provided for in section 211 of the Labour Code. ***The Committee therefore urges the Government to take the necessary measures without further delay to give effect to the provisions of the Convention by adopting the implementing decree for section 211 of the Labour Code. The Committee would also be grateful to be provided with more detailed information on the measures adopted or envisaged to ensure effective consultations with the social partners on equal terms in all the stages of the process of fixing minimum wages, as required by the Convention.***

The Committee notes that, according to the information provided by the Government in its last report, the minimum wage rates in the various sectors are determined in collective agreements. In this respect, it is bound to recall that the fixing of minimum wages by collective agreements is only permitted under certain conditions: the minimum wages must have the force of law, not be subject to abatement and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions (see paragraphs 99–101 of the 1992 General Survey on minimum wages). ***The Committee therefore requests the Government to indicate the manner in which compliance with these principles is ensured in the context of the system for fixing minimum wages by collective bargaining. It requests the Government to provide copies of these sectoral collective agreements containing provisions relating to the minimum wage and to indicate the number of men and women, and of adults and young persons, covered by such provisions.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***



## **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes with *regret* that the Government's last report contained no reply to its previous comments, but essentially reproduced information already submitted in earlier reports which the Committee had considered to be strictly irrelevant to the scope and content of the Convention. The Committee is once again led to conclude that for the last 40 years there has been practically no progress in implementing the provisions of the Convention in either law or practice. The Committee expresses its deep disappointment about the Government's continued failure to apply the Convention despite the technical assistance provided by the Office in 1981 and the numerous commitments made by the Government ever since as regards the drafting and adoption of specific regulations or legislation concerning public contracts. *Under the circumstances, the Committee hopes that the Government will make a sincere effort to maintain a meaningful dialogue with the ILO supervisory bodies and once more urges the Government to take all necessary measures without further delay in order to bring its national law and practice into conformity with the clear terms and objectives of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Islamic Republic of Iran**

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1972)**

*Article 12 of the Convention. Payment of wages at regular intervals.* The Committee notes the Government's detailed report in reply to the observations of the International Trade Union Confederation (ITUC), which were forwarded to it on 18 September 2009. The ITUC had reported significant problems of wage arrears, principally in the sugar cane, metal industries and textile sectors, with delays in payment ranging from two to 12 months. The Committee recalls that it has been commenting on this issue since 2005 and that the Office carried out two missions in 2006 and 2007, following the examination of the situation on two occasions by the Conference Committee on the Application of Standards, with a view to gathering concrete figures on wage arrears and the number of workers affected in order to gain a better understanding of the nature and scope of the problem.

In its report, the Government admits that the accumulation of wage arrears is in contravention of the letter and the spirit of the Convention and states that it is determined to accelerate its efforts to find appropriate solutions to the problem of the delayed payment of wages through social dialogue and better implementation of active labour policy, labour legislation and other corresponding laws and regulations. It reiterates that wage arrears are due, among other reasons, to unfair globalization causing inequalities both within and between nations, the lack of competitiveness, the scarcity of skilled labour and the lack of investment in human resources development at the enterprise level, the outdated equipment used in plants, the weakness of supporting industrial infrastructure, the privatization of state industries, low productivity and the rapid increase in wages, which are making certain industries, such as textiles, sugar and steel production, more fragile. In this respect, the Government indicates that it is continuing to invest massively in enterprises experiencing difficulties with a view to renewing the means of production and improving productivity, saving jobs and avoiding labour conflict. The Government adds that programmes are proposed for the payment of debts in instalments, together with managerial advice.

#### **I. Monitoring and evaluation of the situation of wage arrears**

The Government indicates that 680 large and medium-sized enterprises have encountered problems, including problems of delayed payment of wages, including 459 public enterprises and 71 private enterprises. It adds that, of these enterprises, 311 have reported problems relating to wage arrears classified as mild to serious, while mismanagement and lack of flexibility were identified as the reasons for similar problems in 89 other enterprises. The Government finally indicates that these figures do not include small workshops in the informal economy, which must have been more adversely affected by the crisis. With regard to the court proceedings initiated in this field, the Committee notes that 80,972 complaints were lodged in 2007, resulting in 51,872 rulings in favour of 61,385 workers. Similarly, 85,626 complaints were lodged in 2008 resulting in 45,765 rulings in favour of 59,215 workers. With reference to the monitoring of the situation, the Committee notes the Government's indication that the number of inspections is constantly increasing (a 45.6 per cent increase in 2008 in scheduled inspections and a 14.7 per cent increase in unscheduled inspections), as well as an increase in the staff of the inspection services (rising from 531 inspectors in 2007 to 821 in 2009). It notes that labour inspectors have a new form that has been prepared to include inspection of the payment of workers' wages. In the event of problems due to the non-payment of wages, labour inspectors have to note the amount of the arrears and the period, in months, during which the wages have not been paid. The Committee also notes the establishment of working groups in each province to supervise the payment of wages and, where necessary, to report the non-payment of wages and any arrears that build up. Finally, the Committee notes the indication that some concrete steps still have to be taken for the analysis of the data collected by the labour inspection services, but that more detailed statistical data will be provided in future reports on the amount of wage arrears, the sectors and regions most affected, and estimates of the delays in the payment of wages.

## II. Situation of wage arrears in the sugar cane, textile and metal sectors

The Government indicates that in the sugar cane sector covered by Decree No. 40030.53539 of June 2008, the enterprise *Haft Tapeh Sugar* is now under the control of the Industrial Development and Renovation Organization (IDRO), the main task of which is to pay the wages due to the 17,000 workers in the enterprise. The Committee notes that 2,477,647,642 rials (or approximately US\$250,000) have been paid in wage arrears and that, as of October 2009, all the workers had received what was owed to them. It also notes the Government's indication that the delay in the payment of wages, which used to be three months, is now one month.

In the textile sector, which accounts for 280,000 jobs in 9,400 enterprises, the Government indicates that the delay in the payment of wages ranges from two to four months, particularly in the province of Mazandaran. It notes that the debts of 43 major enterprises in this sector have been rescheduled over several months, and even years, depending on the gravity of their financial problems, and that the Government is continuing to invest massively in this sector and in renovation programmes (US\$4 billion in 2008). However, the Government does not provide any specific indication of the amount of wage arrears in the metal industry sector, or on any progress made in this respect.

While noting this information, the Committee observes that wage arrears are far from being resolved and that the international economic and financial crisis has only aggravated already existing structural factors. ***The Committee therefore requests the Government to continue providing detailed information, and particularly statistical data, on the amounts of wage arrears and the sectors affected. It also requests the Government to keep the Office informed of any new legislative, administrative or other measures intended to ensure the regular payment of wages, as required by Article 12 of the Convention.***

In this respect, the Committee recalls its general observation of 2009 on wages which refers to the Global Jobs Pact, adopted by the International Labour Conference in June 2009 in response to the global economic crisis. The Pact places particular emphasis on the need to strengthen respect for international labour standards and explicitly identifies ILO instruments on wages as being relevant in order to prevent a downward spiral in labour conditions and build recovery (paragraph 14). The Committee wishes to emphasize that the Protection of Wages Convention, 1949 (No. 95), in particular, seeks to prevent wage arrears, which not only deprive workers of means of subsistence and therefore lower consumption, but also imply poor tax revenues and reduced public spending, thus leading to a vicious circle that affects the entire economic and social tissue of society. The Committee recalls that in view of the complexity of the issues, progress in this field can only be made through cooperation with the social partners. Implementing reforms and reaching compromise solutions in a crisis environment needs constant and genuine social dialogue. Drastic conditions also call for strict monitoring and enhanced enforcement, which in turn implies the strengthening of labour inspection services and a system of truly dissuasive and effective sanctions.

## Netherlands

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1952)***

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the observations made by the Netherlands Trade Union Confederation (FNV) concerning the application of the Convention. The FNV reiterates its view that the national legislation has never specifically implemented the Convention but rather the EU Public Procurement Directive of 2004 which is purely permissive. The FNV adds that the Government has initiated a process of privatization and liberalization of public services and public procurement has become an instrument in the Government's privatization policy. The FNV also expresses its concern over a new legislative proposal for a Public Procurement Act (TK 2009-2010, 32 440), which was transmitted to the Parliament on 25 June 2010. ***The Committee invites the Government to transmit any comments it may wish to make in response to the observations of the FNV. It would also appreciate receiving a copy of the Public Procurement Bill referred to above.***

## Aruba

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)***

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the Government's succinct report and regrets that no clear replies have so far been provided to the issues that the Committee has been raising for over 20 years. The Committee recalls that the Government has been making reference to the Labour Ordinance, the Civil Code and the Uniform General Instructions (UAV) as giving effect to the requirements of the Convention despite the Committee's repeated observations that the mere fact of the national legislation being applicable to all workers does not release a ratifying State from its obligation to take the necessary measures to ensure that public contracts contain the labour clauses specified in *Article 2* of the Convention (see also paragraphs 110–113 of the General Survey of 2008 on labour clauses in public contracts). On other instances, the Government stated that it had no authority to dictate how much contractors should pay their workers in so far as they complied with the minimum wage legislation in force while more recently it indicated that discussions had been initiated between the Labour Department and the Department of Public Works on how to ensure compliance with the provisions of the Convention. Finally, in its last

report, the Government refers to the General Administrative Rules, which include an express reference to ILO Convention No. 94, without being clear whether these rules are specific to public procurement contracts and how they relate to the abovementioned UAV. ***In light of the fragmented and unclear information provided by the Government in successive reports, the Committee requests the Government to give in its next report a detailed account on any measures taken or planned in order to implement the basic requirements of the Convention. It would appreciate receiving copies of all legal instruments, such as laws, regulations or administrative circulars, which relate to the labour conditions applicable to those engaged in the execution of public contracts and thus may have an impact on the application of the Convention.***

Finally, the Committee wishes to draw the Government's attention to the General Observation of 2009 on wages in which reference was made to the Global Jobs Pact, adopted by the International Labour Conference in June 2009 in response to the global economic crisis, that places particular emphasis on the need to strengthen respect for international labour standards and expressly identifies ILO instruments on wages and labour conditions on public contracts as being relevant in order to prevent a downward spiral in labour conditions and build recovery (paragraph 14). The Global Jobs Pact further suggests that governments as employers and procurers should respect and promote negotiated wage rates (paragraph 12), thus recognizing Convention No. 94 as one of the ILO instruments in the crisis that can help ensure that investments financed by public stimulus packages generate jobs with decent pay and working conditions.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Niger

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

*Article 12(1) of the Convention. Payment of wages at regular intervals.* The Committee notes the Government's indication that section 206 of Decree No. 67-126/MFP/T of 1967, which exempts all agricultural, industrial and commercial undertakings from the obligation to pay at regular intervals not exceeding 15 days the wages of workers employed on a daily or weekly basis, is no longer applicable by virtue of section 343 of the Labour Code of 1996 which repeals all regulatory provisions that are not in harmony with the provisions of the Code. The Government refers to section 160 of the Labour Code which prescribes that wages have to be paid at regular intervals not exceeding 15 days in the case of workers employed by the day or week and not less often than once a month in the case of employed persons whose remuneration is calculated on a bi-monthly or monthly basis. The Government adds that the draft decree on regulations implementing the Labour Code reproduces textually the provisions of the Convention. ***The Committee notes the Government's explanations and requests the Government to transmit a copy of the new regulations implementing the Labour Code as soon as it has been adopted.***

With regard to the problem of wage arrears, the Committee notes the Government's statement that, since 1999, the wages of public sector workers have been paid regularly and all previous difficulties have been resolved following the establishment of the Committee for the Settlement of the Internal State Deficit (CADIE). The Committee understands that the committee responsible for the settlement of wage arrears has reportedly announced the completion of its mission in July 2008 after having paid a total of 6 billion CFA francs (approximately US\$13 million) of wage arrears to public employees. ***The Committee would appreciate if the Government would clarify whether any difficulties remain regarding the payment of wages on time and in full in either the public or private sector, or whether any measures have been taken or planned to prevent similar situations in the future.***

The Committee is raising other points in a request addressed directly to the Government.

## Philippines

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1953)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee has been commenting for numerous years on the Government's persistent failure to adopt implementing legislation which would give effect to the basic requirement of the Convention, that is, the insertion of labour clauses in public contracts to ensure that the workers engaged in the execution of public procurement contracts (whether for works, goods or services) enjoy wages and other working conditions not less favourable than those fixed by collective agreements, arbitration awards or national laws or regulations for work of the same character in the same area. The Committee notes with ***regret*** that in its last report the Government does not provide any new information nor does it appear prepared to take any measures in order to bring its public procurement legislation into line with the letter and the spirit of the Convention. Under the circumstances, the Committee is bound to reiterate that the mere fact that the Labour Code and its Omnibus Rules Implementing the Code apply to workers employed in the public contracts is not sufficient to meet the level of protection required by *Article 2* of the Convention. As regards other legal instruments to which the Government has been referring in its reports, these mostly seek to regulate the bidding and selection process in public procurement, but have no direct bearing on the matters dealt with by the Convention. Finally, Republic Act No. 6685, which seeks to promote the employment of local manpower, does not satisfy the requirements of the Convention either. The Committee recalls, in this

respect, that, although the Convention requires the insertion of labour clauses covering wages, hours of work and other working conditions in all public contracts to which it applies, it does not preclude the application of other social criteria at either the pre-selection or the post-award stage of the tendering process, for instance, affirmative action measures with a view to promoting the employment of women or vulnerable groups or pursuing broader social policy objectives such as the promotion of employment for long-term unemployed, young persons, disabled or migrant workers, etc. The requirement in public contracts that such additional criteria be satisfied does not relieve the Government of its duty to include clauses ensuring to the workers the conditions prescribed by the Convention. ***The Committee therefore once again urges the Government to adopt all necessary measures without further delay in order to give full effect to the Convention.*** To this effect, the Government may draw upon the technical assistance of the Office and may also make use of the Committee's General Survey of 2008 on labour clauses in public contracts and of the Office's *Practical Guide*, copies of which have previously been transmitted to the Government.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Rwanda

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the adoption of Act No. 13/2009 of 27 May 2009 issuing labour regulations. It also notes that, according to the Government's report, sections 42–46 of this Act establish the labour clauses required by the Convention. However, these provisions regulate subcontracting, in which the head of an industrial or commercial enterprise assigns the execution of work or services to a contractor who in turn recruits the necessary workforce, and do not regulate contracts concluded with a public authority. The Committee notes with **regret** that, despite the comments which it has been making for many years, the recent General Survey and the Practical Guide – copies of which were sent to the Government – the Government still does not appear to fully understand the actual concept of public contracts which is the subject of the Convention. The Committee is therefore bound to repeat that a public contract pursuant to *Article 1(1)* of the Convention is a contract: (i) concluded by a public authority; (ii) involving the expenditure of funds by a public authority and the employment of workers by the other party to the contract; and (iii) relating to the execution of public works, the manufacture of materials or the provision of services. It is therefore clear that subcontracting in the form of the specific labour contract governed by the provisions of Chapter II, Title II, of the new Labour Code bears little relevance to public contracts and even less to the labour clauses which such contracts ought to contain.

Moreover, with regard to the 2007 Public Procurement Act, the Committee recalls that the mere fact that the general legislation applies to workers responsible for the execution of public contracts, as laid down by section 96 of this Act, is not sufficient to ensure the observance of the provisions of the Convention. The Convention seeks to ensure that public contracts are executed under conditions of labour which are not less favourable than those established by collective agreement, arbitration award or national laws or regulations for work of the same character in the trade or industry concerned in the region where the work is carried out. This in practice means the most advantageous labour conditions for the workers concerned, including pay rates, overtime pay, and other working conditions, such as limits on hours of work and paid leave entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors are to be reflected in a standard contractual clause which has to be effectively enforced, notably through a system of specific penalties. Moreover, the Committee recalls that the Convention does not only apply to construction contracts but also to contracts for supplies and services. ***In the light of the above, the Committee urges the Government to take all necessary steps without delay to bring national law and practice into conformity with the Convention, and requests it to keep the Office informed of any developments on these matters.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Sierra Leone

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 16 of the Convention. Full information on legislative amendments.* ***While recalling that the Government has been referring for the last ten years to the imminent adoption of new labour legislation and also recalling that draft amendments had been prepared with the assistance of the Office more than 20 years ago in order to bring the national legislation into conformity with the requirements of the Convention, the Committee urges the Government to take all the necessary steps without further delay to enact the new law and reminds the Government of the availability of further ILO technical assistance in this regard.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Singapore

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1965)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee has been commenting on the Government's persistent failure to give effect to the provisions of the Convention in either law or practice. The Committee has also been requesting clarification as to whether the Executive Resolution of 10 June 1952 providing for the inclusion of fair wages clauses in government contracts, which previously gave effect to the provisions of the Convention, is still in force. In its last report, the Government indicates that it is currently reviewing the requirements of the Convention and that the Committee's concerns are duly noted. In addition, the Government refers to the "Tripartite Advisory on Responsible Outsourcing Practices" which was adopted in 2008 by the tripartite committee on work-related benefits for low-wage workers and which seeks to ensure compliance with national employment laws by end-user companies when they outsource their business functions and buy services from third-party contractors. The Committee is bound to observe, in this connection, that this initiative bears little relevance to the Convention as it does not refer to public procurement contracts awarded through competitive bidding.

To help better understand the requirements of the Convention, the Committee wishes to refer to paragraphs 40 and 41 of its General Survey of 2008 on labour clauses in public contracts in which it explained that the essential purpose of the Convention is to ensure that the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as those normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts. The intention is that labour costs are removed from competition between bidders and also that local standards higher than those of general application should be applied, where they exist. Accordingly, clauses within public contracts that merely restate the applicability and binding nature of national employment or labour laws – such as for instance the clause included in the Public Sector Standard Conditions of Contract (PSSCOC) formulated by the Building and Construction Authority – are not sufficient to meet the requirements of the Convention.

Along the same line of thought, in paragraphs 44 and 103 of the General Survey, the Committee observed that conditions not less favourable than the three alternatives offered by the Convention (i.e. collective agreement, arbitration award or national laws or regulations) in practice, in most instances, imply the best conditions of the three. In fact, the type of labour clauses prescribed by *Article 2* of the Convention seek to ensure that the contractor applies the most advantageous pay rates, including overtime pay, and other working conditions, such as limits on hours of work and paid leave entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors, are to be reflected in a standard contractual clause which has to be effectively enforced notably through a system of specific sanctions. *In light of the preceding observations, the Committee hopes that the Government will take the necessary steps without further delay in order to effectively implement the Convention and asks it to keep the Office informed of any progress made in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Uganda

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1963)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1–4 of the Convention. Minimum wage fixing machinery.* *The Committee trusts that the Government will supply detailed information in its next report on the application of all the provisions of the Convention in the light of the Employment Act, 2006. The Committee also requests the Government to send available data concerning changes in the minimum wage and the rate of inflation, and also the average wage by branch of activity and occupation.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Ukraine

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

*Article 12(1) of the Convention. Regular payment of wages.* The Committee recalls that the wage arrears situation in Ukraine was again examined by the Conference Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010). In its conclusions, the Conference Committee expressed deep concern about the worsening wage crisis and requested the Government to provide updated information for the present session of the Committee of Experts concerning: (i) concrete measures to improve the application of the Convention in practice and the results achieved, including statistical information on the wage arrears situation; (ii) the activities of the labour inspection services or other monitoring bodies with regard to wage protection; (iii) any developments concerning the adoption of the law on the protection of workers' wage claims in the event of the employer's insolvency; and (iv) the working conditions, including pay conditions, prevailing in the mining sector.

*The wage arrears situation.* The Committee notes that according to the State Statistics Committee of Ukraine, the total amount of wage arrears as of 1 July 2010 stood at 1.79 billion Hryvna (UAH) (approximately 166.7 million euros).

By sectors of economic activity, the industrial sector represents 52.8 per cent of the total amount of wage arrears, construction represents 15.8 per cent and transport and communication 8.5 per cent. As regards the structure of the wage debt, nearly 70 per cent from the total amount belongs to economically active enterprises and 30 per cent to bankrupt or inactive enterprises. The Committee also notes that based on figures presented at the national tripartite Conference on “Recovering from the crisis: Implementing the Global Jobs Pact in Ukraine” held in Kiev in May 2010, wage arrears increased 2.5 times in 2008 and 2009, and the situation apparently continues to worsen.

The Government indicates that the situation is constantly scrutinized by interim commissions which have been created within executive and local municipal bodies to deal with the repayment of wage arrears. Since the beginning of 2010, these commissions held 5,185 sessions during which 16,643 heads of enterprises were warned about the disciplinary liabilities, 94 contracts were terminated and 3,797 other measures were taken. The Government further indicates that the results of these activities are frequently discussed in targeted meetings of the Cabinet of Ministers, often with the participation of the social partners. Moreover, the Government indicates that on 11 August 2010, the Ministry of Labour drafted and approved a decree on a plan of urgent measures for the repayment of wage arrears. ***The Committee asks the Government to describe in detail the urgent measures envisaged in the Decree of 11 August 2010 and to provide concrete information on its practical implementation. The Committee would appreciate receiving a copy of that Decree. More generally, the Committee asks the Government to keep the Office informed of the evolution of the situation and to report on any new measures or initiatives aimed at resolving the wage crisis in the country.***

*Labour inspection activities.* The Committee notes the Government’s indications concerning the activities of the State Department for the supervision of observance of the labour legislation (*Gosnadzortuda*) in the field of wage protection. According to the Government’s report, *Gosnadzortuda* controls the observance of the implementation of Presidential Decree No. 292 of 2001 on urgent measures aimed at accelerating the repayment of wage arrears and of Presidential Decree No. 576 of 2004 on urgent measures for completing the settlement of wage arrears. Since the beginning of 2010, *Gosnadzortuda* and its regional bodies carried out 5,831 inspections in 4,598 indebted enterprises, and drew up 3,947 reports of administrative offences. Overall, some 6,095 officials of indebted enterprises were found administratively liable for non-payment of wages and a total amount of UAH2.4 million (approximately 225,000 euros) of punitive sanctions was imposed by courts and labour inspectors. With specific reference to the situation in the Lugansk region and the state enterprise “Luganskugol”, the Government indicates that in 2009–10, this enterprise and its separate subdivisions were inspected on 36 occasions which revealed numerous violations of the labour legislation, including non-observance of applicable minimum wage levels. ***The Committee asks the Government to continue supplying up-to-date statistics on labour inspection results and all other activities aimed at ensuring compliance with national laws and regulations on wage protection.***

*Draft legislation on workers’ protection in insolvency – Pay conditions in the mining sector.* The Committee notes that the Government’s report does not contain any information concerning the process of adoption of new legislation on the protection of workers’ wage claims in the event of the employer’s insolvency, to which reference was made by a Government representative at the Conference Committee discussion of June 2010. Similarly, the Government’s report does not elaborate on the working and pay conditions in the coal industry which experiences considerable difficulties and is undergoing restructuring. ***Referring to the conclusions of the Conference Committee on the Application of Standards, the Committee again asks the Government to: (i) indicate any further developments concerning the preparation of new legislation aimed at modernizing existing legislation on the protection of workers’ claims in the event of insolvency proceedings; and (ii) provide an updated account of the employment situation in the mining sector, particularly as regards the prevailing working conditions and the regular payment of wages.***

*The situation in the Lugansk region and the Nikanor-Nova mine.* The Committee notes the comments of the Independent Trade Union of Miners (ITUM) of the Nikanor-Nova coalmine, dated 27 July, 22 October and 1 November 2010, concerning ongoing wage problems in the Nikanor-Nova coalmine. According to ITUM, there is deliberate and systematic non-compliance with labour legislation in force and applicable minimum wage standards and, as a result, workers are deprived of the possibility to earn a decent living. In addition, ITUM considers that as of July 2010, the minimum monthly wage for workers engaged in underground work should be UAH1,129 (instead of UAH888 currently paid) and UAH1,042 for all other workers. In its reply dated 11 October 2010, as well as in its reply to earlier comments made by the Confederation of Free Trade Unions of the Lugansk Region (KSPLO) on the same issue, the Government indicates that the Lugansk regional state inspectorate continuously monitors coal mining enterprises and has frequently detected violations of the labour legislation, including payment of wages at a rate below the applicable minimum wage. The Government further indicates that all inspections are carried out with the direct involvement of KSPLO representatives and that managers who permitted such violations have been charged with administrative offences.

Finally, the Committee notes that the Government has requested the Office to undertake a technical assistance mission with a view to better understanding the current wage debt situation. The Committee understands that this mission is now planned for early 2011 to be followed by a national tripartite event on the timely and full payment of wages. It hopes that the mission will give an opportunity to review and evaluate the wage arrears situation and trusts that the Office will seek to address pending issues and hold separate meetings with government authorities, institutions or services, employers’ and workers’ organizations – including the KSPLO – and other associations interested in the matters in question.

## **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2006)**

*Articles 2 and 3 of the Convention. Binding force of minimum wage and periodic review of minimum wages.* The Committee notes the comments of the Independent Trade Union of Miners (ITUM) of the Nikanor-Nova coal mine dated 27 July 2010 concerning the application of the Convention. According to ITUM, the state enterprise “Luganskugol” that manages the Nikanor-Nova coal mine has set the minimum wage rate as from 1 July 2010 at a level that is lower than the rate provided for under section 5.7 of the applicable collective agreement, i.e. 630 Ukrainian hryvnas (UAH) instead of UAH1,129 for the workers engaged in underground work. Further, ITUM indicates that this is a situation that affects more than 200,000 workers; it should therefore be properly investigated and those responsible should be brought to justice while measures should be taken to prevent similar practices.

In addition, the Committee notes the comments of the National Forum of Trade Unions of Ukraine (NFPU) received on 30 April 2010 concerning the application of the Convention. The NFPU expresses concern about several provisions of the new draft Labour Code, which is scheduled for adoption by the National Parliament very shortly, including the possibility for the minimum wage to be determined centrally by the Government. In the view of the NFPU, this does not reflect modern labour market conditions; the active involvement of employers’ and workers’ organizations would be the only efficient way to ensure adequate wage rates while it would also be essential to provide for compensation of unpaid or underpaid sums through judicial means. **The Committee requests the Government to submit any comments it may wish to make in response to the observations of ITUM and NFPU.**

## **United Kingdom**

### **British Virgin Islands**

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes with *regret* that the Government is still unable to report substantive progress concerning the adoption of legislation giving effect to the provisions of the Convention. While noting the Government’s indication that the draft bill to amend the Labour Code Ordinance, Cap. 293 is under review and should be resubmitted to the Legislative Council, the Committee recalls that the Government has been stating for the last 28 years that the enactment of appropriate legislation for the insertion of labour clauses in public contracts is under consideration.

The Committee wishes to point out that the principal obligation for a government arising out of the ratification of an international labour Convention is to take such action as may be necessary to make effective the provisions of the ratified Convention, and to continue to ensure its application for as long as it does not decide to denounce it. **The Committee therefore strongly suggests that the new legislation designed to implement the Convention should be adopted without delay and asks the Government to keep the Office informed of any developments in this respect.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## **Bolivarian Republic of Venezuela**

#### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1944)**

The Committee notes the adoption of Decree No. 6.660 of 30 March 2009, raising the level of the minimum wage as from 1 September 2009 to 959.08 bolívares (*bolívares fuertes*) (approximately US\$447), amounting to an increase of 20 per cent, for all workers in urban and rural areas, the private and public sectors, as well as domestic workers, concierges and apprentices. The Committee notes this information with particular *interest*, especially in light of the Global Jobs Pact, adopted by the International Labour Conference in June 2009 to address the impact of the international financial and economic crisis. Indeed, the Global Jobs Pact calls on governments to consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability (paragraph 23). It also emphasizes that, in order to avoid deflationary wage spirals, minimum wages should be regularly reviewed and adapted (paragraph 12).

*Article 3(2) of the Convention. Consultations with employers’ and workers’ organizations.* The Committee notes the Government’s reply to the observations made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the Confederation of Workers of Venezuela (CTV). The Committee also takes note of new comments made by FEDECAMARAS and the Independent Trade Union Alliance (ASI), dated 31 August 2010 as well as the Government’s reply dated 19 November 2010. These organizations have indicated, in the same way as the International Organisation of Employers (IOE) in 2007, that the Government was not holding the consultations envisaged by law for the determination of the national minimum wage, namely convening the National Tripartite Commission responsible for making concerted recommendations on the adjustment of the minimum wage, in accordance with section 167 of the Basic Labour Act. The organizations emphasized that they were not able to give their

views on the subject as the invitations to the consultations were sent out very late or even after the date of publication of the Decree to increase the minimum wage.

In its replies, the Government indicates that it holds consultations with the social partners concerned at the national, regional and even local levels concerning any comments that they may wish to make and the measures adopted by the Government in relation to the determination of minimum wages. It adds that section 172 of the Basic Labour Act authorizes the executive authorities to determine the amount of the minimum wage, after seeking the views of the most representative employers' and workers' organizations and other national bodies, so that they can make known their opinion on the determination of the national minimum wage, which demonstrates the Government's will to establish, maintain and consolidate fair, inclusive and beneficial social dialogue, without exclusive rights or discrimination of any type based on former positions related to power or favouritism.

The Committee wishes to emphasize once again the fundamental importance of the consultation procedure under the Convention and recalls that, while each government may determine by national law or regulations the manner of consultation, such consultations must nevertheless be held prior to the adoption of decisions and they have to be effective, that is to say that they need to allow employers' and workers' organizations to be able to give their views in a useful manner on the matters under consultation, in this case minimum wages. The Committee also recalls, as indicated in paragraph 241 of its 1992 General Survey on minimum wages, that the participation of employers and workers, their organizations and representatives, must be direct, including the possibility that the parties concerned form part of the relevant bodies and that their participation is effective, that is to say that the opinions reached by the parties concerned should be duly taken into consideration, and that the participation should take place on an equal footing. ***While noting the efforts made by the Government to review minimum wage rates regularly, with a view to ensuring workers a satisfactory standard of living, the Committee requests the Government to provide detailed information on the exact procedures for consultation with employers' and workers' organizations for the fixing of the minimum wage and on the functioning of the National Tripartite Commission responsible for making recommendations on the adjustment of the minimum wage.***

Finally, the Committee once again draws the Government's attention to the decision by the ILO Governing Body to classify Convention No. 26 among those instruments which may no longer be fully up to date but which nevertheless remain relevant in certain respects (document GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). The Committee therefore suggests that the Government might consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which marks a certain progress in relation to older instruments on minimum wage fixing, for instance in terms of its broader scope of application, the requirement for a comprehensive minimum wage system and the obligation to determine criteria for fixing and adjusting minimum wage rates. ***The Committee requests the Government to keep the Office informed of any decision adopted or envisaged in this respect.***

## Zambia

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1979)**

*Article 12(1) of the Convention. Regular payment of wages.* The Committee notes the Government's indication that it continues its effort to reduce wage arrears owed to local council employees, and that the total wage debt owed to the Mufumbwe District Council workers now stands at 2.6 billion Zambian kwacha (ZMK) (approximately US\$560,000). The Government indicates that wage arrears are due to the fact that local councils have had their revenue sources reduced over the years. It also indicates that grants are given to local authorities to help them reduce and eventually eliminate all salary arrears. ***While noting these explanations, the Committee asks the Government to collect and transmit comprehensive information concerning the overall situation of wage arrears of local council employees in all nine provinces of the country. It also asks the Government to describe in detail any measures, other than giving restructuring grants, intended to resolve the ongoing wage crisis. The Committee would be particularly interested in receiving information on any collectively agreed measures or initiatives, and more generally, on the role of social dialogue in tackling the persistent difficulties in the regular payment of wages.***

In this respect, the Committee wishes to refer to its 2009 general observation in which reference was made to the Global Jobs Pact, adopted by the International Labour Conference in June 2009 in response to the global economic crisis, that places particular emphasis on the need to strengthen respect for international labour standards and expressly identifies wage-related ILO instruments as being relevant in order to prevent a downward spiral in labour conditions and build recovery (paragraph 14). In this connection, the Committee wishes to emphasize the importance of Convention No. 95, which seeks to prevent wage arrears that not only deprive workers of cash and therefore lower consumption, but also imply poor tax revenues and reduced public spending, thus leading to a vicious circle that affects the entire economic and social tissue of the society. In view of the complexity of these issues, progress may only be made through cooperation with social partners while reforms and compromise solutions in a crisis environment call for constant social dialogue. Moreover, drastic measures need strict monitoring and enhanced enforcement, which in turn implies reinforced labour inspection services and a system of truly dissuasive and effective sanctions.



## Zimbabwe

### **Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)** (ratification: 1993)

*Articles 1 and 3 of the Convention. Minimum wage fixing machinery.* The Committee recalls the observations made by the Zimbabwe Congress of Trade Unions (ZCTU), according to which wage negotiations within the National Employment Council for the Agricultural Industry (NEC) are problematic because of the non-cooperative attitude of the employers. The ZCTU denounced the exceptionally low wages paid in the agricultural sector which had forced farm workers to leave employment massively and join the informal sector, while migration to neighbouring countries continued unabated. It also made reference to the wage dispute settlement procedures which were slow and tedious and regretted that, despite having the lowest pay rates, some farm workers went for months without a salary.

In its reply, the Government indicates that the NEC continues to engage employers' and workers' organizations in the review of minimum wages in the agricultural sector and that the question of whether minimum wages are in keeping with the rate of inflation, or indeed the frequency of reviews, remains to be answered by the respective parties. **The Committee therefore requests the Government to provide additional information on any developments concerning minimum wage policy in the current economic context and to indicate any progress made with regard to the readjustment of the minimum wage for the agricultural sector.**

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 26** (Bahamas, Dominica, Lesotho, Sierra Leone, Solomon Islands, South Africa, Togo, United Kingdom: British Virgin Islands); **Convention No. 94** (Nigeria, Sierra Leone, Solomon Islands, Uganda); **Convention No. 95** (Dominica, France: New Caledonia, Guinea, Kyrgyzstan, Niger, Solomon Islands, Uganda); **Convention No. 131** (Albania, Central African Republic, The former Yugoslav Republic of Macedonia); **Convention No. 173** (Armenia).

## Working time

### Costa Rica

#### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1982)**

*Article 2 of the Convention. Daily and weekly hours of work.* The Committee notes that the information sent by the Government to the effect that Bill No. 16030 has been set aside by the Human Rights Commission of the Legislative Assembly and will not be examined by Parliament. It understands, however, that the Ministry of Labour had adopted in 1998 Directive DM-0095-98 authorizing the introduction of a compressed week system (*jornada acumulada* or 4x3) similar to the one provided for in the abovementioned Bill and which consisted in alternating four workdays of 12 hours each and three rest days. ***The Committee requests the Government to provide more detailed information in this regard and to indicate in particular whether this ministerial Directive is in effect.***

In addition, the Committee refers to the comments it has been formulating for a number of years concerning section 136 of the Labour Code which permits to extend to ten hours the daily limit of hours of work for those works which are not unhealthy or hazardous by nature, or to nine hours when working hours are not equally distributed during the week. ***The Committee requests the Government to take the necessary measures without further delay in order to bring its legislation into conformity with the Convention on this point.***

Moreover, the Committee notes that a bill on employment protection in times of crisis has been brought before the Legislative Assembly. It notes in particular that section 8 of this bill provides for the possibility, among a range of exceptional measures which would be authorized in times of crisis, for the employer to replace a normal system of working hours with another system permitted by the labour legislation, provided that day or mixed work is not replaced by night work. ***The Committee requests the Government to provide further information on the progress made with regard to the adoption of this bill and on its potential impact on the limits applicable to hours of work.***

*Article 6. Overtime.* The Committee recalls its previous comments concerning section 139 of the Labour Code which provides that time during which the worker rectifies his/her own errors may not be considered as overtime hours even though no such exception is provided under *Article 6* of the Convention. ***The Committee once again requests the Government to take the necessary measures to ensure that any work performed outside of the normal hours of work are considered overtime with all the consequences this implies.*** In addition, the Committee recalls its previous comments concerning section 140 of the Labour Code which provides that the daily limit of hours of work, including overtime, cannot exceed 12 hours, that is to say, four hours beyond the normal daily limit. It refers, in this connection, to its 2005 General Survey on hours of work (paragraph 144) in which it noted that “even though the establishment of specific limits to the total number of additional hours is left to the competent authorities by both Conventions, this does not mean that such authorities have unlimited discretion in this regard. Taking into account the spirit of the Conventions and in the light of the preparatory work, it is appropriate to conclude that such limits must be reasonable and they must be prescribed in line with the general goal of the instrument, namely to establish the eight-hour day and the 48-hour week as a legal standard of hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life”. In this respect, the possibility to require workers to perform four additional hours per day, without any other limit, weekly, monthly or annual, manifestly does not appear to be in line with a reasonable limit of additional hours. ***The Committee requests the Government to determine the limits of permissible additional hours in a manner that ensures that such limits are reasonable within the meaning of this Convention.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

### Czech Republic

#### **Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1996)**

*Articles 11 and 12 of the Convention. Compensation in lieu of annual holiday with pay.* With reference to its previous comments concerning the need to amend section 110(b) of the Labour Code of 1965, the Committee notes with *satisfaction* that, under section 222(2) of the new Labour Code No. 262/2006 Coll., cash compensation in lieu of annual leave is permitted only in the case of termination of employment, as required by these Articles of the Convention.

The Committee is raising other points in a request addressed directly to the Government.

### Equatorial Guinea

#### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1985)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 6 of the Convention. Permanent and temporary exceptions.* In reply to the comments the Committee has been making since 1994, the Government indicated that the regulations applying section 49 of Act No. 2/1990 were still being examined with the parties concerned, particularly in the oil sector. ***The Committee asks the Government to provide information***

*on the progress made in this matter. The Government is also invited to communicate information on the organizations of employers and workers consulted in the preparation of the abovementioned regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the manner in which effect is given, in practice, to the provisions of section 49 of Act No. 2/1990 on overtime.*

The Committee is raising other matters in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1985)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 7 of the Convention. Permanent and temporary exceptions.* In reply to comments that the Committee has been making since 1994, the Government indicated that the regulations to implement section 49 of Act No. 2/1990 are still being examined with the parties concerned, particularly in the oil sector. *It requests the Government to report on progress in this process. The Government is also asked to provide information on the employers' and workers' organizations consulted in the preparation of these regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the way in which the provisions of section 49 of Act No. 2/1990 on overtime are applied in practice.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **France**

### **Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1971)**

*Article 7 of the Convention. Permanent exemptions – Sunday work.* The Committee notes the detailed information provided by the Government in reply to its previous comments and the numerous attachments to its report, as well as the comments made by the General Confederation of Labour–Force Ouvrière (CGT–FO), received on 26 August 2010, and the Government's reply to these comments, received on 15 November 2010. In its comments, the CGT–FO recalls the criticisms that it made in 2009 concerning Act No. 2008-3 of 3 January 2008 establishing an exemption to the Sunday rest rule for retail furniture stores, and Act No. 2009-974 of 10 August 2009, and its view that these extensions of exemptions from the principle of Sunday rest are opening the way to the generalization of Sunday work, as the many exceptions now granted no longer have an objective and imperative basis from the viewpoint of the general interest. The CGT–FO also emphasizes the dangers arising from this generalization of Sunday work in terms primarily of the family and social life of workers, but also the frequently precarious nature of jobs involving Sunday work.

#### **I. The viewpoint of the workers concerned with regard to Sunday work**

In its previous observation, the Committee requested the Government and the social partners to provide further information on a number of points. It expressed the wish to be provided with the results of any opinion surveys carried out among the workers concerned. The Committee notes that the Government attached to its report the findings of several surveys published in 2008 and 2009, and a table recapitulating the results. It notes that, according to the findings of the CSA poll of October 2008 entitled "The opinion of the French on Sunday work", 50 per cent of the workers questioned indicated that they were ready to work on Sunday if they were paid double, while there were 49 per cent of negative opinions. The Committee also notes the findings of the survey "Sunday work: What do those who work on Sunday think?", published in December 2008, according to which, in the view of 82 per cent of the employees questioned in the context of the study, the fact of working on Sunday primarily arises from a constraint related to the nature of their work or job. Moreover, the employees questioned indicated that a majority were personally in favour of greater legal flexibility so that more shops could open on Sunday (55 per cent) and the Bill to authorize Sunday work on a voluntary basis (66 per cent). In its comments, the CGT–FO questions the relevance of taking into account opinion surveys to assess the conformity of a legal measure with an ILO Convention. The Committee wishes to emphasize in this respect that this information is not intended to assess the conformity of the national legislation with the Convention as such, but rather to have available fuller information on the overall context surrounding the 2009 Act. The CGT–FO also recalls the difficulties involved in drawing reliable findings from opinion polls and refers to a study carried out in 2008 by the *Centre de recherche pour l'étude et l'observation des conditions de vie* (Crédoc), which was not mentioned by the Government in its report, according to which, although 52 per cent of those surveyed were in favour of the Sunday opening of shops, 61 per cent were opposed to working on a Sunday. The Committee observes that the polls published on the issue of Sunday work do not offer definitive conclusions on the views of the workers concerned. Indeed, there appears to be a dichotomy between the replies given by workers concerned with Sunday work and those of potential clients on a Sunday.

#### **II. The voluntary nature of Sunday work**

The Committee also requested information on the measures adopted to ensure the voluntary nature of Sunday work and the compensatory measures offered to the workers concerned. In this respect, it notes the Government's indications that the reality of the voluntary nature of the work is ensured by several requirements and guarantees, both individual and collective, set out in the applicable legislative provisions. The Committee also notes that, according to the Government's

report, no guarantees of this type existed in the Labour Code before the adoption of the Act of 10 August 2009. The Committee further notes the Government's indications that, in tourist towns and areas, the guarantees and compensatory measures available for employed persons are established by the provisions of branch and/or enterprise agreements. It notes that section 2 of Act No. 2009-974 requires the opening of negotiations with a view to the conclusion of an agreement on the measures to compensate Sunday work in branches that include shops and retail services, and in such shops or services where an agreement is not already in force. The Committee notes the information provided by the Government concerning the provisions respecting compensatory measures for Sunday work contained in the collective agreements concluded in sectors in which employees traditionally work on Sundays, and the conclusion of enterprise agreements which harmonized the system of compensatory measures applicable to persons employed by the enterprise, irrespective of the location of the shop or the type of exemption (tourist town or area, "areas of exceptional consumption" (PUCE), exemptions accorded by the Prefect), with most agreements providing for the doubling of remuneration and the granting of compensatory rest. Finally, the Committee notes the conclusion of the inter-branch agreement of 27 November 2009 on shops opening on Sunday in the *Plan de campagne* area, which is the largest commercial zone in France and concerning which there was a lively polemic before the adoption of the Act of 2009, as the retail stores were open there despite the legal prohibition that was then applicable. The Committee notes that this agreement envisages two days of weekly rest, one of which is determined in agreement with the employed person, but which may nevertheless be worked, and a wage supplement equivalent to a minimum of 100 per cent of the minimum interoccupational growth wage (SMIC).

The Committee notes that the CGT-FO, in its comments, emphasizes that the Labour Code, as amended by Act No. 2009-974, envisages a difference of treatment that is difficult to justify for workers employed in retail stores according to whether they are employed in a tourist town or in a PUCE, as the voluntary nature of Sunday work is only required in the latter case. The CGT-FO also considers that it is difficult to ensure the really voluntary nature of Sunday work, particularly during a period of high unemployment and in view of the economic dependence of employed persons on their employer. With regard to the compensatory measures for employed persons who do not benefit from Sunday rest, the CGT-FO considers that, also in this respect, the Act introduces inequality of treatment between employed persons. While persons employed in retail stores located in a PUCE benefit from remuneration that is at least double their normal pay, and equivalent compensatory time off, the same does not apply to those engaged in an establishment located in a tourist area. The CGT-FO accordingly asserts that, in view of these differences, the actors concerned are tempted to request classification of their areas as tourist areas, so that retail stores can benefit from the exemption for Sunday work with a minimum of constraints. It observes that all employed persons who do not benefit from these minimum compensatory measures set out in law can only avail themselves of the provisions of the various sectoral collective agreements or enterprise agreements, which is also a major source of inequality of treatment between employed persons. The CGT-FO also affirms that an enterprise agreement may derogate from the provisions of a branch collective agreement, even where it is less favourable to the employed person. Finally, according to the CGT-FO, since the entry into force of the Act of 10 August 2009, most of the measures taken in enterprises establishing compensatory measures for work on Sunday in reality arise out of unilateral decisions by the employer, validated by a referendum of the personnel, which does not offer sufficient guarantees of dialogue and avoids the traditional channels of collective bargaining.

In its reply to the CGT-FO's comments, the Government emphasizes that the principle of the voluntary nature of the work applies to all employed persons working on Sunday under individual and temporary exemptions granted by Prefects. It adds that the principle of the voluntary nature of such work was not extended to cases of exemptions from the right to Sunday rest in so far as, in such cases, Sunday work is a structural component of the jobs involved, known at the time of recruitment. The Government also recalls the guarantees afforded by the law to ensure the voluntary nature of work by employed persons and observes that the labour inspection services have not up to now reported difficulties in the implementation of the legal requirements in this respect. With regard to the compensatory measures, the Government asserts in its reply that the Act of 10 August 2009 extended the scope of the exemptions for which compensatory measures for Sunday work are compulsory. These consist not only of exemptions in PUCes, but also exemptions under section L.3132-20 of the Labour Code. In both of these cases, the employed persons benefit from either compensatory measures determined by collective agreement, or by law (the doubling of remuneration and compensatory rest) in the absence of an agreement.

### **III. Current situation in tourist areas and PUCes**

In its observation in 2009, the Committee also requested information on any developments concerning the definition of tourist areas and PUCes. It notes that, according to the Government's report, 570 territorial communities are registered as areas of touristic interest and 36 of them include one or more areas of exceptional consumption or permanent cultural activity, with the city of Paris having seven such areas. It also notes that five of these towns and areas have been registered as such since the entry into force of Act No. 2009-974, and that only around ten applications are under examination. The Committee notes that, according to the Directorate of Research, Studies and Statistics (DARES), around 50,000 retail stores with approximately 250,000 employed persons would potentially be concerned by Sunday work in tourist towns and areas. It also notes that, according to the Government's report, 15 PUCes were created in June 2010 following the adoption of the Act of 10 August 2009, with the number of stores concerned being estimated at 500 and the number of employed persons potentially concerned being evaluated at between 4,000 and 5,000.

In its comments, the CGT-FO indicates that the profiles of tourist areas are fairly difficult to understand, which is unacceptable as it leaves the door open for unjustified applications for classification as tourist areas. It considers that the definition of PUCes also raises problems, as the elements which characterize a PUCe bear no relation to the requirement to meet primary necessities, but relate more closely to the achievement of profit objectives. Furthermore, the criteria set out in law, relating to customary Sunday consumption and the volume of customers, would appear, according to the CGT-FO, to respond to a desire to legalize practices that were previously illegal. Finally, it considers that, one year after the entry into force of the Act, PUCes are appearing throughout France.

In reply to the CGT-FO's comments, the Government indicates that no significant acceleration in applications for classification as tourist areas has been observed since the adoption of the Act, and that the 11 areas so classified obeyed the strict application of the provisions of the Labour Code. With regard to PUCes, the Government indicates that up to now 24 PUCes have been established, while 13 other applications, which did not fulfil the legal requirements, were refused. The Government adds that the number of employed persons potentially concerned by the exemptions in relation to PUCes is under 15,000 and that the allegation of the generalization of Sunday work is therefore unfounded.

\* \* \*

The Committee takes due note of the voluminous information provided by the Government and the CGT-FO. It recalls the three basic principles around which the Convention is articulated, to which it referred in its previous observation: continuity (a period of weekly rest comprising at least 24 consecutive hours), regularity (weekly rest to be enjoyed in every period of seven days) and uniformity (weekly rest to be granted, wherever possible, simultaneously to all the persons concerned in an establishment and to coincide, wherever possible, with the traditional day of rest). It also recalls that *Article 7* of the Convention only permits the application of special weekly rest schemes where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served or the number of persons employed is such that the normal weekly rest scheme cannot be applied.

While noting that the Labour Code indeed establishes a period of weekly rest of at least 24 consecutive hours, as required by the Convention, and explicitly provides that "in the interest of the employed persons" the weekly rest period shall be granted on Sunday, and while noting that the Act of 10 August 2009 reaffirms in its title the principle of weekly rest, the Committee is bound to note the progressive extension of the exemptions to this principle authorized by the legislation. It accordingly observes that, according to a study published by DARES in October 2009, Sunday work concerned around 6.5 million employed persons, or 28 per cent of them, in 2008 and, of those, 2.8 million (or 12 per cent) habitually worked on Sunday, and that these statistical data are far from being negligible.

In any event, irrespective of the issue of the number of commercial establishments and workers concerned by these new exemptions, what remains to be demonstrated is that it was impossible to apply the normal weekly rest scheme, thereby necessitating recourse to Sunday work. Taking the example of the extension to retail furniture stores of the exemptions authorized by section L.3132-12 of the Labour Code, the Committee notes that this exemption was introduced by Act No. 2008-3 of 3 January 2008 with a view to the development of competition for the benefit of consumers. This wording clearly demonstrates that it is based on economic considerations, related to competition, and the wishes of consumers. Social considerations, namely the impact of the exemption on the workers concerned and their families, do not appear to have been taken into account, or at least not at the same level as economic factors. Moreover, while the opening of furniture stores may correspond to the wishes of consumers, it does not appear to amount to a necessity such that the application of the normal weekly rest scheme is impossible.

The legal measures adopted in favour of tourist areas and PUCes give rise to similar comments from the Committee. Prior to the amendment made by the Act of 10 August 2009, the exemption for tourist areas was limited in time to the tourist period and in scope to retail stores offering the public goods and services intended to facilitate their stay or their relaxation or leisure activities. These conditions, which appeared to be such as to confine the exemption within the limits of its assigned objective, were set aside by the amendment of 10 August 2009. Moreover, the introduction of PUCes openly responds to concerns of an economic nature, which nevertheless reflect the preferences of many consumers. It, however, had the effect of encompassing in the exemption all the stores located within the perimeter of large commercial centres without taking into account their size or activity, thereby going beyond the scope of the special schemes defined by the Convention on the basis of criteria related to the impossibility of complying with the normal scheme that it establishes, by reason of the nature of the work, the nature of the services performed by the establishment, the size of the population to be served or the number of persons employed (*Article 7(1)*).

The Committee clearly understands that, in the context of open competition, exacerbated as it is by the crisis, the member States of the ILO are led to endow labour rules with a certain flexibility to help enterprises cope. It nevertheless observes that, under the terms of the Convention, for an exemption to be made to the general weekly rest scheme, regard must be had to all proper social and economic considerations. ***It therefore requests the Government to continue reviewing, with the social partners, the impact in practice of the measures introduced by Act No. 2008-3 of 3 January 2008 and Act No. 2009-974 of 10 August 2009 having regard for both social and economic considerations. The Committee requests the Government to keep the Office informed of the outcome of this evaluation, and of any initiative that it may take in this respect.***

Furthermore, the Committee is concerned at the information relating to the difference of treatment between persons employed in shops located in tourist areas and those who work (sometimes for the same company) in an establishment located in a PUCE in relation to the guarantees concerning the voluntary nature of Sunday work and the minimum compensatory measures established by law. *It considers it desirable to ensure equivalent protection for persons employed in these two categories of establishments, particularly since the number of businesses benefiting from exemptions in tourist areas has been increased since the entry into force of the Act of 10 August 2009, and it requests the Government to provide fuller information on the measures that it could envisage adopting for this purpose, in consultation with the organizations of employers and workers concerned.* The Committee notes the examples of sectoral collective agreements to which the Government refers in its report, but also notes the CGT-FO's indications that enterprise agreements can derogate from sectoral agreements, even where their provisions are less favourable to the workers. *It requests the Government to provide more detailed information on this point and, if this is indeed the case, to indicate the manner in which the existence of minimum guarantees is ensured for workers engaged on Sunday in terms of the voluntary nature of the work and compensatory measures. Finally, the Committee requests the Government to attach to its next report a copy of the report of the parliamentary committee to follow up the Act of 10 August 2009.*

The Committee is raising other points in a request addressed directly to the Government.

## Georgia

### **Holidays with Pay Convention, 1936 (No. 52) (ratification: 1993)**

*Articles 2 and 6 of the Convention. Right to annual holidays with pay.* The Committee notes the observations made by the Georgian Trade Union Confederation (GTUC) concerning the application of the Convention. The GTUC indicates that, in practice, there are cases in which employees work on the basis of a one-month renewable employment contract, thus never becoming eligible for annual holidays with pay. The GTUC considers that this situation is in practice tantamount to relinquishing the workers' entitlement to annual paid leave and therefore such contracts should be considered null and void. The GTUC also indicates that, as a matter of frequent practice, many employees are dismissed before they take paid leave to which they are entitled, and the legislation makes no provision for the payment of monetary compensation for any unused portion of annual leave upon termination of employment. *Recalling that the GTUC had communicated similar comments in 2008, which the Government has so far failed to address, the Committee requests the Government to transmit any comments it may wish to make in reply to the new observations of the GTUC.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## New Zealand

### **Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1938)**

*Article 2 of the Convention. Right to weekly rest.* The Committee has been commenting on the lack of legislative provisions guaranteeing the workers' right to an uninterrupted weekly rest period comprising at least 24 consecutive hours in every period of seven days based on the principles of regularity, continuity and uniformity. In its reply, the Government indicates that measures to give specific legislative expression to the requirements of this Article of the Convention are not thought to be necessary. The Government explains that while the national legislation does not explicitly regulate weekly rest periods, the Convention is still given effect through a combination of existing legislation, mainly the Health and Safety in Employment Act 1992 which obliges employers to take all practical steps to ensure employees are free from harm, including work-related stress or physical or mental fatigue, while at work; the Employment Relations Act 2000 which requires a written agreement for all employees; and the Minimum Wage Act 1983 which provides that if the maximum number of hours in the week is not more than 40, the employer and the employee must endeavour to fix the daily working hours so that they are not worked on more than five days of the week. In this connection, the Committee notes the observations made by Business New Zealand (BNZ) in support of the Government's position, indicating that New Zealand's legislative framework is clearly protective of employees' health and safety while recognizing at the same time the changes in the nature of work and work practices since the adoption of the Convention, which makes compliance with its rigid requirements not always possible.

While noting these explanations, the Committee is still of the view that in the absence of concrete rules and of standards clearly spelled out in national laws and regulations or in collective agreements, the protection of the workers' right to weekly rest in the manner foreseen by the Convention cannot be attained. The Convention was indeed adopted in 1921, but this fact alone does not render it irrelevant in today's context. The body of international labour standards has not remained irresponsive to the challenges of globalization and the momentous changes occurring in the world of work. It is worth recalling, in this respect, that a comprehensive review of international labour Conventions and of Recommendations was undertaken between 1995 and 2002 by the ILO Governing Body through its tripartite Working Party on Policy regarding the Revision of Standards. Upon completion, 71 Conventions – including both Conventions Nos 14 and 106 on weekly rest – were designated as being up to date and recommended for active promotion. The Committee therefore considers that the object and purpose of the Convention, as well as its normative content, have not lost any of their

relevance and remain as an essential feature of labour legislation as ever before. *The Committee accordingly asks the Government to consider all appropriate action in order to bring national law and practice in closer conformity with the letter and the spirit of the Convention.*

In addition, the Committee notes the comments made by the New Zealand Council of Trade Unions (NZCTU) in which the NZCTU raises concerns about the impact of fatigue due to excessively long hours of work in the sectors of road transport and mining. According to the NZCTU, driver fatigue is primarily a safety concern but it is linked to an apparent lack of adequate rest. As regards the situation in certain mines, the NZCTU denounces practices of seven days working in a row together with shifts that last for 11 or 12 hours each. Finally, the NZCTU draws attention to draft new legislation which seeks to remove the workers' right to a meal and rest break by either transferring it to another time or replacing it by a monetary compensation. *Even though this last point is not directly related to the application of the Convention but illustrates the utmost importance of regular rest periods for the worker's health and well-being, the Committee requests the Government to provide any comments it may wish to make in response to the observations of the NZCTU.*

## Sierra Leone

### **Holidays with Pay (Agriculture) Convention, 1952 (No. 101)** (ratification: 1961)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 8 of the Convention. Right to annual holidays with pay.* The Committee notes the statement in the Government's last report that section 63(6) of the draft Employment Act would provide that any agreement to relinquish the right to minimum annual holiday would be null and void. The Committee hopes that the Act will be adopted in the near future, bringing section 12(a) of Government Notice No. 888, which the Committee has repeatedly highlighted as being in need of amendment, into conformity with the Convention. *It requests the Government to provide a copy of the full text of the revised legislation as soon as it is adopted.*

The Committee also takes this opportunity to recall that, on proposal of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided that Convention No. 101 is outdated and has invited States parties to that Convention to contemplate ratifying the Holidays with Pay Convention (Revised), 1970 (No. 132), which is not deemed to be fully up to date but remains relevant in certain respects (see GB.283/LILS/WP/PRS/1/2, paragraph 12). Acceptance of the obligations of Convention No. 132 in respect of persons employed in agriculture by a State party to Convention No. 101 involves the immediate denunciation of the latter. *The Committee requests the Government to keep the Office informed of any decision it may take in this respect.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 1** (Angola, Czech Republic); **Convention No. 4** (Lao People's Democratic Republic); **Convention No. 14** (Angola, Armenia, Bahamas, Burundi, Costa Rica, Czech Republic, Guinea-Bissau, Islamic Republic of Iran, Ireland, Kyrgyzstan, Solomon Islands); **Convention No. 30** (Equatorial Guinea); **Convention No. 47** (Ukraine); **Convention No. 52** (Burundi, Kuwait, Kyrgyzstan); **Convention No. 89** (Angola, Burundi, Congo, France: French Polynesia, France: New Caledonia, Guinea, Guinea-Bissau, South Africa); **Convention No. 101** (Burundi, Djibouti, United Republic of Tanzania: Tanganyika); **Convention No. 106** (Angola, Costa Rica, Djibouti, France, Guinea-Bissau, Islamic Republic of Iran, Sao Tome and Principe, Ukraine); **Convention No. 132** (Czech Republic, Guinea, Ireland); **Convention No. 171** (Czech Republic); **Convention No. 175** (Guyana).

## Occupational safety and health

### Algeria

#### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1962)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the Government's report. It also notes its indication that white lead has not been used in the manufacture of paint since the adoption of the Order of 4 March 1950. The Committee further notes that, according to the discussions held by the Government with the management of the Association of Paint, Varnish and Adhesive Manufacturers of the National Paint Company and the Paint Company of West Algeria, producers have abandoned the use of this ingredient in the preparation of paint. Furthermore, according to the Government's report, a survey undertaken by the Ministry of Industry confirms that paint manufacturers do not use lead or its compounds.

The Committee notes Decree No. 97-254 of 8 July 1997 determining the conditions and procedures for issuing and withdrawing authorization prior to the manufacture and/or import of consumer products of a toxic nature or presenting a specific risk, as well as the Ministerial Order of 28 December 1997 and its annexes. The Committee notes that item 11 of Annex III specifies that the acceptable dose limit for lead and its compounds is set at 5g/kg for paint.

As indicated by the Government, the texts referred to above apply to the final product and do not make a distinction between the various applications of paint. Indeed, for 40 years, the Committee has been reminding the Government that there are no specific provisions in force giving effect to the Convention. The very serious risks arising from lead compounds are generally recognized and the Committee deplores the fact that the Government has not yet taken the necessary measures to secure the application of the Convention. The Committee is therefore bound to recall the main principles of the Convention: (i) the prohibition of the use of white lead and sulphate of lead in the internal painting of buildings; (ii) the regulation of the use of white lead in artistic painting; (iii) the prohibition of the employment of young men under 18 years of age and all women in any painting work involving the use of white lead; and (iv) the regulation of the use of white lead in painting work for which its use is not prohibited. **Finally, the Committee requests the Government to provide statistics with regard to lead poisoning among working painters, as required by Article 7 of the Convention. The Committee requests the Government to take all the necessary measures without delay to bring the national law and practice into conformity with the terms and objectives of the Convention.**

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

#### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1969)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the brief information provided by the Government in its latest report. It notes the Government's indication that the Committee's comments will be taken into account, in so far as possible, in the context of the process of revising the occupational safety and health laws and regulations, and particularly the revision of Act No. 88-07 of 26 January 1988, with a view to bringing them into conformity with the provisions of the Convention. The Government also refers in its report to the complexity of the issue of the guarding of machinery, on the one hand, and the fact that most of the machinery used in Algeria is imported, on the other. With reference to its previous comments, the Committee notes that a draft executive decree has been formulated and submitted for inter-ministerial examination. In this respect, the Government indicated previously that this draft text is in a preliminary stage in accordance with the established procedures and that it reflects all the relevant provisions of the Convention, as well as those of the Recommendation. **The Committee accordingly requests the Government to adopt the draft executive decree referred to above without delay so as to give effect to the various provisions of the Convention. Nevertheless, and in the absence of more detailed information, the Committee is bound to recall the following points:**

*Article 2(3) and (4), of the Convention.* The Committee recalls that section 8 of Act 88-07 of 26 January 1988 which prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery or parts of machinery that do not correspond to current national and international health and safety standards does not determine the machinery that is considered to be dangerous, nor the parts thereof which are likely to present danger, in accordance with the requirements of *Article 2(3) and (4)* of the Convention. It recalls that it had noted that the provisions of Executive Decree No. 90-245 of 18 August 1990 applicable to gas pressure machinery and of Executive Decree No. 90-246 of 18 August 1990 applicable to steam pressure machinery, met the requirements of *Article 2* of the Convention, but that similar measures of general application to machinery covered by the Convention as a whole were needed. **In this regard the Committee wishes to reiterate its previous comments that the objective of Article 2 of the Convention is to guarantee that machines are safe before they reach the user, whereas the provisions of Executive Decree No. 91-05 of 19 January 1991 respecting general safety provisions concern the guarding of machinery once it is in use.**

The Committee again draws the attention of the Government to paragraphs 73, et seq. of its General Survey of 1987 on safety and the working environment where it indicates that it is essential for the effective application of Part II of the Convention that national legislation designate those parts of machinery that present danger and require appropriate guarding (paragraph 82) and that, until there has been a determination of the machinery and parts thereof that present danger, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery contained in *Article 2* of the Convention remains ineffective. **The Committee recalls its previous reference to paragraph 85 of the 1987 General Survey, op. cit., to indicate that the definition of dangerous machinery and parts thereof should as a minimum cover all those parts enumerated in Article 2 of the Convention.**

*Article 4.* Further to its previous comments, the Committee notes the Government's reply that the responsibility referred to in paragraph 2 of the Committee's previous comments was provided for in section 37 of Act No. 88-07 of 26 January 1988 which prescribed sanctions in cases of violations of sections 8, 10 and 34 of the same Act. The Committee recalls once again that, while section 8 of Act No. 88-07 prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery that is dangerous, with a view to its use, section 10 of the same Act explicitly lays down the responsibilities only of those who are involved in the manufacture, import, cession and use of the machinery (manufacturer and



importer) and not of the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, and their respective agents. The Committee once again refers to paragraphs 164–175 of its 1987 General Survey, op. cit., in which it observes that the general prohibition from manufacturing, selling, hiring or transferring in any other manner machinery which is dangerous is inadequate if it is not accompanied by a provision explicitly requiring these provisions to be applied to the manufacturer, vendor, the person letting out on hire or transferring the machinery in any other manner or their respective agents, in order to comply with *Article 4* of the Convention which expressly establishes the responsibility of these persons, and to avoid any ambiguity. ***The Committee urges the Government to take the necessary measures to ensure that the responsibility of the categories of persons mentioned in Article 4 is explicitly established in national legislation and that sanctions are applicable in the event of the violation of these provisions.***

*Articles 6 and 7.* Further to its previous comments concerning the responsibility of the employer, the Committee notes the Government's indication that this responsibility is established in section 38 of Act No. 88-07. The Committee notes that the provisions of Act No. 88-07, including section 38, do not fully respond to its previous comments that the use of machinery any parts of which, including the point of operation, is without appropriate guards, is not explicitly prohibited in law. It reiterates its previous indications that sections 40–43 of Executive Decree No. 91-05, while requiring the dangerous parts of machines to be guarded, do not explicitly prohibit the use of machinery, the dangerous parts of which are not guarded. The Committee refers once again to paragraph 180 of its 1987 General Survey, op. cit., in which it indicates that *Article 6(1)*, of the Convention is formulated as a general prohibition to be included in the national legislation and that, in order to observe this provision, it is not enough to require the guarding of machines while in use, without at the same time requiring that the use of machines without appropriate guards is forbidden. The Committee wishes to reiterate the need for the legislation to establish clearly that the obligation to ensure compliance with this prohibition rests on the employer, in accordance with *Article 7* of the Convention.

***The Committee hopes that the Government will do its utmost to take the necessary measures in the near future.***

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1969)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 14 of the Convention. Suitable seats for workers.* The Committee notes the information provided by the Government indicating that labour legislation is currently being reviewed, and that the obligation to provide suitable and sufficient seats for workers has been taken into consideration in the provisions of the future Labour Code. ***The Committee once again requests the Government to adopt, as soon as possible, appropriate measures in law and practice to ensure that all workers covered by the Convention have sufficient and suitable seats, and the possibility of using them, and to keep the Office informed of any progress achieved in this respect.***

*Article 18. Protection against noise and vibrations.* The Committee notes the reference by the Government to sections 15 and 16 of Executive Decree No. 91/05 of 19 January 1991 which states the obligations of employers to reduce the impact of noise on workers' health, and where this is not possible, to provide such workers with personal protective equipment. ***The Committee reiterates its request that the Government adopt, as soon as possible, appropriate measures in law and practice to give effect to the provisions of this Article with regards to vibrations, and to keep the Office informed of any progress achieved in this respect.***

*Part IV of the report form. Application in practice.* With reference to its previous comments, the Committee notes that the Government's report does not contain information on this matter. ***The Committee accordingly requests the Government to provide information on the manner in which the Convention is applied in practice, for example by supplying extracts from inspection reports and, where such information exists, the number of workers covered by the legislation; the number and nature of the contraventions reported; and the number, nature and cause of accidents reported.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## **Azerbaijan**

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1992)**

The Committee notes that the information provided by the Government in its latest report contains no new information regarding progress in relation to the draft legislation reportedly under discussion with a view to giving effect to the Convention. The Committee hopes that the Government's next report will contain full information on the matters raised in its previous observation which read as follows:

*Article 11(1) of the Convention. Prohibition to use machinery without the guards provide being in position.* The Committee notes that, in addition to referring to general provisions in sections 213 and 215 of the Labour Code concerning the powers of the executive authorities in the labour protection field and the responsibilities of the owner of an enterprise and the employer in relation to occupational safety and health, the Government indicates that regulations were being developed in order to give effect to this provision of the Convention. ***The Committee hopes that the draft legislation giving effect to this provision of the Convention will be adopted in a near future and requests the Government to transmit copies thereof once it has been adopted.***

*Article 12. Protection of the rights of workers under national social security or social insurance legislation.* The Committee notes the Government's additional information that a "Life Requiring Compulsory Personal Insurance Against Industrial Accidents" has been elaborated in accordance with paragraph 2.6 of the "State Programme for the Implementation of the Employment Strategy of the Republic of Azerbaijan (2007–10)" approved by Decree No. 167 of 15 May 2007 as well as section 211 of the Labour Code. It also notes that a draft Law on "Compulsory Personal Insurance of Employees against Industrial Accidents and Occupational Diseases" is being elaborated. ***The Committee hopes that the draft law will be adopted in the near future and requests the Government to transmit copies of relevant legislation once it has been adopted.***

*Article 13. Application to self-employed workers of the obligations of employers and workers.* The Committee notes the information provided concerning the ongoing revision of the Labour Code and the declared intent of the Government to introduce amendments and additions thereto regulating the responsibilities, inter alia, of independent employees. ***The Committee hopes***

*that these amendments will be adopted in a near future and requests the Government to transmit copies thereof once they have been adopted.*

*Part V of the report form. Application in practice. The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from labour inspection services reports, statistics on the number of workers covered by the legislation, the number and nature of contraventions reported, as well as any other information allowing the Committee to assess more accurately how the Convention is applied in practice in the country.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Barbados

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1967)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information contained in the Government's report and the reply to its direct request. It notes that, despite comments it has reiterated for several years, the Government's report contains no new information and that, according to the Government's replies, no follow-up has been given to the Committee's comments. The Committee also notes that the Government's report refers to observations submitted by the "Barbados Workers' Union" which requests the Government to reactivate the Advisory Committee on Radiation Protection; to establish legislative measures to afford protection to workers exposed to ionizing radiation, particularly by fixing the maximum admissible radiation exposure doses; to take appropriate measures to prescribe a compulsory medical examination – not merely optional – for workers exposed to radiation; and to provide alternative employment allowing them to maintain their income for persons who can no longer work in zones exposed to radiation. *In view of the above, the Committee is bound to reiterate its observations on the following matters.*

*Articles 2 and 4 of the Convention.* The Committee noted the Government's indication that the regulatory body to monitor the exposure of workers to ionizing radiation has not been established yet. *It further notes that the ACRP has not yet given directives regarding protective measures to be taken against ionizing radiation, or time limits for the application of such measures. Referring to its introductory comments, the Committee urges the Government to take the appropriate steps to make the ACRP operational and thus creating the framework for the monitoring of workers' exposure to ionizing radiation and the issuing of directives regarding protective measures, which falls, according to the Committee's understanding, in the area of competence of the ACRP.*

*Articles 3 and 6.* With regard to the fixing of maximum permissible doses of ionizing radiation, necessary in order to comply with the requirement to ensure effective protection of workers in the light of "knowledge available at the time" and in the light of "current knowledge", the Committee noted from the Government's report that the radiation protection officer, being a hospital physician and the chairperson of the ACRP, is well aware of the recent revised dose limits of the International Commission on Radiological Protection (ICRP). In this regard, the Government indicates that reports on the doses of ionizing radiation received by workers show that the limits recommended by the ICRP were not exceeded. However, in particular cases recorded for cardiac catheterization doctors and one radiologist, the dose of radiation absorbed was beyond this limitation, which subsequently has been brought to their attention. *The Committee, noting that the observance of the dose limits for ionizing radiation, as recommended by the ICRP in 1990, do not seem to set a problem to the Government in practice, requests therefore the Government to reconsider the possibility to fix maximum permissible dose levels of ionizing radiations with legally binding effect in order to guarantee by means of enforceable provisions an effective protection of workers exposed to ionizing radiations, in accordance with Articles 3 and 6 of the Convention.*

*Article 5.* With regard to the installation of a computerized system, type "Selectron HDR", in 1990 which reduces the number of workers dealing with radiation sources to an extent that the probable exposure to radiation would turn to zero, the Committee noted the Government's indication that this system is used in the treatment of cancer of the uterine cervix and related problems. However, its use in other medical disciplines has to be planned since logistical problems regarding the necessary equipment and the movement of staff working in related disciplines need to be resolved. *The Committee hopes that the Government will take the necessary action to enable the use of the "Selectron HDR" system in all medical disciplines where appropriate in order to restrict the exposure of workers to the lowest practicable level and to avoid any unnecessary exposure of workers. The Committee requests the Government to supply information on experiences already collected in applying the system in the field of the treatment of cancer of the uterine cervix.*

*Article 7.* The Committee noted the Government's indication that no legislation is in place to set a lower limit on the age of radiation workers. However, since it is a very fundamental issue, it is hoped that it will appear in the amended Radiation Act. In the meantime it belongs to the radiation protection officer's tasks to ensure that adequate structural shielding in place is provided, such as area monitoring, warning lights or alarm where appropriate and that only qualified workers are employed to operate machines producing radiation. In this respect, the Committee notes again the Government's indication provided with its 1998 report to the effect that the minimum age for engagement in radiation work was 16. *Recalling the provision of Article 7(2) of the Convention which provides for a minimum age of 16 to become engaged in work involving ionizing radiation, the Committee requests again the Government to specify the legal basis providing for the prohibition to engage young persons under 16 years of age in work involving exposure to ionizing radiations.* Moreover, the Committee recalls the provision of *Article 7(1)(a)* of the Convention, providing for the fixation of appropriate levels of exposure to ionizing radiations for workers who are directly engaged in radiation work and are aged 18 and over. *The Committee therefore asks the Government once again to indicate the measures taken or contemplated in order to fix appropriate levels for this group of workers. Since the Committee understands from the Government's indication that an amendment of the Radiation Act is intended, it would invite the Government to consider the possibility to incorporate such appropriate levels in the amendment of the above Act.*

*Article 8.* With regard to dose limits to be set for workers not directly engaged in radiation work, the Government indicated that the reports on radiation received by these workers show either negligible or zero doses. While the Committee noted this information with interest, it nevertheless wishes to point out that *Article 8* of the Convention obliges every ratifying State to fix appropriate levels of exposure to ionizing radiations for this category of workers, in accordance with *Article 6*, read together with *Article 3(1)* of the Convention, that is in the *light of knowledge available at the time*. In this respect, the Committee would draw the Government's attention to paragraph 14 of its 1992 general observation under the Convention, as well as to section 5.4.5

of the ILO code of practice on the radiation protection of workers (ionizing radiations) of 1986, explaining that the employer has the same obligations towards workers not engaged in radiation work, as far as restricting their radiation exposure is concerned, as if they were members of the public with respect to sources of practices under the employer's control. The annual dose limits should be those applied to individual members of the public. According to the 1990 ICRP Recommendations, the annual dose limit for members of the public is 1 mSv. **The Committee therefore asks the Government to indicate the measures envisaged to fulfil its obligation under this Article of the Convention.**

*Article 9.* The Committee noted the information supplied with the Government's report on the functions of the alarm systems used in those units at hospitals where radiation treatment is carried out. It also notes the existence of appropriate warning signs fixed on the doors to indicate the presence of hazards arising from ionizing radiations. However, with regard to adequate instructions of workers directly engaged in radiation work, the Committee calls again the Government's attention to section 2.4 of the 1986 ILO code of practice on the radiation protection of workers (ionizing radiations) which contains general principles for informing, instructing and training of workers. **The Government is requested to indicate the measures taken or envisaged to ensure that workers are adequately instructed in the precautions to be taken for their protection in conformity with Article 9(2) of the Convention.**

*Article 11.* The Committee noted the Government's indication to the effect that the workers designated to perform radiation work are presently monitored by TLD radiation monitoring badges supplied by the universities of the West Indies. **The Committee requests the Government to explain more in detail the characteristics of this specific monitoring and the manner in which it is carried out.**

*Article 12.* With regard to appropriate medical examination of workers directly engaged in radiation work, the Government indicated that a medical examination is still a prerequisite for an appointment to the public service. In addition, all workers assuming duties at the hospital are tested subsequently after they have taken up their work on a voluntary basis. In this respect, the Committee wishes to underline that subsequent medical examinations of workers directly engaged in radiation work have to be carried out on a mandatory basis and thus cannot be left to the discretion of the workers concerned whether or not they want to undergo a medical examination once they have been employed. **The Government is accordingly requested to indicate the measures taken or envisaged ensuring that all workers engaged in radiation work are obliged to undergo appropriate medical examinations, not only prior to their employment, but also subsequently at appropriate intervals.**

*Article 13.* With regard to the measures to be taken in emergency situations, the Government indicated that no such measures are in place yet, but that it is hoped that the development of emergency plans will be one of the tasks of the proposed regulatory body. In this respect, the Committee states that the ACRP is responsible, inter alia, to prepare a detailed radiation protection programme for Barbados (point (3) of the Advisory Committee on Radiation Protection – Terms of reference). The Committee thinks that the preparation of measures to be taken in emergency situations would form an integral part of its task. The Committee therefore hopes that the ACRP will resume its functions in the near future and that it will, within the framework of its duties, elaborate plans for emergency situations. **To this effect, the Committee invites the Government again to refer to its 1987 general observation under the Convention as well as to paragraphs 16–27 of its 1992 general observation under the Convention concerning occupational exposure during and after an emergency which intend to give guidance regarding the measures to be taken in emergency situations. The Committee hopes that the Government will report on any progress made in this respect.**

*Article 14.* **In absence of any additional information regarding alternative employment of workers with premature accumulation of their lifetime dose, the Committee requests once again the Government to indicate whether and, if so, under which provisions, it is ensured that a worker who is medically advised to avoid exposure to ionizing radiations is not assigned to work involving such exposure, or is transferred to another suitable employment if he or she has already been assigned.**

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**

## Brazil

### Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1992)

*Articles 4, 7 and 15 of the Convention. Formulation, implementation and revision of national policy. Revision at appropriate intervals with regard to occupational safety and health in specific sectors. Coordination between various authorities. Communication from the Union of Teachers, Federal District (SINPRO–DF).* The Committee notes the communication sent by SINPRO–DF and the reply from the Government received in June 2010. The Committee also notes that the Government's report was received too late to be examined at the present meeting, and for that reason the Committee will merely examine the communication and its reply and will examine the Government's report in 2011. The Committee notes that, according to SINPRO–DF, there is no system of health protection for the public sector and in particular the teaching sector, nor is there any inspection of workplaces, periodic examinations, risk evaluation, or statistics having a minimum of reliability to enable the adoption of effective policies. The trade union maintains that occupational safety and health standards in the public sector, particularly education, are limited to leave of absence for sickness and occupational rehabilitation, i.e. when the person concerned is already ill, but that there are no preventive measures. The union refers to various existing pathologies, osteo-muscular disorders, respiratory ailments and burnout, inter alia, and considers that these pathologies are due to the high level of stress which is a feature of this occupation, the excessively heavy workload, its repetitive character, and the gulf that exists between planners of policy and those implementing it. SINPRO–DF states that the situation is so serious that it has requested an investigation which is attached to its communication, from the Laboratory for Psychodynamics and Labour Clinic of the University of Brasilia. This study emphasizes the need for prevention and dialogue with the teachers. The trade union calls for an occupational safety and health policy to be formulated for the teaching sector, with the full participation of the workers.

*The Government's reply.* Firstly, the Government indicates that the (national) Federal Government has adopted initiatives aimed at the application of standards to all federal public servants but that it has no knowledge of such initiatives with respect to the Government of the Federal District. It also indicates that the supervisory role of the Ministry of Labour does not extend to inspection of occupational safety and health conditions within public entities. Secondly, the Government sends a note from the Under-Secretariat for the Management of Education Professionals of the Government of the Federal District dated 13 April 2010, which indicates that the Occupational Safety and Health Council is established under section 5 of Decree No. 29.021/2008 and that its powers include the formulation of an occupational safety and health policy, and the monitoring and implementation thereof. It is unclear from the information supplied whether the representative workers' and employers' organizations participate in the aforementioned Council.

It is the Committee's understanding that the Government makes a distinction between the application of national policy in sectors within its direct jurisdiction and in the Federal District and other federal entities. The Committee also understands, according to the information supplied, that the Federal District will formulate a specific safety and health policy for the Federal District, as suggested by the aforementioned Decree. The Committee recalls that it already indicated to the Government in previous comments that it should adopt appropriate measures to ensure the application of ratified Conventions throughout its territory, and that the Convention required a coherent national policy and coordination in order to achieve this. For that reason the Committee indicates that occupational safety and health policies intended for different sectors or territorial entities must form part of a national policy which establishes a basis applicable to all workers covered by the Convention. ***The Committee requests the Government to seek solutions to the situation described by SINPRO-DF in the context of Articles 4, 7 and 15 of the Convention, bearing in mind that the national policy referred to by these Articles prescribes consultation with the social partners and its formulation, practical application and periodic revision with the fundamental objective of prevention, and requests it to supply detailed information in this respect. The Committee also requests the Government to supply information on any measure adopted to achieve coherence and coordination of national policy as required by the Convention.***

The Committee is examining other aspects of the communication from SINPRO-DF in its comments on the application of the Occupational Health Services Convention, 1985 (No. 161). In addition, as regards the examination of a communication from the Wood, Civil Engineering and Furniture Industry Workers' Union of Altamira and Region (SINTICMA), it refers to its comments on the Safety and Health in Construction Convention, 1988 (No. 167).

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1990)**

*Article 5 of the Convention. Occupational health services with functions that are adequate and appropriate to the occupational risks of the undertaking. Article 8. Cooperation and participation on an equitable basis of the employer, the workers and their representatives. Communication from the Union of Teachers, Federal District (SINPRO-DF).* The Committee refers to its comment on the Occupational Safety and Health Convention, 1981 (No. 155), in which it noted, inter alia, that SINPRO-DF affirms that the situation regarding the health of the teachers whom it represents is extremely serious and that occupational safety and health standards for the public sector, particularly education, are limited to leave of absence for illness and occupational rehabilitation, that is when the person concerned is already ill, but it maintains that there are no preventive measures. The Committee notes that, according to SINPRO-DF, in addition to the lack of preventive measures, the medical services repeatedly refuse to grant leave of absence for illness without even examining the patients concerned and it is extremely rare that they recognize the occupational origin of pathologies and they decide on early invalidity pensions to the clear detriment of the teachers in terms of the salaries they earn. The union also indicates that the period of sickness does not count towards accumulated service, which has an impact on holiday time and career progression, and that ultimately sick workers are penalized. SINPRO-DF indicates that the number of judicial proceedings relating to this subject already exceeds 1,000. It emphasizes the need for health services to identify and evaluate risks to health, monitor environmental factors at work, provide advice with regard to the planning and organization of work, promote improvements, and participate in analysis of occupational accidents. The union also calls for the application of *Article 8* with regard to the worker participation provided for in this Article. The Committee notes that the Government has sent a report from the Under-Secretariat for the Management of Educational Professionals of the Government of the Federal District, which indicates that provision was made under Decree No. 29.021/2008 for a medical examination for admission to employment, a periodic medical examination for staff working in school canteens, that a programme for the periodic examination of all public employees is being drawn up, which was due to be implemented from May 2010 onwards, and that another programme – the “Better Health” programme – has been drawn up, which aimed at improving the health of employees and reducing absenteeism. The Committee notes that the Government does not provide any information on preventive measures of the health services or on the participation of teachers in the application of *Article 8* of the Convention. ***The Committee requests the Government to take the necessary steps to ensure the full application of Articles 5 and 8 of the Convention in the sector concerned and to supply detailed information in this respect.***

As the Government's report was received too late to be examined at the present meeting, the Committee will examine it in detail at its next meeting, together with the reply to the present comments.

*[The Government is asked to reply in detail to the present comments in 2011.]*

## **Safety and Health in Construction Convention, 1988 (No. 167)** (ratification: 2006)

*Communication from the Union of Workers in the Lumber, Civil Construction and Furniture Industries of Altamira and the Surrounding Region (SINTICMA).* The Committee notes that the Government's report, received on 2 November 2010, arrived too late to be examined at the current session. The Committee also notes the communication by SINTICMA, sent to the Government on 12 April 2010. The Committee notes that the Government has not sent its comments concerning this communication. The Committee also notes that, according to SINTICMA, enterprises operating in the region do not comply with the labour legislation concerning the documentation of workers, that the working conditions on the sites are subhuman and that the workers enjoy none of the rights guaranteed by the legislation. It maintains that the enterprises enslave workers in conditions of urban slavery, that many of them suffer accidents at work and that no inspections are carried out in these towns. It indicates that there is one Ministry of Labour and Employment assistance post for 40,000 workers seeking help who are from ten towns in the trans-Amazonian region. It indicates that the labour inspectorate is unable to monitor these enterprises because the work is temporary and it only visits the region every two or three years. It maintains that this situation also exists in the lumber industry, which has even more difficulties than the civil construction sector. **The Committee requests the Government to provide information on the measures taken or envisaged to ensure the application of the Convention to workers in the informal economy, including the workers in the region mentioned in the communication. Noting that the Government's report does not reply fully to the questions raised in its previous comments concerning the application of the Convention to the informal sector, the Committee requests the Government to provide detailed information in reply to those comments, in particular on the manner in which those workers are taken into account for the purposes of: (a) developing policies for the construction sector; (b) recording occupational accidents; and (c) training. Furthermore, the Committee requests the Government to provide its comments on the communication submitted by SINTICMA so that the Committee can examine them at its next meeting, together with the Government's report.**

[The Government is asked to reply in detail to the present comments in 2011.]

## **Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2006)**

The Committee notes the first and second reports of the Government and notes with *interest* the adoption of Regulatory Standard No. 22 (NR 22), as amended on 1 October 2007, concerning occupational safety and health in mining, which gives effect to the Convention and was drawn up through a tripartite process. NR 22 regulates, inter alia, fundamental aspects relating to the Convention, such as the participation of workers through the Internal Commission for the Prevention of Accidents in Mining (CIPAMIN), established by section 22.36, and the right of workers to remove themselves from any sector of the mine when there are reasonable grounds to think that the situation poses a serious danger to their safety or health, as established by *Article 13(1)(a) of the Convention*.

The Committee is raising other points in a request addressed directly to the Government.

## **Bulgaria**

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120)** (ratification: 1965)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information contained in the Government's report and particularly on the inspections carried out between 2002 and 2004 by the Executive Agency General Labour Inspection.

*Article 6(2) of the Convention. Establishment of a system of sufficiently dissuasive penalties.* The Committee notes the reply by the Government to its previous direct request according to which it is taking into account the comments made by the Committee concerning the need to establish sufficiently dissuasive penalties for violations of the legislation respecting occupational safety and health. The Committee notes that the highest number of violations concern occupational safety and health standards (75 per cent of all violations reported). Despite the very high number of contraventions, the Committee notes that the Government has not provided any information on adequate penalties to ensure the proper application of the legislation. In this respect, the Committee recalls that measures can only be effective when the penalties involved are sufficiently dissuasive, for example, by imposing very heavy fines on those responsible for violations. **The Committee requests the Government to take the necessary measures for the establishment of a system of penalties which will have a preventive, dissuasive and effective impact against violations of the legislation giving effect to the Convention.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## **Burkina Faso**

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1997)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information in the Government's reports submitted in 2007, including the reference to various legislative and regulatory texts.

*Article 2 of the Convention. Implementation and periodical review of a coherent national policy on occupational health services.* Further to its previous comments, the Committee notes the information in the Government's report, according to which a national occupational safety and health policy is still being prepared. This involves a framework document on national policy in this area, accompanied by a national action plan. The measures concerning the implementation and periodical review of the policy are set forth therein. **The Committee hopes that this document will be adopted in the very near future and asks the Government to provide a copy thereof once it has been adopted.**

*Article 6. Provision for the establishment of occupational health services.* Further to its previous comments, the Committee notes that some progress has been made in this respect, in that the action plan accompanying the framework document on national policy relating to occupational health services will cover not only the formal sector, but also the informal sector and the agricultural sector. The Committee notes, however, that the Government has not provided any clarification as to the points raised in its previous comments. It is therefore obliged to reiterate its request concerning the following points: *Article 3*, Establishment of health services; *Article 5(a)*, Identification of risks from health hazards in the workplace; *Article 5(b)*, Surveillance of the workplace; *Article 5(c)*, Role of health services in the planning and organization of work; *Article 5(d)*, Role of the health services in testing and evaluating new equipment; *Article 5(e) and (i)*, Role of the health services in ergonomics; *Article 5(h)*, Role of the health services in vocational rehabilitation; *Article 5(j)*, Emergencies and first aid; *Article 9(2)*, Cooperation of the health services with other services in the enterprise; *Article 10*, Independence of health service personnel; *Article 11*, Qualifications of health service personnel; *Article 15*, Notification to health services of absences from work for health reasons. **The Committee asks the Government to take these points into consideration within the context of the preparation of the new national policy, so as to give full effect to the provisions of the Convention.**

*Part VI of the report form. Application in practice.* The Committee notes the information provided by the Government, according to which 162,372 workers in the private sector and 70,308 workers in the public sector are covered by the legislation. Furthermore, the Committee invites the Government to request, at the appropriate time, ILO assistance with the view to the effective application of the Convention. **The Committee hopes that such technical assistance can be carried out and asks the Government to provide information on any steps taken in this respect with the relevant ILO bodies. The Committee requests the Government to continue providing information concerning the practical application of the Convention in order to follow the progress made.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Burundi

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1963)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information contained in the Government's report and the statistical data. It notes with regret that, despite the comments it has been making for a number of years, the legislation to apply the Convention has not been changed.

*Article 4 of the Convention. Inspection system.* Further to its previous comments, the Committee notes from the information provided that the Government will explore possibilities for training labour inspectors to monitor safety prescriptions in the building sector. The Government nevertheless points out in its report that managers in charge of occupational risk prevention at the National Social Security Institute (INSS) are qualified to carry out inspections in the building sector and that they give useful instructions to the employers concerned. **The Committee requests the Government to provide information in its next report on the practical application of this provision of the Convention.**

*Articles 6–15.* With reference to its previous comments, the Committee notes that, according to the Government, the legislation governing occupational safety has not been repealed and that Rwanda-Urundi (ORU) Ordinance No. 21/94 of 24 July 1953 establishing the legal framework for occupational safety in the building industry has not been revoked, and that the Government is envisaging its re-dissemination. **The Committee requests the Government to provide clarification on the legislation in force to enable it to assess how the Convention is applied in Burundi.**

*Part V of the report form.* Further to its previous comments, the Committee notes the statistical data in the Government's report showing trends in the number of active workers and the numbers receiving occupational risk benefits between 2000 and 2004, and the distribution of enterprises according to size and branch of economic activity at 31 December 2004. **The Committee requests the Government to provide further information in its next report regarding trends in accidents in the building industry, together with any other relevant information allowing the Committee to assess how the safety standards established in the Convention are applied in practice.**

*Revision of the Convention.* The Committee draws the Government's attention to the Safety and Health in Construction Convention, 1988 (No. 167), which revises Convention No. 62 of 1937 and could well be better adapted to the current situation in the building sector. It again points out that the ILO Governing Body invited States parties to Convention No. 62 to envisage the ratification of Convention No. 167, which entails, ipso jure, immediate denunciation of Convention No. 62 (GB.268/8/2). **The Committee requests the Government to provide information on any action taken on this suggestion.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Cameroon

### **Asbestos Convention, 1986 (No. 162) (ratification: 1989)**

The Committee notes with *interest* the information provided by the Government in its brief report indicating that Order No. 051 on diseases caused by exposure to asbestos was adopted on 22 September 2009. The Committee also notes that the Government has yet again not responded to its previous comments or to the communications by the General of Confederation of Labour–Liberty of Cameroon (CGT–Liberté), transmitted to the Government on 8 November 2005. The

Committee further notes that the Government has reiterated its interest for technical assistance from the ILO to ensure application of this Convention. ***Noting that effect does not appear to have been given to the majority of the provisions of the Convention, the Committee invites the Government to make a formal request to the Office for technical assistance in the development of legislation to give effect to the provisions of this Convention, and regarding the reporting obligations associated with ratification of ILO Conventions. The Committee also asks the Government to provide a detailed report on the application of each provision of this Convention, in law and in practice, and to include a copy of the abovementioned Order No. 051.***

*Part V of the report form. Application in practice.* The Committee notes that the CGT–Liberté has indicated that, while asbestos is not produced in the country, it has been used to create firewalls in certain buildings and there is a general lack of awareness of the dangers related thereto. ***The Committee asks the Government to give a general appreciation of the manner in which the Convention is applied in the country, and to attach extracts from inspection reports and, where such statistics exist, information on the number of workers covered by the legislation, the number and nature of the contraventions reported, and the number, nature and cause of accidents and occupational diseases reported.***

*[The Government is asked to report in detail in 2012.]*

## Canada

### **Asbestos Convention, 1986 (No. 162) (ratification: 1988)**

The Committee notes the information provided by the Government in its latest report, including information concerning the application of the Convention, in law and practice, in a number of the provinces and territories. It also notes the statistical information on the application of the Convention, which has been dealt with in a request addressed directly to the Government. As regards *legislative and other measures undertaken*, the Committee welcomes the information indicating that representatives of the Canadian employers' and workers' organizations are participating in the Federal Regulatory Review Committee on the revision of Part X (Hazardous Substances) Regulations, and that this Committee has proposed lowering the occupational exposure limit on asbestos from 1 to 0.1 fibre/cubic centimetre, as well as new provisions that would specify requirements for an asbestos management programme for asbestos removal from any building/facility in federal jurisdiction. The Committee notes that following extensive consultation with industry, labour and technical experts, comprehensive new Workplace Safety and Health Regulations, which include new requirements to address asbestos hazards, took effect on 1 February 2007 in Manitoba. The Committee also notes the revised Occupational Health and Safety Regulations of 1 September 2009 in Newfoundland and Labrador; and the replacement in Ontario of Regulation 837 Respecting Asbestos by the O. Reg. 490/09 Designated Substances (effective 1 July 2010), which maintains worker protections while easing compliance for employers. ***The Committee asks the Government to continue to provide information on the legislative measures undertaken concerning the Convention.***

The Committee also notes the comments by the Canadian Labour Congress (CLC), concerning the application of the Convention which were transmitted to the Office together with the Government's report, but which were not specifically addressed by the Government in its report.

*Article 3(1) and (2) of the Convention. Measures to be taken for the prevention and control of health hazards due to occupational exposure to asbestos; periodical review in the light of technical progress and scientific knowledge. Article 10(b). Total or partial prohibition of the use of asbestos.* The Committee notes that according to the CLC there is a compelling body of evidence showing that the most efficient way to eliminate asbestos-related disease is to stop producing and using it. The CLC indicates that the views of the ILO, the World Health Organization (WHO) and the United Nations Environment Programme (UNEP) in this matter must be respected as the main legitimate source of information. With reference to the Ninth International Conference on Occupational Respiratory Diseases in Kyoto in 1997 (Kyoto Conference) the CLC states that chrysotile is contaminated by tremolite and other amphibole group fibres and that these cannot be separated which is reason enough to justify a prohibition of all forms of asbestos. The Committee also notes that the CLC states that, in their view, the Canadian Government should introduce a total prohibition of the use of asbestos or products containing asbestos in work processes within the country, and for the phasing out of asbestos exports. The CLC refers to the "National Programme for the Elimination of Asbestos-Related Diseases" (NPEAD) – a programme specifically designed by the ILO and WHO for countries that use chrysotile asbestos but wish to eliminate asbestos-related diseases – and states that NPEAD is designed as a national institutional framework for strategic preventative strategies for the regional to the enterprise levels to take account of health, economic and social aspects of the problem, including indirect costs such as loss of potential income and the number of jobs offset by any changes. The CLC also indicates that if planned properly, job losses can be effectively offset by developing a positive employment transition process that is linked to the prohibition of asbestos and the promotion of alternative technology. The CLC also refers to the ILO Employment Policy Convention, 1964 (No. 122), ratified by Canada, and its accompanying Recommendation, together with the ILO Resolution on Social and Economic Consequences of Preventive Action at the 59th Session (June 1974) of the International Labour Conference, as important guideposts for establishing and implementing such an employment policy. The CLC also notes that NPEAD envisages the replacement of asbestos by other materials or products or the use of alternative technology. ***In the light of these comments by the CLC, the Committee requests the Government to***

*provide further detailed and up-to-date information on measures taken to give effect to Articles 3(1) and (2) and 10(b), taking into account, in particular, technological progress and advances in scientific knowledge.*

*Articles 4 and 22(1). Consultation with the most representative organizations of employers and workers.* The Committee notes the allegations by the CLC that, to their knowledge, consultations as required under these provisions of the Convention have not taken place in the recent past. ***The Committee asks the Government to respond to this comment by the CLC and to provide further information on measures taken to ensure a full application of these provisions of the Convention.***

*Article 17(2). Protection of workers and limiting the release of asbestos dust in the context of demolition work.* The Committee notes that in its comments the CLC also refers to the WHO International Programme on Chemical Safety (IPCS), which in their view makes it clear that asbestos should not be used in construction materials because of the impossibility of protecting construction workers, their families and building occupants. ***The Committee requests the Government respond to the comment by the CLC and to provide further information on the measures taken to ensure a full application of this provision of the Convention.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2011.]***

## Central African Republic

### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

With reference to its previous comments, the Committee notes that the Government confines itself to reiterating, as it has done since 1992, that no statistics are available on morbidity and mortality resulting from lead poisoning among working painters.

***It is therefore bound once again to express its hope that the Government will take the necessary measures so that the Central African Social Security Office (OCSS), which is responsible for compiling the necessary statistics, takes the necessary action to compile and provide the statistics in question, in accordance with Article 7 of the Convention.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1964)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information that the Government has taken due note of the comments of the Committee and that the necessary measures will be taken within the overall revision of the legislative and regulatory texts on labour envisaged by the Department of Labour and that the technical assistance of the ILO's multidisciplinary advisory team for Central Africa will be requested. The Committee trusts this overall revision will be accomplished soon and that the Government will not fail to address the Committee's previous comments as set out below.

*Introduction into national legislation of the standards set forth in ratified Conventions.* In its previous comments, the Committee drew the Government's attention to the need to adopt measures in laws and regulations to give effect to the provisions contained in the Convention even if, as stated by the Government, under the Constitution of 4 January 1995, international agreements, treaties and Conventions that are duly ratified by the Republic have the force of national law.

The Committee recalls that the incorporation into national legislation of the provisions of ratified Conventions, from the mere fact of their ratification, is not sufficient to give effect to them at the national level in all cases in which the provisions are not self-executing, that is where they require special measures for their application, which is the case, at least, for Part I of the Convention. Furthermore, special measures are also needed to establish penalties for non-observance of the standards set forth in the instrument, which is the case of *Article 3(c) of the Convention*.

The Committee once again draws the Government's attention to *Article 1(1)*, of the Convention, in accordance with which each Member which ratifies the Convention undertakes to maintain in force, laws or regulations which ensure the application of the General Rules set forth in Parts II–IV of the Convention. In this respect, the Committee recalls that draft texts were prepared following the direct contacts which took place in 1978 and 1980 with the responsible government services. The Committee is bound to express the firm hope that the relevant texts will be adopted in the very near future.

*Statistics of accidents (Article 6).* For a number of years, the Committee has been noting the absence, in the Government's reports, of statistical information relating to the number and classification of accidents occurring in the building sector. In its last report, the Government states that the Labour Department does not currently have at its disposal reliable statistics in this field.

The Committee recalls that, under this Article of the Convention, each Member which ratifies the Convention undertakes to communicate the latest statistical information indicating the number and classification of accidents in an enterprise or sector. ***The Committee once again hopes that the Government will soon be in a position to indicate the measures which have been taken to give effect to the Convention on this point and to supply the appropriate statistical information.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:



*Further to the comments which it has made for many years on the application of Article 2(3) and (4) of the Convention, the Committee notes that the implementing regulations provided for in section 37(3) of General Order No. 3758 of 25 November 1954, with a view to designating machinery or dangerous parts thereof, have still not been adopted. The Committee again notes the Government's statement that the Bill is being prepared by the competent authorities.*

The Committee hopes that the future implementing regulations will also give effect to Article 10(1) of the Convention establishing the obligation of an employer to take steps to bring national laws or regulations relating to the guarding of machinery and to the dangers arising and the precautions to be observed in the use of the machinery to the notice of workers, as well as to Article 11 which provides that workers shall not use machinery without the guards provided being in position, nor make such guards inoperative, while guaranteeing that, irrespective of the circumstances, workers shall not be required to use machinery when the guards provided are not in position or when they are inoperative.

The Committee recalls that, should it consider it to be appropriate, the Government may seek the assistance of the International Labour Office in the preparation of this text.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Chile

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1999)**

*Articles 2 and 4 of the Convention. Formulation, implementation and periodic review, in consultation with the social partners, of a coherent national policy on occupational health services. Consultation with organizations of employers and workers on the measures required to give effect to the Convention.* Further to its previous comments, the Committee notes with **interest** the information provided by the Government in its report that, in the context of the formulation and implementation of occupational health services, an Occupational Accident and Occupational Disease Information System (SIATEP) was implemented and the Occupational Safety Institute was established under Act No. 20255 of 11 March 2008. Furthermore, as a result of the National Agreement on the Prevention of Occupational and Fatal Accidents of 2005, Act No. 20123 on subcontracting was adopted in October 2006, which provides that, without prejudice to the responsibilities of the main, contracting or subcontracting enterprise, the main enterprise shall adopt measures to protect the life and health of all the workers, regardless of their status. The main enterprise shall also ensure the establishment and operation of a joint safety and health committee and a risk prevention department. Furthermore, the Act establishes the employer's obligation to notify the Labour Inspectorate and the Ministerial Regional Department (SEREMI) immediately of any serious and fatal accidents and to take other measures. The Ministry of Labour is also obliged to produce quarterly reports on fatal occupational accidents. Through the SIATEP, the administrative bodies will be obliged to keep a database containing information on occupational accidents and occupational diseases. **The Committee requests the Government to continue providing information on its national policy on occupational health services and the consultations held with the social partners on the measures that need to be taken to give effect to the Convention.**

The Committee is raising other points in a request addressed directly to the Government.

## China

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2007)**

The Committee notes the Government's detailed reports concerning the application of the Convention in the country, and welcomes the Government's commitment to production safety. The Committee notes the Government's reply to the International Trade Union Confederation (ITUC) communication dated 9 September 2009. The Committee also notes the ITUC's communication dated 1 September 2010, transmitted to the Government on 15 September 2010, which provides information on the general application of the Convention in practice, and more specifically on the enforcement capacity of the administrative bodies, including the availability of adequate penalties and a system of inspection; the application of the Convention to migrant workers and family-run workshops; the need for regular reporting and prompt notification systems; the application of occupational safety and health (OSH) laws and regulations by the courts; and the continued increase in the number of reported cases of occupational disease. **The Committee invites the Government to respond to the most recent ITUC communication in its next report and asks the Government to provide further information on the following points, with reference to the 2009 comments by the ITUC.**

*Articles 5(c), 10 and 14 of the Convention. Awareness raising, guidance and training on occupational safety and health.* The Committee notes the information provided on how effect is given to these provisions of the Convention, and the efforts made, in law and in practice, to ensure that not only workers but also persons in management are adequately trained in matters related to OSH, taking into account the need for continuous training on the introduction of new techniques, new technology, new material or new equipment. The Committee also notes the efforts by the work safety regulatory and supervisory units at various levels to provide employers and workers with information on OSH legislation and policies, through multiple means of advocacy, such as newspapers, magazines, radio and television, video and audio materials, and special campaigns in the form of "Safety and Law" television programmes, "Safety on the Spot" columns, "National Safe Production Month" and "Work Safety Long March", and online access to OSH laws, regulations and policies. It also notes the information that training and education in the area of OSH is always included as a key

component in higher technical, medical and professional education. The Committee also notes that the ITUC considers that further efforts are needed in the area of enforcement of OSH laws and regulations in the country and calls on the Government to undertake a widespread public educational campaign on OSH legislation and associated rights and duties. The ITUC also indicates that there is a need to disseminate information, in an effective manner, on how to obtain access to redress in the event of non-compliance. The Committee notes the Government's response which indicates the continued efforts to publicize and educate the public on production safety. ***With reference to the foregoing and the 2009 comments by the ITUC, the Committee asks the Government to continue to provide information on measures taken to increase the awareness and knowledge of OSH, not only among the workers and employers directly concerned, but also among the general public.***

*Article 5(e). Protection of workers and their representatives from disciplinary measures.* The Committee notes that the Government has not provided information on the application of *Article 5(e)*. The Committee also notes that the ITUC refers to numerous cases in which workers and their representatives have been harassed, imprisoned or have faced other repercussions following attempts to obtain OSH-related compensation and rights. ***With reference to the 2009 comments by the ITUC, the Committee asks the Government to provide information on the measures taken or envisaged to ensure the protection of workers and their representatives from disciplinary measures as a result of action properly taken by them in accordance with the requirements under Article 5(e).***

*Article 9. Adequate and appropriate system of inspection and provision of adequate penalties for violations.* The Committee notes the information provided by the Government which indicates that the State Administration of Work Safety (SAWS) is responsible for the supervision and inspection of OSH at workplaces in industrial, mining and commercial sectors (except workplaces in coal mines which are under the responsibility of the State Administration of Coal Mine Safety). The Committee welcomes the information that the Government is in the process of regularizing the enforcement of the administrative law on production safety in order to encourage law enforcement personnel to correctly apply production safety laws, administrative regulations and departmental rules, and to narrow discretionary powers to prevent and reduce corruption. The Committee also notes that the ITUC refers to evidence of continuous breaches of OSH laws and regulations in factories and workplaces, and that enforcement efforts are hampered by the existence of widespread collusion by officials. The ITUC further states that many OSH inspectors are only temporarily employed, and are thus inexperienced in OSH management and lack adequate and appropriate training. The Committee notes the Government's response which indicates that in 2009, the State Council launched the "Safety Production Year" campaign, and that as a result, all regions, departments and entities have made comprehensive efforts to implement the three measures for production safety, namely "law enforcement", "advocacy and education" and "rectification". ***With reference to the foregoing, the 2009 comments by the ITUC, as well as its comments under Article 15 below, the Committee asks the Government to provide further information on the measures taken or envisaged to ensure that an adequate and appropriate system of inspection and penalties is in place for the enforcement of laws and regulations concerning OSH.***

*Article 11(c). Procedures for the notification of occupational accidents and diseases by employers, and the production of annual statistics.* The Committee notes the information provided by the Government indicating that section 17 of the Law of the People's Republic of China on Production Safety (1 November 2002) (Law on Production Safety) requires the principal leading members of production and business units to submit to the higher authorities timely and truthful reports on accidents due to lack of work safety, and that section 43 of the Law of the People's Republic of China on Prevention and Treatment of Occupational Diseases (1 May 2002) (Law on Occupational Diseases) states that where the employer or the medical and health institution discover any worker suffering, or suspected of suffering, from an occupational disease, it shall report to the local public health administration department without delay. The Committee also notes the communication by the ITUC which indicates that many cases of occupational diseases are covered up by owners and/or local authorities, particularly in village and township enterprises and small and illegal workshops. With reference to the further guidance provided in Paragraph 15(2) of the Occupational Safety and Health Recommendation, 1981 (No. 164), as well as in the 2002 Protocol to this Convention, the Committee wishes to emphasize that in the process of improving its OSH system in general, it is of particular importance to pursue efforts to improve the system of recording and notification of occupational accidents and diseases. While the improvement of such national systems may temporarily result in an increase in the number of cases recorded, such improved and better functioning systems constitute an important tool in the process of evaluating progress and measuring the impact of actions taken. In this context, and with reference to the comments made under *Article 15* below, it is important to take measures, institutionally or otherwise, to ensure effective coordination among the various government entities (at the national, provincial and municipal levels) with regard to the recording, notification and investigation of occupational accidents and diseases. These measures should also include systematic information-sharing and structured feedback systems, as well as the compilation and use of statistics to develop targeted and, in particular, preventive interventions and strategies. ***With reference to the foregoing and the 2009 comments by the ITUC, the Committee asks the Government to indicate the measures taken to ensure that the functions referred to in Article 11(c) are progressively carried out.***

*Article 15. Coordination between various authorities.* The Committee notes the information in the Government's report that SAWS, the State Administration of Coal Mine Safety and the Ministry of Health are the entities primarily responsible for OSH, and that the China Occupational Safety and Health Association, established in October 2003,

functions as a central coordinating body for occupational safety. The Committee also notes the statement by the ITUC that OSH-related reform policies and instructions set out by central government are not implemented at local level. The Committee notes the Government's response which indicates the efforts made to enhance the vertical and hierarchical management of production safety supervision and the regulatory system. ***The Committee asks the Government to continue to provide information on the measures taken or envisaged to ensure coordination between the various authorities and bodies responsible for OSH, both at central and local government levels, with reference to the 2009 comments by the ITUC; and to provide further information regarding the composition, mandate and coordinating functions of the China Occupational Safety and Health Association. The Committee also asks the Government to provide information on any measures taken to encourage officials at the national, provincial and municipal levels to strengthen collaboration among Government entities in the development of preventive measures, including promotional campaigns based on information-sharing and other coordination mechanisms.***

*Article 18. First-aid arrangements.* The Committee notes that the Government has indicated measures taken to deal with emergencies and accidents in the workplace. The Committee further notes the statement by the ITUC that many enterprises have no basic effective safety procedures or equipment and that prevention, control and emergency measures are lacking. ***With reference to the 2009 comments by the ITUC, the Committee asks the Government to provide further information on the measures taken or envisaged to require employers to provide for adequate first-aid arrangements to deal with emergencies and accidents.***

*Article 19(d). Provision of appropriate training and information on OSH. Article 20. Cooperation between management and workers and/or their representatives within the undertaking.* The Committee notes the reference made by the Government to the legal requirements provided for in sections 21 and 22 of the Law on Production Safety, and section 31 of the Law on Occupational Diseases, on the application of *Article 19(d)* to workers, but notes that limited information is provided on the application of *Article 20* outside of the requirements under section 72 of the Law on Production Safety concerning cooperation with rescue efforts. The Committee also notes the statement by the ITUC that, in practice, many workers are unaware of the risk of occupational diseases and most are never informed of potential hazards at their workplace, and that this is the case, for example, as regards chemical processing workers, who are mostly migrant workers from the inner provinces, and who do not receive information about the chemicals and hazards they face at work. The Committee notes the response by the Government which indicates that SAWS has developed the "Outline for the development of safety culture during the 11th five-year period" focusing on the building of a safety culture in enterprises and which includes intensified training for persons in charge of enterprises, persons in charge of safety administration, and special operational staff. ***With reference to the foregoing and the 2009 comments by the ITUC, the Committee asks the Government to provide further information on the application of Article 19(d) to workers' representatives in the undertaking; and on the cooperation between management and workers and/or their representatives within the undertaking as required under Article 20.***

*Part V of the report form. Application of the Convention in practice.* 1. *Workplace accidents.* The Committee welcomes the information provided by the Government, which indicates that the total number of accidents and deaths throughout the country has decreased for seven consecutive years as a result of a series of major policies and measures adopted by China for strengthening production safety, including intensified legislation and law enforcement to guarantee the life and safety of persons involved. The Committee also notes the Government's recognition that serious problems of unlawful or illicit production practices have not been stopped in spite of repeated efforts to prohibit such practices, and that this can be associated with the lack of effective enforcement of the laws that prohibit such practices, and is also due to serious problems of corruption. With regards to coal mining, the Committee notes that the Government has adopted measures to firmly eliminate backward coal production entities and to combat illegal mining, and that the number of accidents that led to more than ten deaths has reduced from 75 in 2000 to 20 in 2009, down 73.3 per cent. The ITUC states that SAWS reported a 15 per cent reduction in the number of deaths caused by work-related and traffic accidents since China ratified the Convention in 2007. As regards issues related to OSH in the construction industry and in relation to hazardous chemicals, the Committee refers the Government to its comments this year concerning the application by China of the Safety and Health in Construction Convention, 1988 (No. 167), and the Chemicals Convention, 1990 (No. 170).

2. *Occupational diseases.* The Committee notes the communication by the ITUC which states that China officially recorded 14,296 cases of occupational diseases in 2007, although according to the World Health Organization there were actually some 690,858 cases by the end of 2007, of which 90.8 per cent (627,405 cases) were pneumoconiosis – the leading occupational illness in China today, primarily affecting miners, sandblasters and metal grinders. The Committee notes the response provided by the Government which indicates the development by the State Council of the National Occupational Disease Prevention and Control Plan (2009–15) which comprehensively analyses the current situation on prevention and treatment of occupational diseases in China and provides guiding ideology, basic principles and targets to achieve. ***The Committee asks the Government to continue to provide information on the application of the Convention in practice, including statistical information on the number of workers covered by the legislation, the number and nature of contraventions reported, and the number, nature and causes of occupational accidents and diseases reported.***

3. *Scope of the application of the Convention in practice. The case of gemstone processing.* In addition to what is stated above, the ITUC, with reference to the gemstone processing sector, states that, as a result of local government

seeking to attract investment, more factories are planning to move to remote areas where law enforcement is more relaxed. The ITUC states that, with poor OSH awareness, workers will be vulnerable to unscrupulous employers. ***With reference to the 2009 comments by the ITUC, the Committee asks the Government to provide further information on the application of the Convention in the gemstone processing industry.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2012.]***

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2002)**

The Committee notes the information provided by the Government in its latest report, and the attached legislation, as well as the communication by the International Trade Union Confederation (ITUC) on 1 September 2010, and transmitted to the Government on 15 September 2010, which provides information on the general application of the Convention in practice, and more specifically on subcontracting within the construction industry; safety management practices and their adherence with international standards; the hazards associated with work from heights; the exposure of construction workers to a wide range of chemicals, physical and biological hazards; the welfare of workers and the provision of separate sanitary and washing facilities; information and training of workers; the reporting of accidents and diseases; and on the implementation of national laws and regulations, including the lack of enforcement and lack of cross-departmental cooperation. ***The Committee invites the Government to respond to the issues raised in the ITUC' communication in its next report.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2012.]***

### **Chemicals Convention, 1990 (No. 170) (ratification: 1995)**

The Committee notes the information provided by the Government in its latest report, and the attached legislation. The Committee also notes the communication by the International Trade Union Confederation (ITUC) on the Occupational Safety and Health Convention, 1981 (No. 155), received on 9 September and transmitted to the Government on 1 October 2009 and the response thereto provided by the Government in its 2010 report under Convention No. 155. The Committee notes that a number of the issues raised by the ITUC in its 2009 communication concern the application of this Convention.

*Article 15 of the Convention. Information and training.* The Committee notes the response provided by the Government, which indicates that in order to strengthen safety in the production, operation, transport and storage of hazardous chemical processes, targeted safety training for the workers concerned has been emphasised under the Regulations on Safety Management of Hazardous Chemicals and only those workers who have passed the examinations and tests may be involved in the use of hazardous chemicals. The Government indicates that the first draft for chemical safety labelling standards has been drafted under the Regulations on Preparation of Warning Labels for Use of Chemicals at Workplace, and that it has been made available for public comment. The Committee also notes that, according to the abovementioned comments by the ITUC, there are many workers who are unaware of the risk of occupational diseases, and most are never informed of potential hazards at their workplace. The ITUC further states that chemical processing workers, who are mostly migrant workers from the inner provinces, do not receive information about the chemicals and hazards they face at work, and training is not provided on a continuous basis on the practices and procedures to be followed for safety in the use of chemicals at work, nor is any first-aid training provided. ***The Committee asks the Government to respond to the comments by the ITUC concerning the information and training of workers on the hazards associated with exposure to chemicals used at the workplace, and to provide information on the measures taken or envisaged to continue to give effect to Article 15.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes the information provided by the Government, which indicates that the National Registration Centre for Chemicals set up by State Administration of Work Safety (SAWS) is dedicated to the prevention of hazardous chemical accidents, technical research and analysis thereof, and has opened a special hotline for emergency advisory services on chemical accidents; and that, in October 2006, SAWS issued the Emergency Plans for Responding to Hazardous Chemical-induced Accidents and Disasters. The Committee also refers to information provided by the Government under its reports on the Occupational Safety and Health Convention, 1981 (No. 155), which states that, since 2004, hazardous chemical accidents in China have demonstrated a declining trend, with a decrease from 193 accidents in 2004 to 83 accidents in 2009. The Government also indicates that there has been a decrease in the number of deaths in this sector, from 300 in 2004 to 149 in 2009. The Committee notes that the ITUC states that chemicals are often unsafely used in producing resin, all forms of plastics, glues and adhesives, toys, fabrics, leather, shoes, furniture, packaging and paints; and that this, together with long working hours, poor workflow designs and inadequate facilities in the factories, results in frequent outbreaks of occupational illnesses due to benzene poisoning, chronic n-hexane poisoning, and pneumoconiosis due to organic dust in the textile industry. ***The Committee asks the Government to respond to the comments by the ITUC, with reference to the safe use of chemicals, and to continue to provide information on the application of the Convention in practice.***

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2012.]

## Colombia

### White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1933)

*Article 3 of the Convention. Prohibition of the employment of young persons under 18 years of age in any painting work of an industrial character involving the use of white lead or sulphate of lead or other products containing these pigments.* The Committee notes with **satisfaction** that, in accordance with resolution No. 4448 of 2005 of the Ministry of Social Welfare, now replaced by resolution No. 1677 of 2008 of the same Ministry, no boy, girl or young person under 18 years of age may be engaged in any painting work of an industrial character involving the use of white lead or sulphate of lead or any product containing these elements. **The Committee requests the Government to provide information on the application of this Article in practice. Furthermore, noting that section 4 of resolution No. 1677 of 2008 envisages the possibility that, under certain conditions, young persons between 15 and 17 years of age who have obtained a technical or technological training qualification may be engaged in activities prohibited by the Decree, the Committee requests the Government to provide detailed information on the application of this section to the matters covered by this Article of the Convention.**

*Communication from the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC).* The Committee notes a communication of the CUT and the CTC indicating, among other matters, that the great majority of workers who use industrial paints are in the informal economy or work in small enterprises or craft workshops that are not subject to any legal supervision or any contacts with occupational risk agencies, and on which, for the same reason, there are no reliable statistics. The Committee will examine the communication in detail at its next session, together with any comments that the Government may wish to make thereon.

The Committee is raising other matters in a request addressed directly to the Government.

### Benzene Convention, 1971 (No. 136) (ratification: 1976)

*Article 1(b) of the Convention. Application of the Convention to all activities involving exposure of workers to products containing benzene, and Article 4(1). Prohibition of the use of benzene or products containing benzene in certain work.* For many years, the Committee has been requesting the Government to take appropriate measures to extend the scope of application of its national legislation to ensure that it covers all activities involving exposure of workers to benzene or products of benzene containing more than 1 per cent by volume of benzene, in accordance with *Article 1* of the Convention. Furthermore, the Committee previously requested the Government to take legislative measures to determine the work processes in which the use of benzene and products of benzene is prohibited, in accordance with *Article 4(1)* of the Convention. The Committee notes with **regret** the information provided by the Government that there are no specific standards on benzene establishing the protection of workers against risks related to exposure to or use of this chemical as required by *Articles 4, 5, 6, 7, 8 and 9* of the Convention. However, the Government indicates that there are general technical standards which could contribute to protecting workers against exposure, such as Colombian Technical Standard NTC 1728 of 1982 concerning protective respiratory equipment against toxic gases. Furthermore, the Government indicates that, given that the International Agency for Research on Cancer (IARC) has classified benzene as group 1, the Ministry of Social Protection signed an agreement with the National Cancer Institute in 2008 with the aim of drawing up a technical standard and the National Plan on the Prevention of Occupational Cancer in Colombia 2010–14. The general objective of the Plan is to promote the prevention of occupational cancer and its social, economic and personal impact across the national territory. The specific objectives include the goal of developing and maintaining a system for collecting data on morbidity and mortality; investigating carcinogenic agents; implementing systems of monitoring at the government level; determining the priorities relating to vigilance and exposure; implementing the international recommendations made by the WHO and the ILO on matters relating to occupational cancer; and providing information to workers. The Committee notes that the issue is the scope of the Convention, as defined in *Article 1(a) and (b)*, that Colombia ratified the Convention more than 30 years ago and that the Government should give full effect to all provisions of the Convention relating to the aromatic hydrocarbon mentioned in *Article 1(a)*, as well as products containing benzene, in accordance with *Article 1(b)*, whether by means of specific technical standards on benzene or more general standards on occupational cancer. As pointed out by the Government in its report, this matter has effects in various Articles of the Convention. **Taking into account the information provided by the Government that there are no specific technical standards on benzene, but taking into account also that the standards on protection against occupational cancer could cover certain aspects of the Convention, the Committee requests the Government to provide detailed information on the manner in which these standards cover the provisions of the Convention concerning exposure to products containing benzene. Furthermore, taking into account that one of the objectives of the National Plan on the Prevention of Occupational Cancer is to ensure compliance with the ILO Conventions and that 30 years after its ratification the application of the national legislation to the two cases provided for in the Convention is still not guaranteed, the Committee urges the Government to take the necessary legislative measures to ensure that the Convention also applies to activities involving exposure of workers to products containing benzene and to provide the relevant texts, as well as relevant information relating to the Convention arising from the implementation of the National Plan on the Prevention of Occupational Cancer.**

*Article 9(1)(b). Periodic medical re-examinations.* In its previous comments, the Committee requested the Government to indicate whether the medical examinations to be carried out in the framework of the subprogramme of preventive and occupational medicine are compulsory and whether the subprogramme has a binding effect which does not leave it to the discretion of the employer to carry out or to not carry out the medical examinations. Furthermore, the Committee, reminding the Government that this provision of the Convention calls for periodic re-examination at intervals to be fixed by national laws or regulations, requested the Government to take the appropriate legislative measures in this regard and to specify the periodicity of the medical examinations to be carried out according to the above subprogramme. The Committee notes that the Government indicates that section 19(1) of Ministry of Social Protection Resolution No. 2346 of 2007, as amended by Resolution No. 1918 of 2009, provides that occupational medical assessments constitute one of the main activities under the subprogramme on preventive and occupational medicine. The Committee notes with **interest** that, under the terms of section 13 of Resolution No. 2346, the employer is under the obligation to carry out specific occupational medical examinations in accordance with the risk factors to which the worker is exposed and according to the worker's individual conditions, using as a minimum the parameters established and the biological exposure indices (BEIs) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH). It also provides that in cases of exposure to carcinogenic agents, the criteria of the International Agency for Research in Cancer (IARC) shall be taken into account; in the case of exposure to agents causing pneumoconiosis, the criteria of the International Labour Organization shall be observed; and that in following up cases of diseases caused by biological agents, the criteria of the Center for Disease Prevention and Control (CDC) shall be taken into account. The section also provides that, where there are no criteria or parameters for the evaluation of risk factors or agents, and no biological exposure indices, the employer shall establish an evaluation protocol which shall include the identification of the risk factor or agent, vigilance criteria and the frequency of the medical assessment. **Please indicate the intervals fixed by the national legislation, in accordance with this provision of the Convention, and continue providing information on any other regulations in this respect. Please also indicate the manner in which these medical examinations are organized in practice.**

*Part IV of the report form in relation with Articles 1(a) and (b), 5 and 9 of the Convention. Exposed workers. Preventive measures. Medical examinations.* **The Government has communicated a guide, drawn up in 2008, focusing on occupational safety and health with specific reference to benzene and its derivatives. Please provide information on the practical application of the guide, the manner in which it facilitates the application of the Convention, in particular, preventive measures in accordance with Article 5. Please provide statistics or estimates of the number of workers exposed to benzene under the terms of Article 1(a) and (b) of the Convention and on the manner in which the medical examinations envisaged in Article 9 of the Convention will be implemented.**

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 2001)**

*Part VI of the report form. Application of the Convention in practice. Communication from the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC).* The Committee notes the Government's report and a communication from the CUT and the CTC received on 31 August 2010 and sent to the Government on 6 September 2010. The Committee notes that the Government's comments on the communication have not as yet been received. The Committee will examine the communication at its next session together with any comments the Government may wish to make. It will set out below the main matters raised. The CUT and the CTC indicate that the main problem relates to the practical application of the Convention rather than the relevant legislation. The communication refers, in particular, to the following matters.

*Articles 2 and 3 of the Convention. Formulation, implementation and periodic review of a coherent national policy on occupational health services. Progressive development of such services.* The communication indicates that the Occupational Risk Administrators (ARP) are in charge of health services and that they have no preventive duties, that their membership rate is extremely low, only 36 per cent of workers being members, which means that, out of 19 million workers, 12 million have no cover whatsoever.

*Articles 5 and 8. Occupational health services that are adequate and appropriate to the occupational risks of the undertaking. Cooperation between the employer, the workers and their representatives.* The abovementioned organizations raise the following matters:

- *High rate of occupational accidents.* According to the CUT and the CTC, Government action is limited to the hiring of occupational risk insurers, and the inefficiency of prevention is reflected in the high rate of occupational accidents. They indicate that between 2008 and May 2010, 1,221,619 occupational accidents were reported, of which only 868,791 were recognized as occupational accidents. Furthermore, taking into account only the figures for those recognized as such, the monthly average of occupational accidents is 29,958 which amounts to 968.1 accidents per day.
- *Non-application of regulations.* The CUT and the CTC state that in its report, the Government merely lists functions of the subprogramme on preventive and occupational medicine, on which the trade union organizations were not consulted. Furthermore, Colombia cannot continue to hide behind regulations that are not applied, and it must take the necessary administrative and budgetary measures to comply with the Convention. They also indicate a

lack of participation by workers and assert that although forums for dialogue do exist officially, they do not operate in practice.

- *Absence of supervision of work environment factors.* The organizations allege, in particular, a lack of prevention in mines and indicate that on 16 June 2010 an occupational accident occurred in the San Fernando coalmine causing 73 deaths, among other reasons because the risks were not identified and there was no monitoring of the work environment factors. Furthermore, of the 29 mines operating legally in the Sinifaná basin, only five meet all requirements and, in the others, the main requirements that are not fulfilled relate to safety and health.

*Article 15. Notification to occupational health services of occurrences of ill health and absence from work for health reasons in the interests of identifying any relation between the ill health and health hazards.* The CUT and the CTC assert that this provision is not applied and that workers must wait until a disease becomes chronic or degenerative before asking the employer or insurers to have the necessary studies carried out.

***The Committee asks the Government to supply information on the application in practice of the abovementioned Articles, indicating the proportion of workers covered by the functions set forth in Article 5 of the Convention. If, as provided in Article 3(2), occupational health services cannot be immediately established for all undertakings, the Committee requests the Government to provide information on the plans for establishing such services, drawn up in consultation with the most representative organizations of employers and workers. The Committee will examine the Government's report together with its comments on the present communication.***

*Plan of Action 2010–16.* While noting that the abovementioned organizations refer to the absence of a policy on occupational safety and health, the Committee points out that this is not a subject covered by the present Convention. It wishes to take this opportunity to inform the Government that in March 2010, the Governing Body adopted the Plan of Action 2010–16 to achieve widespread ratification and effective implementation of the Occupational Safety and Health Convention, 1981 (No. 155), its Protocol of 2002 and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (GB.307/10/2(Rev.)). The Committee points out that, under this Plan, the Office provides technical assistance to any governments wishing to bring their legislation and practice into conformity with these key occupational safety and health Conventions, with a view to promoting ratification and effective implementation of these instruments. The Committee reminds the Government that the Office is at its disposal for the preparation of reports on ratified Conventions. ***The Committee invites the Government to supply information on any needs that may arise in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2011.]***

### ***Asbestos Convention, 1986 (No. 162) (ratification: 2001)***

The Committee notes that the Government's brief report received on 30 August 2010 does not contain replies to all the questions raised in its previous comments and in particular that it does not indicate clearly the sections of the national legislation, including the Colombian technical standards, which, in the Government's opinion, give effect to the provisions of the Convention. Furthermore, it notes that the Office requested further information on this matter. The Committee also notes the attachments to the Government's report, received on 27 October 2010, including Ministry of Labour resolution No. 00935 of 25 May 2001 establishing the National Occupational Health Committee for the Asbestos Sector. Section 7 of the resolution lays down the duties of the above Committee which include providing the Government with assistance in developing standards under the present Convention. The Committee also notes the communication by the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC), which was received on 31 August 2010 and sent to the Government on 6 September 2010. The Committee notes that it has not received the further information requested or the Government's reply to the communication by the trade unions. In this context, at the current session, the Committee will only note the comments submitted by the CUT and the CTC and will examine them in detail at its next session, together with any comments that the Government wishes to make in that regard.

The Committee will indicate at this session the main themes of the above communication, which seem to relate to *Articles 10 (replacement/prohibition of asbestos or of certain types of asbestos or products containing asbestos) and 3(2) of the Convention (periodic review of the national legislation in the light of technical progress and advances in scientific knowledge)*. The trade union confederations state that the Government fails to recognize *Article 10*, which provides that where necessary to protect the health of workers and technically practicable to adapt the national legislation, which they emphasize has not been done in Colombia, the national legislation shall provide for one or more of the following measures: (a) replacement; or (b) total or partial prohibition. They refer to various international scientific organizations such as the WHO, according to which "there is no significant evidence of a threshold for exposure to asbestos below which cancer does not occur". The communication also indicates that in its report on the Occupational Health Services Convention, 1985 (No. 161), the Government does not refer to the measures taken to give effect to these provisions concerning asbestos (*Articles 6(3) and 20*); that there is neither prevention nor protection with regard to asbestos (*Articles 3, 9 and 15*); that there is no national training programme for the handling and use of asbestos (*Article 22*); and that the technical standards are not imposed (*Article 5 of the Convention*). The communication refers to these matters, in particular in relation to mining and construction workers. The CUT and the CTC indicate that more than 10,000 tons are extracted every year in the mine located in the department of Antioquia, which is extremely risky given that the

exploitation of mining resources is carried out using traditional methods without technology. They also indicate that in 2007 30,403 tons of asbestos were imported by the fibrocement sector. This sector has apparently taken some measures but according to the trade union confederations, there are no control measures to eliminate risk and the Government has taken no measures to that end. They indicate that in the construction sector, asbestos and its handling has serious consequences, that workers are exposed to asbestos when working in demolition and producing insulation boards, paint primers, asbestos cables, asbestos textiles, millboard, packaging, reinforced plastic, roofs, tiles and aqueducts, for example, and that most of these products are developed using chrysotile and crocidolite or amosite. They also indicate that there are an estimated 320 deaths related to asbestos each year, according to estimates by Global Unions, based on ILO methodology. Finally, the trade unions indicate that the Colombian trade union confederations are united in their belief that the use of asbestos should be prohibited and its replacement promoted and they refer to resolution No. 001 of 14 December 2006 of the Confederation of Workers of Colombia and maintain that the Convention be applied in domestic legislation and that the use of asbestos should not be permissible. ***The Committee requests the Government to provide information on this communication and on the effect given to Article 4 of the Convention, which requires that the most representative organizations of employers and workers be consulted on the measures to be taken to give effect to the provisions of the Convention, and to provide information on that matter.***

### **Chemicals Convention, 1990 (No. 170) (ratification: 1994)**

The Committee notes the Government's brief report and the attached documentation. It notes with *interest* the handbook of carcinogens belonging to groups 1 and 2 of the International Agency for Research on Cancer (IARC), classifying the agents which, inter alia, are present in the working environment in Colombia.

*Part V of the Convention. Application in practice. Communication from the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC).* The Committee notes the communication from the CUT and the CTC which was received on 31 August 2010 and communicated to the Government on 6 September 2010. The Committee notes that the Government's comments on the communication have still not been received. The Committee will therefore merely list the main issues referred to in the communication and will examine them in greater detail at its next meeting, together with any comments that the Government makes in response. In the first part of the communication, the trade union confederations supply additional information on the legislation which gives expression to certain provisions of the Convention. In the second part they refer to the following issues related to the application of the Convention in practice:

- *Article 1 of the Convention. Scope.* The CUT and CTC declare that, despite the existence of regulations, the real problem of substance is that protection against risks covers only workers who are in a formal employment relationship and are consequently insured. They indicate that most workers are in the informal and self-employed sectors and that there is no system of prevention or protection for them with regard to occupational accidents and diseases.
- *Article 13. Obligation of employers to assess risks and protect workers by appropriate means.* The CUT and CTC indicate that in order to eliminate risks from the use of chemicals, alternative less toxic materials must be used, ventilation must be improved, leaks must be monitored and protective clothing must be used. Nevertheless, they state that there are no adequate plans for prevention, no monitoring measures are taken, there are no alerts when needed and frequent loss of life or cases of permanent disability still result from the handling of certain chemicals.
- *Article 15. Obligation of employers to provide information and training.* As regards training, the CUT and CTC indicate that many workers have a basic knowledge but are unaware of regulations on industrial safety and consequently of instructions concerning the handling of chemicals, and that certain companies disregard these requirements in order to pay lower wages.

***The Committee requests the Government to supply information on the points listed above and in particular on the manner in which the application of the abovementioned provisions is ensured in practice.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2011.]***

## **Côte d'Ivoire**

### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1960)**

*Article 3(1) of the Convention. Prohibition of the employment of young persons under 18 years of age and women in any painting work of an industrial character involving the use of white lead or sulphate of lead.* In its previous comments, the Committee noted the Government's indication that the Labour Code prohibits the use of white lead, sulphate of lead or leaded linseed oil in painting work in construction (section 4 D 431). The Committee recalled that the prohibition laid down in *Article 3(1)* applies to all sectors which engage in industrial painting work, and not only building work. The Committee also requested the Government to take the necessary measures to ensure that young persons under 18 years of age and women are not employed in any painting work of an industrial character involving the use of white lead or sulphate of lead or other products containing these pigments, in accordance with this Article of the Convention.



The Committee notes that, according to the Government's report, measures will be taken to extend the law to all sectors which engage in industrial painting work, and not only in building work, and that the law will be amended to prohibit the employment of young persons under 18 years of age and women in any painting work of an industrial character involving the use of white lead, sulphate of lead or other products containing this pigment. The Committee recalls that it has been referring to this matter for many years. ***The Committee therefore urges the Government to take the necessary measures to bring its legislation into conformity with the Convention and to provide more concrete information on the amendment of the law. Pending the adoption of the amendments announced, the Committee requests the Government to take practical steps without delay to ensure that young persons under 18 years of age and women are not employed in the work mentioned and to provide information in that regard.***

*Plan of Action (2010–16).* The Committee would like to take this opportunity to inform the Government that, in March 2010, the Governing Body adopted a plan of action to achieve widespread ratification and effective implementation of the key instruments in the area of occupational safety and health (OSH), the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (document GB.307/10/2(Rev.)). The Committee would like to bring to the Government's attention that, under this plan of action, the Office is available to provide assistance to governments, as appropriate, to bring their national law and practice into conformity with these key OSH Conventions in order to promote their ratification and effective implementation. ***The Committee invites the Government to provide information on any needs it may have in this respect.***

### **Benzene Convention, 1971 (No. 136) (ratification: 1973)**

*Action Plan (2010–16).* The Committee notes with *interest* the documents entitled “National Occupational Safety and Health Policy” and “National Occupational Safety Plan 2010–14”, the latter of which indicates under objective 1.1 the desire to ratify the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Health Services Convention, 1985 (No. 161), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). It also notes the introduction of the document concerning the national policy, which indicates that “Due to the lack of an overall policy, there are problems in terms of both the design and the operation of the occupational safety and health system in Cote d’Ivoire, even though it is codified”. The Committee takes this opportunity to indicate that, in March 2010, the Governing Body adopted the plan of action to achieve widespread ratification and effective implementation of Convention No. 155, its 2002 Protocol and Convention No. 187 (see document GB.307/10/2(Rev.)). The Committee indicates that, under this plan of action, the Office envisages a whole series of actions to provide assistance to governments who request it to help them to bring their legislation and practices into line with the fundamental occupational safety and health Conventions in order to promote their ratification and effective implementation. ***The Committee requests the Government to provide information on any needs identified in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

## **Croatia**

### **Asbestos Convention, 1986 (No. 162) (ratification: 1991)**

The Committee notes the information provided by the Government in its latest report. The Committee notes, however, that the Government has not submitted a detailed report, as requested, indicating the specific measures which give effect to each Article of the Convention, in order to allow the Committee to properly examine the current application of the Convention in the country. ***The Committee therefore reiterates its request to the Government to submit a detailed report, indicating the measures taken or envisaged, in law and in practice, to give effect to each Article of the Convention, and to continue to provide information on any legislative measures undertaken with regard to the Convention.***

The Committee also recalls the comments submitted by the Croatian Trade Union Association (HUS) in 2009 regarding the Salonit asbestos issue referred to briefly in its previous comment, and that the HUS alleges that there has been no change in solving the workers' status, that the workers have still not been compensated, and that they still have major problems in defining their working status as the ex-owner still controls the bankruptcy process. The Committee also notes the information submitted by HUS that around ten workers started a hunger strike in September 2009 in order to call upon an urgent solution to their problems. While the Committee notes the response provided by the Government on the issues examined below, the Committee notes the absence of further information regarding, *inter alia*, the legal stalemate caused by the bankruptcy process against the ex-owner of the Salonit factory. ***The Government is requested to provide further information in response to this and other issues raised by the HUS including in particular, whether the Government has succeeded in adequately mitigating the negative impact of this legislative stalemate for the individual workers concerned.***

With reference to its previous comments concerning *legislative measures* taken and the question of compensation of victims and providing them an *old-age pension on more favourable conditions*, the Committee notes with *satisfaction* the information provided by the Government regarding the adoption of the Ordinance on conditions and methods for health monitoring, diagnostic procedures for suspected occupational diseases caused by asbestos and the criteria for recognizing

occupational diseases cause by asbestos (*Official Gazette* 134/08). The Committee also notes that the Commission for Settling Claims for Compensation by Workers Suffering from Occupational Diseases Due to Exposure to Asbestos (the Commission) drew up guidelines in 2010 for workers claiming compensation, pursuant to the Act on compensating workers occupationally exposed to asbestos, which provide a detailed explanation of the procedure for recognizing occupational diseases and indicate the documents that need to be submitted in order to obtain the right to monetary compensation for an occupational disease caused by exposure to asbestos. The Government indicates that these guidelines, accompanied by application forms and other useful information, have been made available on the website of the Croatian Institute for Occupational Safety and Health. The Committee notes the information indicating that the Commission has received 937 claims for compensation since it was established in 2007, including 106 new cases between July 2009 and July 2010. The Government indicates that of the 330 decisions that have been issued, 144 were successful and 186 were unsuccessful. The Committee further notes the information indicating that in the course of implementing the Act on the requirements for obtaining an old-age pension by workers occupationally exposed to asbestos (*Official Gazette* 79/07), it was noted that there were a certain number of workers, who, while working for a legal person using asbestos as a raw material in its manufacturing process (Salonit d.d. in administration and Plobest), had subsequently developed a recognized asbestos-related occupational disease, but did not meet the requirements relating to age or had not completed the required number of years of insurance, as prescribed by the Act. The Committee welcomes the information indicating that in response to this, the Government amended the Act (*Official Gazette* 149/09) in order to enable this category of ill workers to obtain the right to an old-age pension under more favourable conditions. As a result of this, since 1 January 2010, they have been receiving 26 per cent higher pensions. ***The Committee asks the Government to continue to ensure that all claims and requests for compensation by workers suffering from an occupational disease due to exposure to asbestos during the course of their employment are handled as expeditiously as possible, to provide information on progress in this respect, as well as on the measures taken to raise the awareness of such workers regarding the possibilities to seek redress.***

As regards measures taken at the *institutional level*, the Committee notes the information provided by the Government in its report on the Occupational Safety and Health Convention, 1981 (No. 155), concerning the adoption on 19 December 2008 of the National Occupational Health and Safety Programme 2009–13, and the establishment, after consultation with the social partners, of the Croatian Institute for Health Protection and Safety at Work. The Government indicates that the Institute has the role of confirming diagnosed occupational diseases and keeping a register of occupational diseases, as well as submitting an annual report to the Ministry of Health and Social Welfare on the preventive measures taken to reduce the number and occurrence of occupational diseases, accidents and any other injuries to health which arise in the course of or in connection with work. The Committee also notes that the Institute is establishing a database on the employers and workers who handle, or are exposed to, antineoplastic, carcinogenic and mutagenic substances and ionizing radiations, and that employers are legally obliged to submit data to the Institute. ***The Committee asks the Government to continue to provide information on the activities undertaken by the Croatian Institute for Health Protection and Safety at Work, in particular concerning the application of the Convention; and to provide an update on the previously noted intention to ensure coherent national action in relation to the application of this Convention.***

As regards *measures taken to rehabilitate* the Salonit factory and adjacent areas, the Committee notes the information indicating that the Government, through the Fund for Environmental Protection and Energy Efficiency, paid 86 million kuna (HRK) for labour costs of workers, and that until the end of 2009, contracts worth HRK13 million had been concluded for preparing rehabilitation work, with the involvement of 107 workers of the Salonit d.d. administration. The Government further indicates that the Fund guarantees continued engagement in rehabilitation work to all workers who do not acquire the right to pension. The Committee notes, however, that the Government has not addressed the application throughout the country of legislative measures requiring that all work related to remediation be carried out under expert supervision by an authorized company. ***The Committee requests the Government to provide further information on the application throughout the country of legislative measures requiring that all work related to remediation be carried out under expert supervision by an authorized company.***

*Part III of the report form. Decisions by courts of law.* The Committee notes the information which indicates that a total of 29 lawsuits were filed with the Administrative Court by the applicants who had been unsuccessful in their application for compensation. ***The Committee asks the Government to provide further information on the outcomes of these lawsuits, and to provide copies of the texts of the decisions.***

*Part V of the report form. Application of the Convention in practice.* ***The Committee asks the Government to give a general appreciation of the manner in which the Convention is applied in the country, and to provide, where such statistics exist, information on the number of workers covered by the legislation, the number and nature of the contraventions reported, and the number, nature and cause of occupational accidents and diseases reported.***

***[The Government is asked to report in detail in 2012.]***

## Cuba

### **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 1982)

*Articles 4, 8 and 15 of the Convention. National policy and legislation. Coherence and coordination between enforcement bodies.* The Committee notes with **satisfaction** Ministry of Labour and Social Security Resolution No. 39 of 29 June 2007 issuing the General Bases for Occupational Safety and Health which provide that national bodies, organizations and entities shall use these in establishing plans and strategies for ongoing improvement in the occupational safety and health systems and in allocating human, material and financial resources therefore in their budgets. These bases apply to all workers and to students engaging in work for the purpose of their training. It contains provisions on the bodies that govern the Occupational Protection and Health System; coordination of the various bodies that are involved; the powers, functions and duties of heads of work units; the occupational safety and health system of work units; occupational safety and health committees; risk management and prevention programmes. Annex II of the Resolution sets forth mandatory basic technical measures to be universally applied. It also notes Ministry of Labour and Social Security Resolution No. 50 of 25 June 2008 issuing the methodology for working out the requirements for individual and collective protection equipment, budgetary needs and implementation monitoring. The Ministry of Labour and Social Security also adopted Resolution No. 51 of 25 June 2008 issuing the methodology for formulating the Organizational Regulation on Occupational Protection and Health, Occupational Safety Handbook, for work units, setting out the different levels of organization in enterprises and other forms of economic organization. The Committee notes that the legislation referred to is conducive to coherence and coordination between the bodies responsible for applying the Convention. It also notes that Resolution 19/03 of 8 September 2003 on the notification and registration of occupational accidents should pave the way to eventual ratification of the Protocol of 2002 to the present Convention, which supplements the Convention by regulating registration and notification. The Committee takes this opportunity to point out that in March 2010 the Governing Body adopted the Plan of Action (2010–16) to achieve widespread ratification and effective implementation of the occupational safety and health instruments (Convention No. 155, its 2002 Protocol, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)); and that these three instruments are the fundamental occupational safety and health instruments. ***In view of the fact that Cuba has ratified the present Convention and Convention No. 187, the Committee draws the Government's attention to the fact that the Plan of Action envisages a number of arrangements for technical assistance, and invites the Government, should it envisage the possibility of ratifying the 2002 Protocol, to communicate any needs for assistance that might arise.***

*Part V of the report form. Practical application.* The Committee notes that the legislation covers 5,072,400 workers, of whom 1,934,100 are women, and 3,138,300 are men. It also notes that, in 2009, 10,974 inspections were carried out, 29,869 infringements were reported and 25,253 orders were issued to remedy the infringements and that, in 2008, 6,028 workers were injured in occupational accidents, 79 of which were fatal, whereas in 2009 5,397 workers were injured in occupational accidents, 88 of which were fatal. ***Noting that in 2009 there were fewer occupational injuries than in 2008, but more of them proved fatal, and that this is borne out by the mortality rate provided by the Government (13.1 per cent in 2008 and 16.3 per cent in 2009), the Committee asks the Government in its next report to indicate the possible reasons for this difference and to provide relevant statistics for the reporting period. It would also be grateful if the Government would provide a breakdown of accidents by sector of activity.***

## Czech Republic

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1993)**

The Committee notes the information in the Government's latest report, including references to the availability of legislation online. The Committee also notes the inclusion of observations made by the Confederation of Industry and Transport on the importance of occupational safety and health (OSH) policy in the sector of radiation protection, despite the high costs, and that surveillance of workers in this area is undertaken by the Czech authorities, and also the strong pressure of both the Czech Republic and the international community. The Committee further notes the responses by the Government to its previous comments, which appear to show effect given to *Articles 1 and 12 of the Convention*. ***The Committee asks the Government to continue to provide information on the relevant measures undertaken with regard to the Convention.***

*Article 5 of the Convention. Exposure to ionizing radiation.* The Committee notes the response provided by the Government indicating that the principle of optimization and other basic principles of radiation protection are enshrined in Act No. 18/1997 Coll., the Atomic Act, as amended. The Government indicates that limiting the exposure of workers to the lowest level possible is done using the system of quality assurance, and that such a system requires each workplace involved in disposing ionizing radiation to submit the so-called evidence of optimization as well as a quality assurance programme according to section 13(5) of the Atomic Act, which forms a part of the approval documentation for a permit to dispose of ionizing radiation. Section 17(3) of Decree No. 307/2002 Coll., as amended, takes into account the economic and social factors to assess the benefits of measures for introducing graded radiation activities, medical radiation, natural and accidental exposure. The Committee notes that the Government has not referred to any efforts made to restrict the

exposure of workers to ionizing radiation to the lowest practicable level, and that any unnecessary exposure is to be avoided. **The Committee reiterates its request that the Government indicate the measures taken or envisaged to apply Article 5 of the Convention, in law and in practice.**

*Article 7. Prohibition against engaging workers under the age of 16 in work involving ionizing radiation.* The Committee notes the information provided by the Government indicating that section 21 of Decree No. 307/2002 sets limits for apprentices and students (16–18 years of age), but that the Government does not specify the provisions which ensure that workers under the age of 16 are not engaged in work involving ionizing radiation. **The Committee asks the Government to specify the exposure limits set for apprentices and students (16–18 years of age); and to indicate the measures taken or envisaged to ensure that no worker under the age of 16 shall be engaged in work involving ionizing radiation.**

*Article 8, in accordance with Article 6. Levels to be set for workers who are not directly engaged in radiation work.* The Committee notes the information provided by the Government which indicates that section 23 of Decree No. 307/2002 limits the exposure of individuals in special cases, including exposure of individuals who care for patients exposed to medical radiation beyond their duties or who live in the same household (persons older than 18 years), and that the limit for such exposure is 5 mSv per calendar year and 1 mSv per calendar year for other persons. **The Committee, referring to paragraph 35(a)(ii) of its 1992 general observation on the Convention which specifies that external and internal exposures of workers not directly engaged in radiation work, as well as of members of the general public, are to remain below 1 mSv a year, asks the Government to keep the Office informed of any measures taken to bring national laws into line with these requirements.**

*Part V of the report form. Application of the Convention in practice.* The Committee notes the response provided by the Government indicating that the reduction of risk of accidental exposure of workers to a dose exceeding the maximum permissible limit (occurring in only extremely rare incidents) is dealt with in the document “On-site Emergency Plan” that is part of the approval documentation for permission to use ionizing radiation sources (in the annex to the Atomic Act), and that the focus of inspectors of the State Office for Nuclear Safety is also to prevent such situations. The Committee notes the detailed information provided by the Government in its report regarding the application of the Convention, including on inspection activities in the area of radiation protection. The Government indicates that a total of 1,078 inspections were carried out in the area of radiation protection in 2009, of which 33 were identified as grade 3 (meaning an inspection in which deficiencies were detected preventing a safe manner in the carrying out of activities leading to exposure). The Committee also notes the information that 22,500 workers were monitored by dosimetric services in 2009. The Government indicates that the issuing of personal radiation cards has helped ensure an accurate and a complete assessment of doses for workers entering the controlled area. The Committee notes the information that, based on an analysis of the findings from investigations of higher doses, the critical group of workers with high occupational exposure (apart from uranium miners) are doctors conducting medical intervention radiology procedures. The Government also indicates that since 2002, radiation exposure of workers has been monitored in workplaces where there may be a significant increase in radiation from natural sources, and that the most important professional groups, whose doses are regularly evaluated, are airline staff and tour guides in caves open to the public. **The Committee asks the Government to continue to provide information on the application of the Convention in practice.**

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1993)**

*Article 10 of the Convention. Professional independence.* The Committee notes the response provided by the Government which indicates that providers of occupational health care are independent from employers and that currently the care provided is almost entirely based on a contractual relationship between the employer and the occupational health-care provider. The Committee notes the comments by the Czech-Moravian Confederation of Trade Unions (CMKOS), included in the Government’s report, which state that there are health-care institutions which still use their own employees (doctors) for occupational health purposes and their independence is thus compromised. The Committee notes the Government’s response thereto, which indicates that the comments by CMKOS were discussed at the tripartite Working Group for the Cooperation with the ILO of the Council of Economic and Social Agreement on 18 October 2010, and it was agreed that a special sitting of the Working Group (with the expert participation from the side of the Government, as well as of the social partners) will be dedicated, in the near future, to the issue of occupational health services, as well as the White Lead (Painting) Convention, 1921 (No. 13). **The Committee asks the Government to continue to provide information on the measures taken or envisaged to ensure that the personnel providing occupational health services enjoy full professional independence from employers, workers, and their representatives, where they exist, in relation to the functions listed in Article 5, with reference to the comments by CMKOS; and to provide further information on the outcome of the abovementioned tripartite working group.**

*Article 11. Qualifications required for personnel providing occupational health services.* The Committee notes the response provided by the Government, which indicates that, in addition to occupational health-care specialists, occupational health-care services are also provided by general practitioners. The Government indicates that the Institute of Health Care Post-Graduate Education organizes training for general practitioners targeted at occupational health-care issues through courses covering 150 hours of lectures. The course is concluded by examinations and tests, after the passing of which the graduate receives a certificate. CMKOS admits that although new legislation has introduced specific provisions for education of medical doctors and nurses specializing in occupational health, these services are, in practice,

usually carried out by general practitioners, and that the reform of the national health legislation has not been realized yet. The Committee notes the response above by the Government to the comments by CMKOS. ***The Committee asks the Government to continue to provide information on the qualifications required for the personnel providing occupational health services, with reference to the comments by CMKOS; and to indicate whether general practitioners, who undertake a role in occupational health care, do not do so until they are certified in such duties.***

The Committee is raising other points in a request addressed directly to the Government.

### **Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2000)**

The Committee notes the information contained in the Government's latest report, including the comments by the Czech–Moravian Confederation of Trade Unions (CMKOS), which indicate that mining trade unions pay maximum attention to the unfavourable situation concerning fatal accidents, and adopt measures realized by union occupational safety and health inspectors. The CMKOS also states that pursuant to Memorandums of Understanding between mining trade unions, the State Labour Inspection Office and the Czech Mining Office, the situation is jointly appraised on a regular basis and agreed conclusions are immediately realized. The Committee also notes that the Government has referred to online versions of the annual reports on mining safety for the period 2006–09. ***The Committee asks the Government to continue to provide information on the measures taken and envisaged to improve safety and health standards in mines, particularly coalmines.***

The Committee is raising other points in a request addressed directly to the Government.

## **Democratic Republic of the Congo**

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 4 of the Convention.* The Committee notes the new reorganization of the labour inspectorate into four specialized subservices, one of which will be inspecting technical safety standards. ***The Committee would be grateful if the Government would provide more information on this restructuring, in particular on the manner in which this renewed system of inspection ensures the effective application of the provisions of the safety legislation in the building industry.***

*Article 6.* The Committee notes that the Government explains the absence of statistical information on occupational accidents by the war situation prevailing since 2 August 1998, which has prevented the central services of the labour administration from contacting all the external services. ***The Committee hopes the Government will be in a position to supply to the Office, with its next report, statistical information on the number and classification of the accidents occurring, particularly to persons working in the sector covered by the Convention, and as detailed information as possible on the number of persons engaged in the building industry and covered by the statistics.***

The Committee notes that, according to section 125 of Act No. 93-001 of 2 April 1993 concerning constitutional harmonization during the transition period, all legislative and regulatory texts in existence at the time of the entry into force of the said Act, will continue to be in force until they are expressly repealed. The Committee notes that the Government indicates in its report that the legislative and regulatory texts applying the provisions of the Convention have already been provided to the Office. The Committee notes that the texts referred to by the Government, which were recalled by the Government in its report of 1984, were adopted between 1959 and 1974. ***In view of the substantial changes that have taken place in the country since then, the Committee would be grateful if the Government would indicate the laws and regulations currently in force and those that have been expressly repealed. Please provide the Office with a copy of the amending laws or regulations which will permit an assessment of the application of the provisions of the Convention.***

***The Committee hopes that the Government will make every effort to take the necessary measures in the very near future.***

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2(2)–(4) of the Convention.* *Prohibition against the sale, hire, transfer in any other manner and exhibition of unguarded machinery.* The Committee notes the information provided by the Government according to which a draft law has been prepared concerning the guarding of machinery and other mechanical devices and prohibiting the sale, hire, transfer in any other manner and exhibition of machinery not provided with appropriate protection of their dangerous parts. It notes that this law is to be submitted for examination during the next session of the Labour Council. ***The Committee asks the Government to ensure that the draft legislation gives effect to the Convention and requests it to transmit a copy thereof as soon as it has been adopted.***

*Article 3. Exemptions to the obligation to provide guards. Article 4. Responsibility for ensuring compliance.* With reference to its previous comments, the Committee notes that the Government's report does not provide an answer to the questions raised by the Committee. ***The Committee urges the Government to provide information on measures taken or envisaged to give effect, in law and in practice, to Articles 3 and 4 of the Convention.***

*Part V of the report form. Practical application of the Convention.* ***The Committee requests the Government yet again to provide a general appreciation of the manner in which the Convention is applied in the country, including, for instance, extracts from official reports, such as labour inspection reports, and information on any practical difficulties in the application of the Convention, the number and nature of work accidents reported, as well as any other information allowing the Committee to assess more accurately how the Convention is applied in practice in the country.***

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Djibouti

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1978)**

The Committee notes with *regret* that, for the third consecutive year, the Government's report has not been received and that, prior thereto and since 2000, the Government has submitted the same report which does not provide any new information in reply to the Committee's previous comments. While noting the efforts made in the country through the adoption of a new Labour Code in 2006 and the development and adoption of a Decent Work Country Programme 2008–12, the Committee must underscore that the reporting obligations undertaken by the Government are important and that a regular review of the situation in the country in relation to the matters covered in this Convention can be helpful for the Government in its further improvements, not only in relation to the application of the present Convention but in the area of occupational safety and health in general.

*Plan of Action (2010–16).* The Committee would also like to take this opportunity to inform the Government that, in March 2010, the Governing Body adopted a plan of action to achieve widespread ratification and effective implementation of the key instruments in the area of occupational safety and health (OSH), the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), (document GB.307/10/2(Rev.)). The Committee would like to bring to the Government's attention that, under this plan of action, the Office is available to provide assistance to governments, as appropriate, to bring their national law and practice into conformity with these key OSH Conventions in order to promote their ratification and effective implementation. *The Committee invites the Government to provide information on any needs it may have in this respect.*

In the meantime, the Committee must repeat its previous observation which reads as follows:

The Committee understands, however, that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitutes a general framework for the protection of workers against risks related to work. According to previously submitted information the relevant legislation would also include Order No. 1010/SG/CG of 3 July 1968 concerning the protection of workers against ionizing radiation in hospitals and health-care institutions, or in Order No. 72-60/SG/CG of 12 January 1972 on occupational medicine. *With reference to article 125(a) of the newly adopted law providing for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, on a series of different issues including radiation protection, the Committee requests the Government to clarify whether the abovementioned Orders remain in force and, as appropriate, to transmit to it copies of any revised or complementing legislation once it has been adopted.*

The Committee also notes the observations submitted by the General Union of Djibouti Workers (UGTD) on 23 of November 2007, raising concerns regarding insufficient protection against ionizing radiation for employees at health care centres. These observations were transmitted to the Government for comment on 21 September 2007, but no comments have been received to date.

*Article 3(1). Protection of workers against ionizing radiations; Article 6(2). Maximum permissible doses; and Article 9(2) of the Convention. Instruction of the workers assigned to work under radiations.* With reference to the foregoing and its previous comments, the Committee recalls that all appropriate steps shall be taken to ensure effective protection of workers against ionizing radiations and to review maximum permissible doses of ionizing radiations in the light of current knowledge. In this context, the Committee notes that the UGDT seems to indicate that, in practice, industrial undertakings using procedures involving ionizing radiation do not seem to apply uniform rules for the protection of workers against exposure thereto and that the workers engaged in, for example, health-care centres are not sufficiently informed of the dangers related to their activity and are not protected in an adequate way. The Committee again draws the Government's attention to the revised dose limits for exposure to ionizing radiation established on the basis of new physiological findings by the International Commission on Radiological Protection (ICRP) in its 1990 recommendations. *The Committee requests the Government to respond to the observations made by the UGDT and urges the Government to take all appropriate measures, in the near future, and with due account of the 1990 Recommendations of the ICRP, to give full effect, in law and in practice, to these provisions of the Convention.*

*Article 7(1)(b) and (2) of the Convention. Exposure limits for young persons between 16 and 18 years of age. Prohibition against employing young persons under 16 in work involving exposure to radiation.* In its previous comments, the Committee had noted that there were no provisions in relevant legislation prohibiting the employment of children under 16 years of age in radiation work and fixing maximum permissible doses for persons between 16 and 18 who are directly engaged in radiation work, as called for by this Article of the Convention. *The Committee urges the Government to take all appropriate measures to ensure the application of this Article in the near future.*

*Exceptional exposure of workers in situations of emergency.* With reference to its previous comments, the Committee again draws the Government's attention to paragraphs 16–17 of its 1992 general observation under this Convention which concern occupational exposure during and after an emergency. *The Government is requested to indicate whether, in emergency situations, exceptions are permitted to the normally tolerated dose limits for exposure to ionizing radiation and, if so, to indicate the exceptional levels of exposure allowed in these circumstances and to specify the manner in which these circumstances are defined.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## **Hygiene (Commerce and Offices) Convention, 1964 (No. 120)** (ratification: 1978)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee understands that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitute a general framework for the protection of workers against risks related to work. *The Committee nevertheless requests the Government to provide additional information concerning the following points.*

*Articles 10, 13, 14, 15, 16 and 18 of the Convention.* With reference to the comments that it has formulated for several years, the Committee notes that article 125(a) of the Labour Code provides for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, in particular, with regard to lighting, ventilation or aeration, drinking water, sanitary facilities, evacuation of dust and fumes, precautions to be taken against fire, installation of emergency exits, radiation, noise and vibrations. *The Committee trusts that the Government will adopt the abovementioned legislation in the very near future and that it will give full effect to Articles 10, 13, 14, 15, 16 and 18 of the Convention. The Committee requests the Government to provide a copy of this legislation as soon as it has been adopted.*

*With reference to the advances that hopefully will be made through the Decent Work Country Programme 2008–12, including, inter alia, further cooperation with the social partners, the Committee urges the Government to make every effort to take the necessary action in the very near future.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Dominican Republic**

### **Safety and Health in Construction Convention, 1988 (No. 167)** (ratification: 1998)

*Application of the Convention. Government's report and observations from trade unions.* The Committee notes the report from the Government which was received too late for the Committee to be able to examine in detail at the current session of the Committee. Nevertheless, the Committee notes the insufficient information provided in relation to its previous comments, and in particular the absence of a reply to questions formulated in paragraphs 2–3 of the comment, which refer to *Article 10* on workers' right and duty to participate in ensuring safe working conditions and *Article 12(1)* on the right to removal. With reference to the comments from the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Trade Union Unity (CNUS) and the National Confederation of Dominican Workers (CNTD), transmitted to the Government on 23 September 2010, the Committee notes that the report received from the Government does not contain a response thereto. The comments from the trade unions refer, inter alia, to the high rate of accidents and diseases in the construction sector, and to the lack of effectiveness of the labour inspectorate in addressing frequent, systematic and serious violations of the applicable legislation. The Committee also notes the reference made to the Ministerial Resolution No. 4 of 2007, but that the Government does not include a copy thereof with its report. It is thus not clear whether this Resolution has an impact on existing legislation and whether this text is the draft legislation on risk prevention, and the amendment to the Occupational Safety and Health in Industry Regulation No. 807 of 30 December 1966, that the Government has referred to in its previous reports. *The Committee requests the Government to respond to the comments submitted by the CASC, the CNUS and the CNTD; to provide further details on current legislation giving effect to the Convention, including copies of such legislation; and to reply to its previous comments. The Committee will examine the report of the Government at its next session in the light of any information received in these respects.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## **Ecuador**

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1970)**

Noting that the Government's report does not contain the information requested previously, the Committee refers to the comments it has made this year on the application of the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), in which it invites the Government to request technical assistance from the Office for the preparation of reports and for a number of issues pertaining to the occupational safety and health Conventions. *The Committee again invites the Government to provide detailed information replying to the questions in the Committee's observation of 2005 on the application of this Convention.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Benzene Convention, 1971 (No. 136) (ratification: 1975)**

The Committee notes that in its report the Government does not supply the information requested in the Committee's previous comments and states that the Committee's comments have been referred to the new authorities of the Directorate of Occupational Safety and Health so that they may provide the relevant responses. The Committee refers

to the comments it has made this year on the application of the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), in which it invites the Government to seek technical assistance from the Office for the preparation of reports and in relation to a number of issues pertaining to the occupational safety and health Conventions. ***The Committee again asks the Government to supply detailed information on the matters raised in the last observation (2006) on the application of this Convention.***

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1975)**

The Committee notes that in its report the Government does not supply the information requested in the Committee's previous comments and states that the Committee's comments have been referred to the new authorities of the Directorate of Occupational Safety and Health so that they may provide the relevant responses. The Committee refers to the comments it has made this year on the application of the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), in which it invites the Government to seek technical assistance from the Office for the preparation of reports and in relation to a number of issues pertaining to the occupational safety and health Conventions. ***The Committee again asks the Government to supply detailed information on the matters raised in the last observation (2006) on the application of this Convention.***

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1978)**

The Committee notes the Government's brief report which includes copies of three internal safety and health regulations of the enterprises Adelca, Mezclalista and Baker Hughes Incorporated, apparently adopted pursuant to Ministerial Resolution No. 219 of 2005, and other information from various sources. Further to the comments that it has made for several years, the Committee once again notes with *regret* that, despite asking the Government to reply in detail to the comments made, the Government's report is a general summary and, in the absence of further explanation by the Government, the Committee is unable to assess the importance of the further information from various sources attached to the Government's report. In some cases, it is pointed out that the information requested is not within the remit of the unit concerned. The Committee indicates that regardless of the internal distribution of competencies, coordination is necessary both to apply the occupational safety and health Conventions and to prepare the respective reports and that, regardless of the internal distribution of responsibilities, the responsibility for presenting the reports lies with the Government. As a result of the various issues mentioned, the information available does not allow the Committee to assess whether the national legislation and practice give effect to the obligations assumed under the Convention. However, the Committee notes that certain efforts are being made with regard to occupational safety and health in the country. For example, the Committee notes that the Occupational Safety and Health Unit has now become the Occupational Safety and Health Directorate and that the Committee's comments have been sent to the new authorities for their respective comments. ***The Committee requests the Government to gather together the information requested in its previous comments and to reply in detail to the questions raised in 2009. The Committee asks the Government to consider the possibility of requesting technical assistance from the Office with a view to preparing reports and replying to the questions raised in relation to the occupational safety and health Conventions.***

*Plan of Action (2010–16).* The Committee takes this opportunity to inform the Government that in March 2010 the Governing Body adopted the Plan of Action 2010–16 to achieve widespread ratification and effective implementation of the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (document GB.307/10/2(Rev.)). The Committee draws the Government's attention to the fact that, under this Plan, the Office is providing technical assistance to governments so that they can bring their legislation and practices into conformity with these key occupational safety and health Conventions in order to promote their ratification and effective implementation. Furthermore, the Committee recalls that the Office is available to provide assistance with the preparation of reports on ratified Conventions. ***The Committee requests the Government to provide information on any needs that may arise in this regard.***

*[The Government is asked to reply in detail to the present comments in 2011.]*

### **Asbestos Convention, 1986 (No. 162) (ratification: 1990)**

*Articles 11 and 12 of the Convention. Use of crocidolite and the spraying of asbestos. Article 17(1) and (2). Demolition of plants or structures containing friable asbestos insulation materials. Article 24(4). Efforts made to provide workers unable to pursue their work for medical reasons with other means of maintaining their income.* The Committee notes that in its report the Government does not provide the information requested in the previous comments and indicates that the Committee's comments have been referred to the new authorities of the Occupational Safety and Health Directorate so that they may provide the relevant responses. The Committee refers to the comments it has made this year on the application of the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), in which it invites the Government to seek technical assistance from the Office for the preparation of reports and for a number of issues pertaining to the occupational safety and health Conventions. ***The Committee accordingly asks***



*the Government to provide the information requested in the 2005 observation on the abovementioned Articles of the Convention.*

*Part V of the report form. Application in practice. Article 5. Labour inspection services. The Committee requests the Government to make every effort to provide information on the practical application of the Convention, including reports supplied by the labour inspection service or other bodies responsible for enforcement of the Convention and the relevant regulations, so that the Committee can assess more fully the manner in which the Convention is applied in practice. Please provide, for example, general information on the manner in which the Convention is applied, including in the construction sector, to the extent possible.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Ethiopia

### **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 1991)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

With reference to its previous comments, the Committee notes the information in the Government's report of this year, including a copy of a document entitled "Occupational Safety and Health Directive 2003" by the Ministry of Labour and Social Affairs. While the content of this document represents a promising development in this area, the Committee notes that the Government refers thereto as a "draft Directive on OSH" and that its status therefore remains unclear. *The Committee asks the Government to clarify the status of the Occupational Safety and Health Directive 2003 and – if this is draft legislation – to indicate whether it has been adopted and, in that case, to transmit a copy thereof to the Committee as soon as it has been adopted.*

*Article 1(1)–(3) of the Convention. Adequate protection to public servants.* The Committee also notes that, in reply to previous comments on this issue, the Government indicates that two new laws – Proclamations No. 377/2003 (amending Labour Proclamation No. 42/1993) and Proclamation No. 262/2002 on "public civil servants" – have been adopted, ensuring the safety, health and welfare of public servants. The Government did not, however, include copies thereof in its report. *The Committee requests the Government to submit to it copies of Proclamation Nos. 377/2003 and 262/2002, as well as any other relevant legislation that may have been adopted subsequently to enable the Committee to examine the application of this Convention in the country.*

*Technical assistance.* The Committee notes the interest of the Government in receiving technical assistance from the Office to develop structures for effective cooperation at the institutional level in the country and to improve its system of labour inspection and expresses the hope that a request would be along those lines.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Finland

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1978)**

The Committee notes the information provided regarding effect given to *Article 7(1)(b) and (2) of the Convention*, and references made to new legislation adopted giving further effect to the Convention, as well as the detailed information provided regarding regulatory guides for different types of work involving possible exposure to radiation. The Committee further notes the observations from the Central Organisation of Finnish Trade Unions (SAK) included in the Government's report.

*Articles 3(1) and 6(1) of the Convention. Effective protection of workers in the light of available knowledge; maximum permissible doses.* The Committee notes from the SAK's comments that the dose limits for work-related exposure to radiation defined by the Radiation and Nuclear Authority (STUK) should be stricter on the basis of current research data. *Noting that the Government does not address these concerns in its report, the Committee asks the Government to respond to the SAK's comments in its next report.*

*Article 12. Medical examinations.* The Committee notes from the SAK's comments that health inspections are not carried out on all workers because of the use of temporary and subcontracted workers. *Noting that the Government does not address these concerns in its report, the Committee asks the Government to respond to the SAK's comments in its next report.*

*Article 14. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable.* The Committee notes the Government's response that, according to the Employment Accidents Insurance Act (608/1948) compensation for injury or illness covers medical treatment, daily allowances, accident pension and handicap allowance, including any relevant supplements, compensation for costs and loss of income arising from physical therapy. However, with reference to its previous comments the Committee would again like to draw the Government's attention to what is stated in paragraph 32 of the 1992 general observation under the Convention, and the fact that this provision also relates to situations before any occupational disease has been declared but after a determination that continued assignment to work involving exposure to ionizing radiation has been found to be medically inadvisable. In such cases, paragraph 32 makes it clear that every effort must be made to provide the workers

concerned with suitable alternative employment, or to maintain their income through social security measures or otherwise. *The Committee requests the Government to provide further information on measures taken to ensure that workers are offered alternative employment or to maintain their income when it has been determined that it is medically inadvisable for them to continue their work, including information on the situation of workers who have been employed for less than three years.*

*Part V of the report form. Application in practice.* The Committee notes from the comments by the SAK that the occupational health-care provisions are not supervised and that no statistics are available on the implementation of statutory health inspections, or on negligence and related sanctions. *The Committee requests the Government to indicate measures taken to address the comments raised by the SAK and to provide a general appreciation on the application of the Convention including, for instance, extracts from inspection reports as well as statistical information on the number and outcome of such inspections.*

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1985)**

The Committee notes the information provided regarding effect given to *Articles 5(e), 19(a) and (b), of the Convention, and Articles 1(a) and (d), 3(a), 4(a) and 7, of the Protocol.* It notes with *interest* the detailed statistical information provided, which is examined below. The Committee further notes the observations from the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK), the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), the Union of Professional Social Workers Talentia, the Commission for Local Authority Employers (KT) and the State Employer's Office (VTML) included in the Government's report.

*Article 4 of the Convention. National policy.* With reference to its previous comments, the Committee notes the Government's response stating that the development of occupational health care is based on the Council of State's Decision-in-Principle "Occupational Health 2015 – Development Strategy for Occupational Health Care". This document sets out a detailed policy for most aspects of occupational health care. The Committee also notes the information provided regarding the practical aspects of the 1998–2007 policy related to occupational health in the report on the Occupational Safety and Health Strategy 1998–2007 made available to the Committee. *The Committee requests the Government to continue to provide information on the continuous process of formulating, implementing and periodically updating the national policy on OSH in the country.*

*Article 9. System of inspection.* The Committee notes the comments of AKAVA in regard to the implementation of the inspection system that reductions have been made in resources of the OSH authorities, and its particular concern over the insufficiency of supervision and expertise with regard to the mental health aspect of OSH services. The Committee also notes AKAVA's suggestions that, instead of resource reduction, additional resources targeted at risk monitoring are required. *Noting that the Government does not address these issues in its report, the Committee asks the Government to respond to AKAVA's comments in its next report.*

*Articles 13 and 19(f). Protection of workers removed from situations presenting an imminent and serious danger.* The Committee notes the comments raised by the Union of Professional Social Workers Talentia expresses concerns over the ambiguity of national legislation and regulations especially in regard to workers who need to go to clients' homes on house calls alone or face clients, if they fear the clients in question, knowing them to be violent, or have even had their lives threatened by the client. In such cases, the supervisors of workers have ordered them to press ahead and carry out their duties. If, after personally evaluating their duties as posing a major threat, workers refuse to perform them, the situation may be interpreted as refusal to work without a valid reason. The Committee further notes AKAVA's view on this aspect that it is important to clarify OSH legislation for the purpose of preventing work-related violence more effectively and improving post-incident support in cases of work-related threats and violence. *Noting that the Government does not address these concerns in its report, the Committee asks the Government to respond to the concerns of the Union of Professional Social Workers Talentia and AKAVA in its next report.*

*Articles 14 and 19(d). Occupational safety and health training.* The Committee notes the Government's response in regard to the employer's obligation under section 33 of Act 44 of 2006. The Committee also notes the comments of the SAK and STTK that no training criteria, qualifications requirements, or performance monitoring have been set for employers' and employees' representatives responsible for OSH. The Committee further notes from the comments that there are many doctors working in occupational health care who do not have the required qualifications and since they mainly work in health-care centres, it remains unclear how work-related illnesses are identified. *Noting that the Government does not address these matters in its report, the Committee asks the Government to respond to the SAK's and STTK's comments in its next report.*

### **Protocol of 2002 (ratification: 2003)**

*Article 2 of the Protocol. National legislation.* With reference to its previous comments, the Committee notes the Government's response that no decree has so far been issued under section 46(4) of Act 44 of 2006 in regard to the content and manner by which the reporting of occupational accidents and diseases are to be carried out. *The Committee asks the Government to keep it informed of any decisions taken in this regard.*

*Article 3(c). Duration for maintaining records.* The Committee notes the Government's response in that, by virtue of section 10 of the Occupational Safety and Health Act, employers are obligated to monitor the occurrence of occupational accidents, for which purpose they must maintain their records on occupational accidents for a suitable period of time. **The Committee asks the Government to provide clarification as to the practical meaning of "a suitable period of time".**

*Part V of the report form. Application of the Convention in practice.* The Committee notes the detailed statistical information provided concerning the developments in Finland 2005–09 including the analysis *Occupational Accident Development Analysis – Final Report 31 January 2010* of the Finnish Institute of Occupational Health. The Committee notes that reference is made to five indicators (compensated occupational accidents and diseases; compensated occupational accidents (for all sectors and for the construction industry and transport and storage sectors); accidents in the workplace and commuting accidents; fatal commuting accidents and compensated occupational diseases); that there has been a noticeable decrease in the number of workplace accidents especially in sectors with high risk of accidents such as construction and transport; that the data broken down by gender indicate that the frequency of accidents for men is more than double that of women and that work-related deaths almost exclusively affect men, that the factors influencing the decrease in the number of workplace accidents include the economic downturn and the reduction in employment; that other societal factors, such as age, also influence the number of occupational accidents; that accidents occur more often among young workers than ageing workers, but that the type of accident changes with age, and that recovery from an injury takes longer for ageing workers; that occupational accidents among ageing workers often involve falling down, slipping and stumbling; and that several lifestyle factors, such as deteriorating health, stress, fatigue, tobacco, alcohol and drug use, and being overweight, are also known to increase the risk of accidents. **The Committee asks the Government to continue to provide a general appreciation of the manner in which the Convention is applied in the country based on relevant statistical data and the analyses based thereon.**

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1997)**

The Committee notes the detailed information provided, including on relevant legislation adopted since the previous report such as the Council of State Decree on the Safety in Construction Work (205/2009) which replaces the 1994 Decree on the same subject. The Committee also notes with *interest* Act No. 44/2006 on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces and Act No. 1233/2006 on the Contractor's Obligations and Liability When Work is Contracted Out. The Committee further notes the comments from the Central Organisation of Finnish Trade Unions (SAK) included in the Government's report.

*Article 1(1) of the Convention. Scope of application.* With reference to the previous direct requests on the comments by SAK, the Committee notes that the Government confirms that the main legislation in this area, currently Decree No. 205/2009, applies to "construction, renovation and maintenance of buildings or other structures on or under ground level or in water, as well as to installation, demolition, earthwork, hydraulic engineering and construction design in connection with such construction, renovation or maintenance", but that it is not applicable to dockyards. **With reference to the terms of the Convention, the Committee requests the Government to provide information on how effect is given to the Convention, in law and in practice, in dockyards.**

*Part VI of the report form. Workplaces where two or more employers undertake activities simultaneously (Article 8). Welfare (Article 32). Reporting on occupational accidents and diseases (Article 34). The provision of appropriate labour inspection services (Article 35(b)).* With reference to its previous comments, the Committee notes the information provided regarding recently adopted legislation and statistical data on the frequency and outcome of labour inspections in this area for the five years 2005–09. The Committee notes that the Government indicates that it has given high priority to inspection of shared workplaces, which is reflected, inter alia, in the fact that between 2005 and 2008 the number of labour inspections on such workplaces increased. In this context, the Committee also notes the concerns expressed by the SAK that as a result of increased grey market activity, outsourcing of construction work and subcontracting activity, occupational accidents within the construction sector are no longer necessarily registered and this falsifies the actual number of accidents within the construction sector; that statistics in Finland only consist of occupational accidents concerning companies insured in Finland, which means that they do not include occupational accidents occurring under employers registered outside of Finland. The Committee also notes that the SAK regrets the termination in 2007 of the so-called RAKETTI register for the health monitoring of construction workers, and that the occupational health-care card system, which later replaced this register, has not been operating as hoped and that the Finnish Construction Trade Union observes that occupational health-care services for the entire construction sector is poor, with inadequate accommodation for workers and workspaces, and special problems have occurred on a nuclear plant construction site, where the level of accommodation has been hazardous to health, as well as causing social problems. **The Committee asks the Government to provide further information on the application in practice of newly adopted legislation and on measures taken to respond to the comments by the SAK regarding the effectiveness of the Finnish reporting mechanisms of occupational accidents and diseases in the construction industry and the functioning of the occupational health-care services provided. The Committee also requests that the Government continue to provide up-to-date statistical data, including extracts from inspection reports with information on the number and nature of infringements, and disaggregated by gender if possible.**

## **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (ratification: 2008)**

The Committee notes the Government's comprehensive first report including the legislative texts attached. The Committee also notes the comments submitted by the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK), the Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA), the Commission for Local Authority Employers (KT) and the State Employer's Office (VTML) attached to the Government's report.

*Article 2(1) of the Convention. Promote continuous improvement of OSH by the development of a national policy, national system and national programme.* The Committee notes from the Government's report that the legal frame work for the Strategy is provided by the Occupational Safety and Health Act 2002 (OSHA) and supporting legislation and that such legislation promotes and supports the systematic development of working conditions in the workplaces through various programs and projects in cooperation with various actors, such as the Forum for Wellbeing at Work, which was set up in 2008. The Committee also notes the Central Organisation of Finnish Trade Unions' (SAK) comments, where it states that, the 1998 Occupational Safety and Health Strategy of the Ministry of Social Affairs and Health (OSH Strategy) applies to occupational safety and health sector under the Ministry but that it does not include a section on occupational health and occupational health care, and that it is not handled or prepared, for example, by the Ministry of Social Affairs and Health's Advisory Committee on Occupational Safety and Health. The SAK further maintain that this OSH Strategy does not meet the needs for working life, that it is not based on an in depth situation analysis and does not include measures related to, for example, mental health care and work-related illness. The Committee notes that the Government for its part states that the Finnish occupational health care system is under reform in accordance with the Council of State's Decision-in-Principle, issued in 2004 and that the Ministry of Social Affairs and Health's social and health policy strategy 2015 also includes sections on occupational safety and health and occupation health care. **The Committee requests the Government to provide further information on efforts to promote continuous improvements of OSH through the development of a national policy, national system and national program. The Government is also requested to keep the Committee informed on the Finnish occupational health care system reform.**

*Article 3(3). Promoting basic principles and to develop a national preventative safety and health culture that includes information, consultation and training.* The Committee notes that the Government states that the Advisory Committee on Occupational Safety and Health handles training, guidance, statistics and other monitoring data. The Committee also notes that the Government refers to the Finnish Work Environment Fund (Act 407/1979), which receives funds pursuant to section 35 of the Employment Accidents Insurance Act and that such funds are granted for occupation safety research and training, and collecting and disseminating information related to OSH, in addition to financing the activities of the Centre for Occupational Safety. The Committee also notes that the Government states in its report that, the most representative labour market organisations always contributes to the preparation of OSH legislation by means of advisory committees, either as members of specially appointed working groups or failing this by issuing a statement. In regards to national conditions and practice taken into consideration, the Committee notes that the Government indicates that the Occupational Safety and Health Strategy follow up reports include comprehensive analysis of OSH activity, assessment of the development of working conditions based on statistics and research results, and input from various actors and stakeholders. The Committee also notes the comments raised by the SAK, which takes the view that there is a need to prepare a wide ranging cross administrative national plan of action based on an in depth situation analysis as a part of the Government Policy Programme for Employment, Entrepreneurship and Worklife in cooperation with parties from the labour market, to promote OSH and that the said policy should be based on transparent, open and confidential tripartite cooperation. **The Committee requests the Government to provide further information on the outcome of the consultations held in this regard and to continue to provide information on measures taken to apply this provision of the Convention.**

*Article 5(1). Formulate, implement, monitor, evaluate and periodically review a national program on OSH.* The Committee notes that the Government indicates that in 1998, the Ministry of Social Affairs and Health ratified the OSH Strategy and its implementation has been monitored and assessed regularly, that the National OSH Profile of Finland was created in accordance with ILO Recommendation No. 197 and published in 2006 and that the statement and measures on the preparation, implementation and monitoring of the OSH strategy of the European Commission form part of Finland's OSH policy. The Committee also notes that the SAK emphasizes that the national policy should be monitored and assessed on a regular basis, that this requires improved and further developed statistics, including a more detailed analysis of occupational accidents in particular, as well as reporting and compilation of statistics on all cases of occupational diseases, work-related illnesses and hazardous and dangerous occurrences and that the assessment and development of the impact of the national policy should be supported by a process of reporting on the activities of the occupational safety and health authorities annually, in compliance with ILO Convention No 81 and the creation of a national profile in accordance with ILO Recommendation No 197. **The Committee requests the Government to provide further information on the functioning of and efforts made to formulate, monitor, evaluate and periodically review its national program on OSH.**

The Committee is raising other points in a request addressed directly to the Government.

## France

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1971)**

The Committee notes the information in the Government's latest report, and the attached legislation, indicating that France has completed its organizational reform of radiation protection by Law No. 2006-686 of 13 June 2006 on transparency and security in nuclear material, which creates a new independent administrative body called the Nuclear Safety Authority (ASN). The Committee notes that the ASN can make decisions to supplement the technical arrangements implementing the provisions of the Labour Code in radiation protection, and that these decisions are subject to the approval of the Ministers of Labour and Agriculture. The Committee further notes that the ASN issued Decision No. 2010-DC-175 on 4 February 2010, approved by the Order of 21 May 2001, specifying the technical methods and frequency of inspections as required in the Labour Code and the Public Health Code. **The Committee asks the Government to continue to provide information on relevant legislative measures undertaken with regard to the Convention.**

*Article 14 of the Convention. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable.* The Committee notes the brief response provided by the Government indicating that action undertaken at the national level, to ensure the full application of the rules protecting workers in undertakings using ionizing radiation, other than natural sources, responds in particular to comments made by the Committee with regard to appropriate measures to ensure the application of this Article of the Convention. The Committee recalls that section R.231-96 of the Decree of 31 March 2003 provides that a worker directly engaged in radiation work may not be assigned to work exposing them to ionizing radiation, except in the event of a situation of radiological emergency, where one of the limits determined in sections R.231-76 and R.231-77 has been exceeded. The Committee notes that no information has been provided on measures offered to provide workers with alternative employment or other means for maintaining their income, and therefore wishes to again draw the attention of the Government to paragraph 32 of the 1992 general observation under the Convention where it is indicated that every effort must be made to provide the workers concerned with suitable alternative employment or to maintain their income through social security measures or otherwise where continued assignment to work involving exposure to ionizing radiations is found to be medically inadvisable. **In light of the foregoing, the Committee hopes the Government will consider appropriate measures to ensure that every effort is made to provide these workers with suitable alternative employment or to offer them other means to maintain their income and requests the Government to keep it informed in this respect.**

*Part III to V of the report form. Application in practice. Inspection services and legal decisions.* The Committee notes the information provided by the Government regarding the 2010 national inspection campaign on the application of the regulatory system in undertakings using ionizing radiation, other than natural sources. The Committee further notes the information which indicates that the analysis of this campaign, in which approximately 2,000 undertakings were inspected, will allow for an evaluation of the level of application of the regulation relevant to this sector, and the identification of any gaps. **The Committee asks the Government to continue to provide information on the application of this Convention in practice.**

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1985)**

The Committee notes with *satisfaction* that full effect has been given to *Articles 4(1) and 8(3) of the Convention* through the adoption of Law No. 2009-526, which amends section L.4621-1 of the Labour Code, and, as a result, removes the exception for transport enterprises in relation to provisions concerning air pollution, noise and vibrations; and the extension of coverage under Decree No. 2009-781 of provisions concerning prevention against vibrations to extractive industries (mines and quarries).

The Committee is raising other points in a request addressed directly to the Government.

## French Polynesia

### **Radiation Protection Convention, 1960 (No. 115)**

The Committee notes the information regarding the updating of the list of work that requires an increased medical surveillance by the adoption of Decree No. 126 CM of 8 February 2010 which abrogates and replaces Decree No. 1756 CM of 20 December 2002. The Committee also notes that the discussions undertaken in the technical committee with competence for the prevention of occupational risks concerning the improvements to be made to the regulations on exposure to ionizing radiations, which were pursued in 2009 together with Nuclear Safety Authority health officials. The Committee notes the stated purpose of these discussions is to improve the situation with respect to the declaration of ionizing sources, the effectiveness of dosimetric monitoring, to develop complementary regulations adapted to the conditions in French Polynesia and to harmonize law and practice in the work and health sectors and that the further objective is to prepare a draft for 2010 for submission to the Parliament of French Polynesia in 2011. **With reference to the comments the Committee has been making since 1993, the Committee once again urges the Government to pursue**

*its efforts to institute legislative changes to comply with the Convention, to appoint a medical inspector and to inform the Committee of the results of these efforts including any progress made. The Committee also feels bound to reiterate its previous comments, which read as follows:*

In its previous comments, the Committee noted Deliberation No. 91-019 AT of 17 January 1991 adopted pursuant to Act No. 86-845 of 17 July 1986, establishing specific measures for the protection of workers against the danger resulting from external exposure to ionizing radiations.

*The Committee noted that the dose limits set forth in section 5 of the Deliberation do not correspond to the revised dose limits set forth in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP). Referring to Articles 3(1) and 6(2) of the Convention, the Committee requested the Government to report on the steps taken or envisaged in the light of current knowledge to amend the dose limits for occupational exposure to ionizing radiations and to ensure effective protection of pregnant women.*

The Committee also noted that, under section 3 of the Deliberation, exposed workers are defined as those who because of their work may be exposed to annual doses of ionizing radiations greater than one tenth of the annual limit set for workers. *With reference to Article 8 of the Convention, which calls for maximum permissible dose levels to be fixed for workers not directly engaged in radiation work, but who remain or pass where they may be exposed to ionizing radiations or radioactive substances, the Committee requested the Government to indicate the steps taken or envisaged to ensure that non-radiation workers are not exposed to doses of radiation greater than those set for the general public (i.e. 1 mSv per year).*

*The Committee further requested the Government to indicate the measures taken or envisaged to ensure the effective protection of workers against internal exposure to ionizing radiations in conformity with Article 6, which calls for dose limits to be set not only for external, but also for internal exposure.*

The Committee notes the Government's information in its report that preparations have commenced, in consultation with employers' and workers' representatives, for a progressive revision of the labour legislation, including the provisions on protection against ionizing radiations, and that this process is expected to be finalized by the end of the first quarter of 1996. The Committee notes with interest the information that the revision will take into account the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) in relation to the matters raised in the Committee's previous comments. In particular, it notes with interest that the 1990 ICRP Recommendations will be incorporated with regard to maximum permissible dose limits of ionizing radiations from sources external to the body for all workers who are directly engaged in radiation work and for pregnant women (*Articles 3 and 6*), for workers not directly engaged in radiation work, but who remain or pass where they may be exposed to ionizing radiations or radioactive substances (*Article 8*), as well as the maximum permissible doses which may be taken into the body (*Article 6*) for workers directly engaged in radiation work. *Also with reference to its 1992 general observation on the Convention, the Committee hopes that the Government will soon be in a position to supply information on the provisions adopted to give full effect to the Convention and which are in conformity with the 1990 Recommendations of the ICRP and the 1994 International Basic Safety Standards.*

*Emergency situations.* The Committee refers to the explanations provided in paragraphs 16–27 and 35(c) of its 1992 general observation on the Convention and to paragraphs 233 and 236 of the 1994 International Basic Safety Standards. *The Committee hopes that the Government will provide information on the measures taken or contemplated in relation to emergency situations.*

*Provision of alternative employment.* *With reference to paragraphs 28–34 and 35(d) of its 1992 general observation on the Convention and the principles set out in paragraphs 96 and 238 of the 1994 International Basic Safety Standards, the Committee requests the Government to provide information on the measures taken or contemplated to ensure effective protection of workers who have received accumulated exposure beyond which they would run an unacceptable risk and who may thus be faced with the dilemma of having to choose between protecting their health or losing their job.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Ghana

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1965)**

The Committee notes the Government's brief report indicating that no legislative amendments to ensure compliance with the Convention have yet been taken. It also notes that the Government requests technical assistance from the ILO in reviewing its laws governing the sectors of concern, namely agriculture, forestry, road and rail transport and shipping. The Committee would like to take this opportunity to inform the Government that, in March 2010, the Governing Body adopted a plan of action to achieve widespread ratification and effective implementation of the key instruments in the area of occupational safety and health, the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (document GB.307/10/2 (Rev.)). The Committee invites the Government to consider broadening the scope of technical assistance to be requested to include revision of the national law and practice in the country also in the broader context of the key Conventions covered by the Plan of Action. *The Committee invites the Government to provide information on any needs it may have in this respect and in order to ensure the effective application of the provisions of the Convention. In the meantime, the Committee is required to repeat its previous observation regarding the scope of application of the Convention which read as follows:*

*Articles 1 and 17 of the Convention. Scope of application.* The Committee reminds the Government that, for more than 30 years, the Committee has drawn the Government's attention to the need to extend the legislation giving effect to the Convention to agriculture, forestry, road and rail transport and shipping. In its 1986 report, the Government indicated that it was due to submit the Committee's observations to the tripartite National Advisory Committee on Labour so that it could examine them and take the necessary steps to give full effect to the provisions of the Convention. The Committee trusts that, in the context of the revision of the labour legislation launched with the adoption of the Labour Code in 2003, the Government will focus on the need to revise the legislation in the field of occupational safety and health, especially in order to give effect to the Convention.

*The Committee urges the Government to take the necessary steps in the very near future to ensure the guarding of machinery in all sectors of economic activity, particularly agriculture, forestry, road and rail transport and shipping.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

*[The Government is asked to report in detail in 2012.]*

## Guatemala

### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1990)**

*Article 2 of the Convention. Regulation of the use of white lead, sulphate of lead, and all products containing these pigments, in various types of work. With reference to its previous comments, the Committee notes the information supplied by the Government on the application of this provision in practice. **The Committee requests the Government to continue to supply such information and urges it to adopt legislative and/or regulatory measures to give effect to this provision of the Convention and to supply information in this regard.***

*Article 3(1). Measures to ensure that persons under 18 years of age and women of any age are not employed in any painting work of an industrial character involving the use of white lead or sulphate of lead or other products containing these pigments. The Committee notes the Government's indication that regulations for the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), and immediate action for the elimination of such forms of labour, to which the prohibition laid down by the Convention with respect to minors applies, were adopted by means of Government Agreement No. 250-2006. **The Committee requests the Government to indicate whether the abovementioned regulations are applied directly with respect to this provision of the Convention or whether it is necessary to amend existing standards for them to be applied.***

*Article 5, Part III(a). Notification of cases of lead poisoning. With reference to its previous comments, the Committee notes the Government's statement to the effect that Agreement No. 1401 of the Executive Board of the Guatemalan Social Security Institute contains a list of occupational diseases which includes lead poisoning. The Committee notes that the agreement considers an occupational disease to be one contracted as an immediate, direct and unquestionable result of the type of work performed by the worker. **The Committee requests the Government to supply further information on the application of the agreement and take account of the fact that this provision of the Convention covers cases not only of lead poisoning but also of suspected lead poisoning and that both types of case must be notified. It also requests the Government to indicate the provisions which make notification of cases of lead poisoning and of suspected lead poisoning obligatory and to provide information on their application in practice.***

*Article 7. Compilation of statistics on lead poisoning among working painters with respect to morbidity. The Committee notes the Government's indication that the Guatemalan Social Security Institute compiles statistics on morbidity and mortality due to lead poisoning and also notes the statement by the Institute in 2009 that no cases of lead poisoning were reported in Guatemala. It is the Committee's understanding, as indicated in its comments on *Article 5*, that there is no obligation to notify cases of lead poisoning and of suspected lead poisoning, which would have a certain impact on statistics. **The Committee requests the Government to supply more detailed information in this respect.***

### **Maximum Weight Convention, 1967 (No. 127) (ratification: 1983)**

*Articles 3 and 7 of the Convention. Maximum weight of loads transported by an adult worker. With reference to its previous comments, the Committee again notes with **regret** that, despite repeated comments made for more than ten years, the Government has still not adopted the new Occupational Safety and Health Regulations. The Committee emphasizes that the indication that new legislation is being drawn up does not free the Government from the obligation to ensure the application of the provisions of the Convention during the transition period and to supply such information in its report. **The Committee urges the Government to adopt the aforementioned Regulations and, in the meantime, to take all necessary steps to ensure the full and binding application of these provisions of the Convention and to supply information in this respect.***

*Article 5. Steps to ensure adequate training in working techniques with a view to safeguarding health and preventing accidents. The Committee notes that, according to information supplied by the Guatemalan Social Security Institute, training activities in 2009 included providing workers with information on appropriate methods for the manual lifting of loads. The information is provided through occupational safety and health committees in workplaces. **The Committee requests the Government to continue to supply information in this regard.***

*Part V of the report form. Application in practice. The Committee notes that 690 occupational safety and health committees have been set up in enterprises since 2006. It notes the Government's statement that there are no statistics on infringements relating to the handling of loads because there have been no complaints from workers. It further notes the statement in the report that, when inspections are made, checks are carried out to ensure that employers are providing workers with training in the handling of loads; recommendations are made that lifting should be by mechanical means; and, if manual lifting is involved, that the provisions on maximum weight set forth in the Recommendation related to the Convention are respected. Account is also taken of the attached appendices. **With regard to the statement that no complaints have been made by workers in relation to maximum weight, the Committee requests the Government to***

*clarify on what basis complaints may be made, given that according to available information the maximum weight established by the Convention is not enshrined in law. The Committee requests the Government to continue to supply the information required in relation to this paragraph.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Asbestos Convention, 1986 (No. 162) (ratification: 1989)**

*Legislation.* The Committee notes the indication in the Government's report that section 201 of the new Occupational Safety and Health Regulations lays down provisions on hazardous substances, prescribing that workplaces where there is exposure to dust, gas or vapours that are flammable or harmful to health, especially containing asbestos and lead, must observe specific limits with regard to capacity, ventilation, lighting, temperature and humidity. Section 205 of the same Regulations states that special rules will apply to hazardous substances, and section 7 states that the employer must provide workers with all necessary information regarding hazards and preventive measures and provide workers with the necessary means of protection. The report also indicates that it is planned to draw up specific technical standards on the prevention of hazards arising from the use of asbestos. According to information supplied in other reports, the Committee notes that the Occupational Safety and Health Regulations are still in the process of being adopted. *The Committee requests the Government to ensure that effect is given to the provisions of the present Convention in the Regulations and in the technical code of practice which it also plans to adopt. The Committee wishes to emphasize the indication that the new legislation is being drawn up does not free the Government from the obligation to ensure the application of the provisions of the Convention during the transition period and to provide such information in its report. Furthermore, with the view of the fact that the information available does not enable it to gain a full picture of the application of the Convention, the Committee requests the Government to supply detailed information on the application of the present Convention, including new legislation, if adopted, and were it has not been, the manner in which the Government ensures the application of the provisions of the Convention.*

*Part V of the report form. Application in practice.* The Committee notes the Government's statement that, when inspections are conducted by occupational safety and health officers, checks are made that asbestos is not being used in construction materials or in clutch and brake components in motor vehicle repair shops. It also indicates that inspections were conducted at an enterprise manufacturing pipes, laminates and reflective heat insulation material, and that checks were made that asbestos was not being used. The largest cement manufacturing company in Guatemala, Cementos Progreso, was also inspected to ensure that asbestos was not being used, and a letter from the occupational safety and health manager of the enterprise is attached, certifying that asbestos is not being used and that the enterprise has a specific procedure for the handling and disposal of any old structures that might contain asbestos. *The Committee requests the Government to provide information on the requirements with which compliance is verified by the labour inspectorate as regards workers involved in demolition work, on infringements reported and measures adopted, and to continue to supply information on the application of the Convention in practice.*

*[The Government is asked to report in detail in 2012.]*

## **Guinea**

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the Government indicates, in its last report, that a draft Order respecting air pollution, noise and vibration, cesspools, drinking water and protection against radiations had been prepared, but was subsequently separated into several draft Orders to make them more easily applicable. These draft Orders should have been adopted some time ago. However, the Advisory Commission on Labour and Social Legislation, as a tripartite commission, is composed of various members with very different concerns and sometimes constraints at the national level, which prevented it from completing its usual session. Furthermore, the Government states that the State of Guinea has priorities, even with regard to the adoption of laws and regulations. The Committee states that the Government has been expressing the intention for many years of adopting regulations to protect workers against ionizing radiations, without however in practice taking the necessary measures to this effect. It notes with regret that the Government's attitude disregards the urgency of taking the necessary legislative action for the adoption of regulations respecting protection against ionizing radiations. In this respect, the Committee recalls that this Convention was ratified by Guinea in 1966 and that since then the Committee has had to comment on various points concerning the application of the Convention. The Committee recalls that, when the Government takes the sovereign decision to ratify a Convention, it undertakes to adopt all the necessary measures to give effect to the provisions of the Convention in question. The Committee also considers that, while the Government may cite the existence of other matters which must take priority in the adoption of laws and regulations, it would be appropriate after the number of years that have elapsed for it to take the necessary measures to ensure that the draft Orders relating to the application of the provisions of this Convention are adopted as soon as possible. *The Committee therefore once again hopes that the Government will soon be in a position to report on the adoption of provisions covering all activities involving the exposure of workers to ionizing radiations in the course of their work and in conformity with the dose limits referred to in its general observation of 1992, in the light of current knowledge, such as that contained in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and in the Basic Safety Standards for Protection Against Ionising Radiation and for the Safety of Radiation Sources of 1994.*

*Articles 2, Article 3(1), and Articles 6 and 7 of the Convention.* In its previous comment, the Committee noted the Government's statement that the current dose limits correspond to an equivalent of an annual dose of 50 mSv for persons exposed



to ionizing radiations. The Committee had recalled the maximum dose limits for ionizing radiations established in the 1990 Recommendations of the International Commission on Radiological Protection and in the 1994 Basic International Safety Standards for Radiation Protection. For workers directly engaged in work exposed to radiation, this limit is 20 mSv per year averaged over five years (100 mSv over five years), and the actual dose must not exceed 50 mSv in any year. The Committee also draws attention to the dose limits envisaged for apprentices aged from 16 to 18 years, set out in Annex II, paragraph II-6, of the 1994 Basic International Safety Standards for Radiation Protection. ***The Committee once again hopes that the maximum doses and quantities to be included in the Government's draft Order will be in conformity with the maximum permitted doses and quantities, and that the Government does indeed envisage adopting the above draft Order.***

*Situations of occupational exposure in emergencies and provision of alternative employment. The Committee once again requests the Government to indicate the measures which have been taken or are envisaged in relation to the points raised in paragraph 35(c) and (d) of the conclusions of its 1992 general observation under this Convention.*

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 11 of the Convention.* The Committee notes the Government's reply to its previous comments indicating that it has taken due note that section 170 of the Labour Code seems to permit employers to authorize or to order workers to remove safety devices, contrary to *Article 11* of the Convention. It also notes the Government's statement that such authorization is only based on prior measures taken by the employer to avoid all exposure to occupational risks, and that in any event it is the responsibility of the employer to promote best safety conditions at workplaces periodically visited by the labour inspectorate. ***The Committee would nonetheless request the Government to consider including in the draft Labour Code implementing regulations that are in preparation, a specific provision prohibiting such authorization or order to remove safety devices, as required by this Article of the Convention.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes with regret that the Government's latest reports do not contain a reply to its previous comments and do not include any new information in relation to the report provided in 2003.

The Committee notes that the Government, in accordance with section 171 of the Labour Code, will be submitting draft orders on sanitary facilities in workplaces and the provision of drinking water and non-alcoholic drinks in enterprises and establishments. The Committee also notes the draft decree establishing Committees on Occupational Safety, Health and Working Conditions (CHSCT).

***The Committee recalls that, since 1989, it has been asking the Government to adopt the ministerial orders envisaged in section 171 of the Labour Code in the following areas: ventilation (Article 8 of the Convention); lighting (Article 9); drinking water (Article 12); seats for all workers (Article 14); and noise and vibrations (Article 18) in order to give effect to these provisions of the Convention. The Committee hopes that such decrees will be adopted after consultation with the representative organizations of employers and workers, in accordance with Article 5 of the Convention.***

*Article 1 of the Convention.* The Committee recalls its previous observation in which it drew attention to the fact that all workers who are mainly engaged in office work, including workers in the public services, are covered by the Convention. ***The Committee hopes that the Government will take the necessary measures in the near future to ensure the full application of the Convention in the public service and requests the Government to indicate the progress made in this regard.***

*Part IV of the report form.* ***The Committee wishes to draw the Government's attention to the fact that the information that it is requested to provide in this respect concerns the number of workers covered by the national legislation and the number and nature of the contraventions reported. This type of information may be found, for example, in the reports of the labour inspection services.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Benzene Convention, 1971 (No. 136) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the Government does not presently intend to amend Order No. 2265/MT of 9 April 1982, but envisages formulating, in consultation with the social partners, technical guidelines on harmful, hazardous and carcinogenic products, particularly benzene. The Committee also notes that the guidelines envisaged will be made available to all users. ***It hopes that the guidelines will be formulated and adopted without delay and requests the Government to provide information on any progress made in this matter.***

*Article 4(2) of the Convention.* The Committee notes the Government's information on processes which use methods of work that are as safe as those carried out in an enclosed system. It notes in particular that the increase in labour and health inspections in enterprises and the involvement of Workers' Committees for Health, Safety and Working Conditions (CHSCT) ensure that the processes are carried out under the safest possible conditions. ***The Committee requests the Government to provide an indication of the frequency of the inspections carried out in enterprises that use benzene. It also requests the Government to provide copies of the statistics collected during inspections, to enable the Committee to assess the extent to which this provision of the Convention is applied in practice.***

*Article 6(2) and (3).* With regard to the concentration of benzene vapour in the air of workplaces, the Committee notes that a draft Order concerning data files on the safety of chemical substances establishes a level not exceeding 10 ppm or

32 mg/m<sup>3</sup> over an eight-hour time-weighted average. The Committee accordingly concludes that the ceiling established in the draft Order is lower than the one established in the Convention when it was adopted in 1971. It nevertheless wishes to point out to the Government that the threshold limit value recommended by the American Conference of Government Industrial Hygienists (ACGIH) is 0.5 ppm over an eight-hour time-weighted average. ***It therefore invites the Government to take measures to bring the ceiling value established by the draft Order into line with the value recommended by the ACGIH. The Committee also requests the Government to specify the guidelines issued by the competent authority on the procedure for determining the concentration of benzene in places of employment. It also requests the Government to provide a copy of the abovementioned Order as soon as it is adopted.***

*Article 8(2).* With regard to limiting the duration of exposure of workers who, for special reasons, may be exposed to concentrations of benzene in the air of places of employment which exceed the maximum established, the Committee notes that, according to the Government, a study is under way on this matter. ***It requests the Government to provide information on any progress made in this regard.***

***The Committee also requests the Government to provide relevant extracts of the inspection reports and the statistics available on the number of employees covered by the legislation as well as the number and nature of violations reported, as requested under Part IV of the report form.***

In its previous comments, the Committee noted the Government's statement that a draft Order on occupational cancer giving full effect to the provisions of the Convention had been formulated with ILO technical assistance. ***The Committee requests the Government to indicate whether this Order is still under consideration for enactment.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1976)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Referring to the comments the Committee has been making for several years concerning *Article 2(1) of the Convention*, the Government has explained in several of its reports that, under section 4 of Order No. 93/4794/MARAFDPT/DNTLS of 4 June 1993, an employer is required to replace a carcinogenic substance or agent by a non-carcinogenic or less carcinogenic substance or agent provided that one exists, each time that such replacement can be envisaged in view of the given circumstances. The Committee notes that, in its last report, the Government indicates briefly that measures will be taken as soon as the new Labour Code is adopted to align the provisions of section 4 of the abovementioned Order. ***The Committee asks the Government to send a copy of the new Labour Code as soon as it is adopted and to indicate any progress made in this matter.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(1) of the Convention.* The Committee notes that the draft conditions of service of the public service, which is being discussed within the Government, should contain the necessary measures to give full effect to the provisions of this Article of the Convention through their application in practice in all branches of economic activity. ***The Committee requests the Government to keep the International Labour Office informed of developments relating to these conditions of service and to provide a copy of them when they have been adopted.***

*Articles 4, 8 and 10.* The Committee notes the information concerning a draft Order, prepared by the Government, which was due to be examined by the Advisory Committee on Labour and Social Legislation. This draft text would cover cesspits, drinking water, noise, vibration, air pollution, etc. ***The Committee requests the Government to indicate whether this text is issued under section 171(1) of the Labour Code.*** It reminds the Government that, under the terms of *Article 4*, the provisions adopted must prescribe the specific measures to be taken both for the prevention of occupational hazards due to air pollution, noise and vibration, and to control and protect workers against these hazards. The Committee also reminds the Government that, under the terms of *Article 8* of the Convention, the above draft text should provide for the establishment of criteria for determining the hazards of exposure to air pollution, noise and vibration and should specify exposure limits. The Committee notes that the Government's report does not indicate whether the above draft text provides, as required by *Article 10*, for the provision of personal protective equipment where the measures taken to eliminate hazards do not bring air pollution, noise and vibration within the limits specified by the competent authority. ***The Committee requests the Government to keep the Office informed of the adoption of this draft text, to provide a copy when it has been adopted and to inform it of any other specific measures taken for the application of the provisions of Articles 4, 8 and 10 of the Convention.***

*Article 9.* ***The Committee requests the Government to indicate the technical measures and supplementary work organizational measures intended to eliminate the above hazards.***

*Article 14.* The Committee notes that the National Occupational Medicine Service is equipped with a laboratory which is inadequately provided with appropriate instruments for its needs, but that the Government plans within a relatively short period to provide the above Service with modern and appropriate equipment. ***It requests the Government to keep the Office informed of the progress made in equipping the National Occupational Medicine Service and to inform it of any other measures taken to promote such research.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## India

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1975)**

The Committee notes the information in the Government's latest report, and the attached documentation, indicating the notification and directive issued under the Atomic Energy (Radiation Protection) Rules, 2004 during the period between 2005 and 2010, and that notifications on dose limits based on the International Commission on Radiological Protection recommendations and on the radiation protection symbol have been prepared and are ready to be issued. The Committee also notes the response provided by the Government, and the relevant sections of the 2005 Atomic Energy Regulation Board (AERB) *Safety manual on radiation protection for nuclear facilities* (Safety Manual 2005) attached, which indicate the exposure levels requiring prompt investigation and give further effect to *Articles 3(1) and 6(2) of the Convention*. **The Committee asks the Government to continue to provide information on relevant measures undertaken with regard to the Convention and to provide copies of any notifications or directives issued under the Atomic Energy (Radiation Protection) Rules, 2004 concerning application of the Convention.**

*Article 1 of the Convention. Consultation with representatives of employers and workers.* The Committee notes the Government's response indicating that during the formulation of the recent notification and directive, consultation was undertaken with relevant stakeholders, including industry representatives. **The Committee asks the Government to keep it informed of measures taken to consult with the concerned representatives of employers and workers on all aspects related to the application of the Convention, including the development and review of relevant legislation and ongoing development of notifications under the Atomic Energy (Radiation Protection) Rules, 2004.**

*Article 14. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable.* The Committee notes the response provided by the Government indicating that under the Safety Manual 2005, cases of exposure exceeding the dose of 20 mSv in a year should be investigated by an exposure investigation committee, which should include as a member the medical officer of the facility. The Government indicates that one of the functions of this committee is to suggest further action in respect of work to be allocated to the person who has been advised to be removed from radioactive areas as a result of exposure. The Committee further notes the information that AERB team members verify that over-exposed persons who are removed from radioactive work are suitably deployed in a non-radioactive area for a specified period. The Government indicates that no cases concerning loss of wages as a result of alternative employment has been brought to the attention of the AERB. **The Committee asks the Government to provide further information on the specified time period that applies for workers removed from radioactive work due to over-exposure; and to indicate whether other means for maintaining income are offered in cases where alternative employment does not cover the entire duration in which workers are medically advised not to continue work involving exposure.**

*Part V of the report form. Application in practice.* The Committee notes the information provided by the Government in its report regarding the application of the Convention through the relevant administrative procedures in place. **The Committee asks the Government to provide information on the application of this Convention in practice, with particular reference to any investigations carried out under part 11 of the 2005 Safety Manual, and to specify any situations where workers have been removed from radioactive work and provided with alternative employment. The Committee also asks the Government to provide general information on the number of workers covered by the Convention and the number and nature of infringements reported by the labour inspectorate.**

## Italy

### **Maximum Weight Convention, 1967 (No. 127) (ratification: 1971)**

The Committee notes the information supplied by the Government in its last report, including Legislative Decree No. 81 of 9 April 2008, "Single Text for the Protection of Safety and Health in Workplaces (TULS)". The Committee notes with *satisfaction* that, by means of sections 167–170 and Annex XXXIII of the abovementioned Decree, Italian law establishes that the manual handling of loads is to be avoided as far as practicable and, where it is unavoidable, the individual risk factors must be evaluated provided that, in any event, the maximum weight (in optimum conditions) shall be 25 kilograms for adult men and 15 kilograms for adult women. Annex XXXIII establishes among other things that, without prejudice to the provisions in force on maternity protection and support and on young workers account shall also be taken, in evaluating individual risk factors, of differences of sex and age, clothing, footwear and personal effects, and the adequacy or suitability of knowledge or training. Technical standard ISO 11228, Parts 1, 2 and 3, shall also apply. **The Committee requests the Government to provide information on the application of these provisions in practice.**

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1981)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information in the Government's most recent report including its response to the Committee's previous comments. The Committee notes the information that the Government intends to give increased attention to accidents at work and that through the recently adopted Law concerning the reorganization and reform of standards on health and safety (Act No. 123 of 3 August 2007), the Government has received delegated authority to reorganize and reform the standards on

occupational safety and health, to improve the cooperation between and vigilance exerted by the different national authorities supervising compliance with national legislation on occupational safety and health. **The Committee requests the Government to keep it informed on all measures taken to implement this national reform in the area of occupational safety and health, including on specific actions taken to improve the application of the present Convention.**

*Article 1(1)–(3) of the Convention. Prohibited substances or substances subject to authorization.* The Committee notes the information submitted by the Government on the adoption of Legislative Decree No. 257 of 25 July 2006 (OG, No. 211 of 11 September 2006) concerning cessation of the use of asbestos. The Committee notes, inter alia, that the maximum exposure limit for all types of asbestos has now been lowered to the EU standard (see Directive 2003/18/CE regarding exposure of workers to the risks arising from asbestos) of 0.1 fibres per cubic centimetre of air measured as a time-weighted average over eight hours, and that any demolition activity and removal of asbestos can only be carried out by recognized entities qualified to carry out such work. **The Committee requests the Government to continue to provide information on the practical application of these provisions of the Convention, including on progress made concerning the implementation of Legislative Decree No. 257 of 25 July 2006 concerning cessation of the use of asbestos.**

*Article 3. Preventive measures and record keeping.* In response to its previous comments, including the observations made by the Italian General Confederation of Workers (CGIL), the Italian Confederation of Trade Unions (CISL) and the Union of Italian Workers (UIL) that relevant legislative provisions calling for the establishment of an appropriate system of records have not been effectively implemented in practice, the Committee welcomes the information that the Government has initiated work, inter alia, with the assistance of the Higher Institute for Occupational Safety and Health (ISPESL), for the realization of an information system capable of determining carcinogenic situations at work, as provided for in Section 71 of Legislative Decree No. 626/94 on job security (as amended). **Against this background, the Committee requests the Government to continue to report on the application of this provision of the Convention, including on progress as regards the initiative to reform its system for keeping records.**

*Article 5. Alternative employment.* With reference to its previous comments, the Committee notes that the Government's report does not provide any additional information in this respect. **The Committee therefore reiterates its request to the Government to provide additional information on the application in practice of this Article of the Convention.**

*Part IV of the report form and Article 6(c).* With reference to its previous comments, the Committee notes the updated information on exposure data and documented estimates of the number of exposed workers by country, carcinogen, and industry based on the carcinogen exposure (CAREX) database. The Committee notes that for the period 2000–03, the CAREX report submitted includes data on 85 CAREX agents reassessed, taking into account changes in exposure patterns and in numbers of employees by industrial class. According to this CAREX report, out of 21.8 million employees in Italy (broken down as 19.4 in industry and services, and 2.4 in agriculture), 4.2 million (or slightly less than 20 per cent of the workforce) were exposed to the agents included in the study. Prevalence of exposure was highest for environmental (passive) tobacco smoke (800,000 exposures); solar radiation (700,000); diesel engine exhaust (500,000); wood dust (280,000); silica (250,000); lead and inorganic lead compounds (230,000); benzene (180,000); hexavalent chromium compounds (160,000); glass wool (140,000); and PAHs (polycyclic aromatic hydrocarbons) (120,000). According to this updated study the ten most common exposures remain “the same as those already identified in CAREX”, with the “relevant exception of asbestos”. The Committee notes that former and current CAREX estimates indicate that asbestos exposure would have decreased with approximately 80 per cent from 352,691 exposures to 76,100. **While noting this updated and informative study, the Committee again requests the Government to provide further and more recent information on the manner in which the Convention is applied in Italy, based on extracts from labour inspection reports and, if such statistics are available, the number of workers covered by the legislation, disaggregated by gender if possible, or other measures which give effect to the Convention, the number and nature of contraventions reported, the number, nature and cause of the diseases, etc.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Japan

### **Asbestos Convention, 1986 (No. 162) (ratification: 2005)**

The Committee notes the Government's report and the legislation attached including the Supplementary Provisions of Mining Safety Law as Amended in 2004 (Law No. 94 of 2004), and the information that the 2006 ban of manufacturing, importing, transferring, providing and using asbestos is provided for in section 55 of the Industrial Safety and Health Act and section 16 of its Order for Enforcement and that subsequently, the Regulations for Equipment of Ships were amended in 2006, prohibiting the use of materials containing asbestos on ships. Furthermore, it also notes that the Government indicates that even before these amendments, it ensured compliance with the International Convention for the Safety of Life at Sea (SOLAS Convention) which prohibits the new installation of materials which contain asbestos on all ships. The Committee notes the information provided regarding effect given to *Articles 14, 15(2) and (3) of the Convention*. The Committee further notes the comments from the Japanese Trade Union Confederation (JTUC-RENGO) attached to the report and the Government's response thereto. **The Committee requests the Government to continue to provide information on relevant laws and regulations giving effect to the Convention.**

*Article 1 of the Convention. Scope of application.* The Committee notes that the Government indicates that, in terms of past exposure, it is currently estimated (up to 30 June 2010) that there are 696 retired seafarers and seven miners which have been engaged in work involving exposure to asbestos. **The Government is requested to indicate measures taken to apply the Convention, in particular the provisions of Article 21, to the seafarers and miners at issue.**

*Article 17. Demolition work.* The Committee notes the JTUC-RENGO's comments that while national legislation in this area has been properly developed, the Government does not properly supervise their application in practice and that, at demolition sites, debris and building materials containing asbestos are not properly separated from crushed rock for recycling. The Committee notes that the Government in its response recognizes the importance of the issues raised by JTUC-RENGO and that it has taken the appropriate measures, including the intention of the Ministry of Health, Labour

and Welfare (MHLW), together with the prefectural labour bureaus, to conduct joint inspections of demolition sites; and through a cooperation agreement between the MHLW, the Ministry of Land, Infrastructure and Transportation, and the Ministry of the Environment that these three ministries will jointly ensure an improved application of relevant laws and regulations. **The Committee requests the Government to continue to report on measures taken to ensure a proper application of laws and regulations giving effect to this Article of the Convention.**

*Article 19. Prevention of pollution of the general environment by asbestos dust released from the workplace.*

*Article 21. Medical check-ups of workers exposed to asbestos.* The Committee notes the JTUC-RENGO's comments concerning adverse health effects on workers who worked at workplaces adjacent to the asbestos-contaminated sites, specifically postmen going in and out of such sites and – with reference to *Article 21* – the need to follow-up on their health through medical check-ups. The Committee notes the response from the Government that the situations referred to by JTUC-RENGO did not concern workers engaged in work directly related to handling asbestos, but that workers who are exposed to asbestos during their work which causes a health impairment are, in principle, entitled to receive work-related accident compensation and that, in addition, those who are not covered by the work-related accident compensation insurance system, i.e. self-employed workers and residents in the affected area, may be subject to the Act on Asbestos Health Damage Relief. The Committee notes that the situation to which the JTUC-RENGO refers seems to fall outside the scope of the application of *Article 21* but would rather be covered by provisions in *Article 19* requiring that the competent authority and the employers to take appropriate measures to prevent pollution of the general environment by asbestos dust released from the workplace. **The Committee requests the Government to indicate measures taken, by employers and the competent authority, to ensure application of Article 19 of the Convention and to indicate whether the referenced Act on Asbestos Health Damage Relief would be applicable in these situations.**

## Jordan

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)**

*Article 4 of the Convention. Obligation of the vendor, the person letting out on hire or transferring the machinery in any other manner or the exhibitor.* With reference to its previous comments, the Committee notes the Government's response that such obligations are not provided for directly by the Labour Code, but can be addressed through legislation of other bodies and joint committees with relevant monitoring bodies in which the Ministry of Labour participates. The Committee notes that the information provided does not appear to address the issue raised in its previous comments, namely that the obligation to apply the provisions of *Article 2* of the Convention shall rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor. The Committee would like to refer the Government to paragraph 165 of its General Survey of 1987 on safety in the working environment, whereby the Committee pointed out that a "general prohibition in the legislation on the sale, etc. of dangerous machinery is not sufficient if it is not accompanied by a provision placing the obligation to ensure compliance with these measures on the vendor and other persons carrying out such acts". **In light of the above comments, the Committee once again requests the Government to indicate the specific provisions in national legislation that give effect to Article 4 of the Convention.**

*Part V of the report form. Application in practice.* The Committee notes the introduction of a national week on occupational safety and health in 2004 and the agreement to hold it every year. The Committee further notes the recent statistical information provided by the Government highlighting the achievements, the gradual increase in the number of inspectors and that 48,640 inspections were undertaken in 2009, in which 223 violations of occupational safety and health were reported. The Committee also notes that, while there has been an increase in the number of inspectors since 2008, there has been a decrease in the number of inspectorial visits since 2007. **The Committee requests the Government to provide further information on the nature of the violations and the reason for the decrease in the number of inspectorial visits. The Committee would also request the Government to continue to provide statistical information on the application of the Convention in practice.**

## Republic of Korea

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2008)**

The Committee notes the Government's first report including the legislative texts attached. The Committee also notes the comments by the Korea Employers Federation (KEF) and the Federation of Korean Trade Unions (FKTU) attached to the Government's report. The Committee further notes the comments transmitted by the Korean Confederation of Trade Unions (KCTU) on 27 August 2010 and the Government's response thereto submitted on 28 October 2010.

*Article 1 of the Convention. Scope of application.* The Committee notes the information provided by the Government regarding the effect given to the Convention, inter alia, through the Occupational Safety and Health Act No. 4220 of 13 January 1990 (as amended until 4 June 2010) (OSH Act), its Enforcement Decree and related regulations. The Enforcement Decree has not been made available to the Committee. The Committee notes that the OSH Act applies to all businesses, workplaces and workers; however, the Government indicates that, by virtue of the Enforcement Decree, certain businesses, workplaces and workers, listed in table 1 to the Enforcement Decree, have been excluded from certain

provisions of the OSH Act. As noted by the FKTU, the Government has not provided any information on progress towards a wider application of the Convention. **The Government is requested to provide further information on measures taken to give effect to this provision of the Convention and to make available a copy of the Enforcement Decree to the OSH Act including, its table 1.**

*Article 4(1). Formulating, implementing and periodically reviewing a coherent national policy in consultation with the most representative organizations of employers and workers. Article 5(d). Communication and cooperation.* The Committee notes the information provided that the current national policy, as articulated in the Third Five-Year Plan for Industrial Prevention, was established following a meeting in April 2010 to gather opinions from workers' and employers' representatives. The Committee also notes that the Government periodically checks the implementation of each task in this plan through expert committees under the *Deliberation Committee on Industrial Accident Compensation Insurance and Prevention*, including, employers, workers and public interest members, and that this Deliberation Committee is tasked with the consideration and coordination of mid- and long-term basic OSH plans on industrial accident prevention and major policies. The Government also refers to the Deliberation Committee in the context of the application of *Article 5(d)*. The Committee notes, however, that, according to the FKTU, the referenced expert committees have not been set up. In this context, the Committee would like to refer the Government to paragraph 49 of the 2009 General Survey on occupational safety and health, in which it is stated as follows: "The social partners are thus to be involved in all stages of the national policy-making process. It should be underscored that the wording in *Article 4(1)* ... refers to action to be taken *in consultation with* representative organizations of employers and workers, as opposed to *after consultation with*, as often provided for in other ILO Conventions. As indicated in the preparatory work [of Convention No. 155] this implied an obligation not merely to consult once but to have a continuing dialogue as necessary. It also implied that this obligation did not affect the authority of the member States, as the case may be, its legislature, to take the final decision." **Against this background, and in light of the comment from the FKTU, the Committee requests the Government to provide further information on how the consultations are carried out with the most representative organizations of employers and workers as prescribed in the Convention including, in particular, in Articles 4(1) and 5(e).**

*Article 9(2). Adequate penalties.* The Committee notes the information provided by the Government regarding functioning of the labour inspectorate and the penalties that can be imposed pursuant to Chapter IX of the OSH Act. The Committee also notes that, according to the KCTU, the Government is not applying these provisions properly, and that the inspectorates mainly impose corrective orders rather than fines, although the latter have a stronger preventive effect. The KCTU refers to statistics from 2007 indicating that, in 96.2 per cent of all cases, only corrective orders were issued including two specific cases with further details where, according to the KCTU, the orders were ignored which in both cases resulted in the death of a worker. The Committee notes the Government's response that the main purpose of sanctions is not to punish employers but to prevent accidents and, in any event, it does not only issue corrective orders, but also takes the proper administrative and judicial actions, such as suspension of the use of machines, suspension of work, imposition of fines, prosecution, etc. While not disputing the statistics referred to by the FKTU, the Government indicates that, according to section 15 of the code of practice for occupational safety and health inspectors (Order No. 703 of the Minister of Employment and Labour, 31 July 2009), a correction order is used as a punishment for minor violations in accordance with specified criteria and this sanction can accomplish its purpose without excessively limiting the rights of those subject thereto. The Committee also notes that, according to the Government's report, it introduced in May 2007 a reliability assessment system to assess the accuracy and precision of the results monitoring of the work environment. In this respect, the Committee notes that the FKTU states that no reliability assessment was conducted until the end of July 2010. **The Committee requests the Government to provide further information on measures taken to give effect to the present Article, with reference to the comments by the KCTU and the FKTU.**

*Article 10. Provision of guidance to workers and employers.* The Committee notes the information provided by the Government that, in 2008 and 2009 respectively, a total of 35,325 and 30,772 workplaces were provided with "guidance and inspection". The Committee also notes that, according to the KEF, the Government should also ensure that guidance is provided to workers so as to ensure their compliance with legal obligations. **The Committee requests the Government to provide further information on measures taken to give effect to the present Article, with reference to the comment by the KEF.**

*Article 14. Including OSH at all levels of education and training.* The Committee notes the reference made by the Government to education materials distributed in schools to promote safety culture. The Committee also notes the comments by the FKTU that this Article also requires the Government to take measures so as to promote the provision of information to meet the training needs of workers. **The Committee requests the Government to provide further information on measures taken to give effect to the present Article, with reference to the comment by the FKTU.**

*Article 15. Arrangements for coordination and consultations with workers' and employer's representatives.* The Committee notes the information provided by the Government that the Ministry of Employment and Labour coordinates the activities of various authorities and bodies at the national level and that it consults with workers' and employers' representatives on occupational safety and health legislation. The Committee also notes the comments by the KEF that the referenced consultations with the most representative organizations of employers and workers cannot be carried out effectively due to time constraints imposed by the Government. **The Committee requests the Government to provide further information on measures taken to give effect to the present Article, with reference to the comment by the KEF.**

The Committee is raising other points in a request addressed directly to the Government.

### **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (ratification: 2008)**

The Committee notes the Government's first report including the legislative texts attached. The Committee also notes the comments by the Korea Confederation of Trade Unions (KCTU) dated 27 August 2010 and the Government's response thereto submitted on 28 October 2010.

*Article 1(a) of the Convention. Definition of the term "national policy". Article 4(2)(b). The functions and responsibilities of the Government in respect of occupational safety and health.* The Committee notes the reference made by the Government to, inter alia, sections 4–6 of the Occupational Safety and Health Act (No. 4220 of 13 January 1990 as amended until 4 June 2010) (OSH Act) detailing the respective roles of the Government, the employers, workers and other interested parties in relation to OSH. The Committee also notes that, according to the KCTU, the Government is engaged in a process to devolve its OSH management and supervisory functions to local governments and that this process is being carried out without consultation with the representative organizations of workers and employers. The Committee notes that, in response, the Government confirms that, in March 2010, the Presidential Commission for Decentralization decided to transfer part of the OSH duties of the Ministry of Employment and Labour to local governments, that this decision will be confirmed when the revision of relevant laws and regulations is completed, and the consultations will be held with representative organizations of workers and employers on the proposed legislation. ***The Committee requests the Government to provide further information on the comments by the KCTU on the redistribution of OSH functions of governmental authorities and on the modalities for cooperation between different authorities in order to maintain a coherent national policy in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155).***

*Article 4(2)(c). Mechanisms for ensuring compliance.* The Committee notes the information provided that the Ministry of Employment and Labour takes overall responsibility for the administration of OSH-related inspection, and labour inspectors who are in charge of OSH in regional and district labour offices carry out such inspection. A labour inspector, if necessary, has a right to enter a workplace, to question a concerned person, to examine books, documents and other things, to conduct a safety and health inspection, and to collect raw materials or equipment to the extent necessary for the examination without compensation, in order to see if the workplace complies with the OSH Act and other national laws and regulations. The Committee also notes the comments made by the KCTU concerning the application of this Article, as well as on Convention No. 155, and which are examined in the context of the latter. ***With reference to its observation concerning the application of Article 9 of Convention No. 155, the Committee requests the Government to continue to provide information on the functioning of and efforts to maintain, progressively develop and periodically review its labour inspection system.***

The Committee is raising other points in a request addressed directly to the Government.

## **Kyrgyzstan**

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1992)**

The Committee notes with *regret* that the Government has yet again failed to submit a report on the application of this Convention. It further notes that the most recent report on the application of this Convention was received in 1994 and that it is yet uncertain whether *Articles 5(3), 6(2), 12 and 14* are fully applied in the country. The Committee also notes, however, the publication in 2008 by the Government, in collaboration with the ILO, of *Occupational safety and health in the Kyrgyz Republic – National profile*. According thereto a number of laws, regulations and technical standards have been adopted since 1994 which indicate promising developments in the area of occupational safety and health. The Committee also notes that according to this national profile the Government is considering the ratification of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Safety and Health in Construction Convention, 1988 (No. 167), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). ***Welcoming these developments, the Committee asks the Government to report on progress in this regard. It also urges the Government to fulfil its reporting obligations under this ratified Convention, and invites the Government to consider whether it would benefit from technical assistance from the Office regarding the development of legislation giving effect to the provisions of the present Convention and the reporting obligations associated with such ratified Conventions. In the meantime the Committee must yet again repeat its previous observation which read as follows:***

*Article 5(3) of the Convention. The Committee asks the Government to provide a copy of collective and other agreements containing mutual obligations designed to ensure safe and healthy working conditions.*

*Article 6(2). The Committee asks the Government to provide information on the general procedures prescribed for the collaboration of employers where two or more of them undertake activities simultaneously at one workplace. It also asks the Government to provide a copy of the Standards and Regulations for Health and Safety in Construction Work (No. III-4-80) and of the Order of the Ministry of Industry and Energy governing work done jointly by several enterprises at the same workplace in coalmining.*

*Article 12. The Committee asks the Government to provide a copy of the Regulations on state medical supervision referred to in its report.*

*Article 14. The Committee asks the Government to describe the measures taken to promote research, in accordance with this Article.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Malta

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1988)**

The Committee notes the information provided concerning effect given to *Article 10 of the Convention*.

The Committee notes with *regret* that the Government has not replied to its comments concerning *Articles 6 and 7* that it has been repeating since 1992. The Committee must therefore reiterate its previous requests which were drafted as the following:

*Article 6 of the Convention. Prohibition by national laws and regulations of the use of machinery without appropriate guards. Noting that the Government's report contains no reply to its previous comments, the Committee requests the Government, once again, to indicate the measures that have been taken or are envisaged in order to prohibit, in accordance with the Convention, the use of machinery any dangerous part of which, including the point of operation, is without appropriate guards.*

*Article 7. Employer's duty to ensure compliance.* The Committee notes the information concerning the effect given in practice to the Occupational Health and Safety Authority and Act 2000 (Act No. XXVII of 2000), and in particular the statement that there are few offences reported and sanctions imposed for contraventions of the employers' obligations relating to the use of dangerous machinery. It notes the Government's statement that one of the problems is that machinery is often second-hand. *The Committee requests the Government to indicate measures taken or envisaged to ensure employers' obligations under Article 7 for second-hand machinery.*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Mexico

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)**

*Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the Constitution of the ILO).* The Committee notes the discussions that took place in the Conference Committee on the Application of Standards in June 2010, the conclusions of the Conference Committee, a communication from the National Union of Federal Roads and Bridges Access and Related Services of Mexico which was sent to the Government on 2 August 2010, and the Government's report received on 14 September 2010.

**A. Conference Committee on the Application of Standards.** The Committee notes that in its conclusions the Conference Committee asked the Government to provide detailed up-to-date information for the 2010 meeting of the Committee of Experts on the follow-up measures taken with respect to the recommendations adopted by the Governing Body, concerning the representation made under article 24 of the ILO Constitution in relation to the accident that took place in the Pasta de Conchos mine. The Government was to have provided information on the number and nature of accidents, in both the formal and informal sectors of the mining industry; the risk evaluation methods used in the mining industry; the compensation actually paid and compensation still owing to the survivors and the families of the victims – including compensation for damages to be borne by the company involved in this case – and the relevant state benefits, and also any social benefits provided for the families of miners without social protection. Furthermore, the Committee urged the Government to ensure that all relevant actions and measures relating to this case are taken in close cooperation with the social partners and asked the Committee of Experts to continue to follow up on events and on progress made.

**B. Communication from the National Union of Workers of Federal Roads and Bridges Access and Related Services of Mexico (SNTCPF).** The Committee notes the detailed communication which alleges failure by the Government of Mexico to comply with the recommendations made by the Governing Body in its report on the representation. The Committee notes that the trade union – which was one of the complainants – asks for a recommendation to be issued complementing the report on the representation (document GB.304/14/8). The Committee informs the union that, according to established practice, when facts and allegations similar to those of a representation are presented, it is for the Committee to examine them in the context of the follow-up to measures taken further to the recommendations made by the Governing Body. Noting that the Government has still not made its comments, the Committee will deal with this communication in greater detail at its next meeting, in the light of any comments that the Government sees fit to make. The key points of the lengthy communication would appear to be the following:

- (a) *Registration of reliable data on existing mines, adequate OSH measures and labour inspection.* The trade union alleges failure to apply Official Mexican Standard NOM-032-STPS-2008, inasmuch as there is no register providing a full list of legal, illegal and clandestine mines in the coalmining region of Coahuila, and as a result it is impossible to plan the necessary measures, the labour inspectorate is unable to monitor them and there is no way of knowing the



percentage of mines that were inspected. The union refers to discrepancies in the figures for the mines recognized by different state bodies (the Ministry of Labour and Social Security (STPS), the Mexican Geological Service (DGM), the Ministry of the Environment and Natural Resources (SEMARNAT) and COCOSHT (the state advisory committee on OSH)).

- (b) *Pocito mines. Lulú mine and “Ferber” pocito mine.* The trade union’s report contains extensive information on the *pocito* mines, stating that many of them are clandestine. With regard to the “Lulú” mine, the union describes the lack of OSH measures in the mine and indicates that, although the mine was closed down, nobody informed the workers. The union indicates that the various inspection documents are not displayed in the mine and the workers are not informed of them. As regards the “Ferber” *pocito* mine, it indicates that the labour inspectorate, during an inspection on 13 August 2009, established that there was failure to comply with 76 safety rules, including the requirement for the mine to have two exits and the provision of a methanometer and emergency breathing equipment. After the failure to comply with 76 safety rules was recorded, the inspection report stated as follows: “The representative of the enterprise is therefore informed that the access of personnel working inside the mine must be restricted until the employer or legal representative of the enterprise complies with the safety measures indicated. Consequently, should the employer or legal representative continue with work inside the mine, he will be held fully responsible for endangering the physical safety of the workers in the event of any accident”. The union indicates that on 11 September 2009 a 23-year-old worker died as a result of a rockslide. According to the union, as far as the Coahuila STPS is concerned, it appears sufficient to fill in inspection forms and have the workers believe that it is protecting their rights, and the union describes inspection activities in the region in question as “acts of simulation”.
- (c) *Impact of measures.* The union indicates that the enactment of NOM-032-STPS-2008 did not produce any change in the region, that even in 2009 the mortality rate increased by 200 per cent, and that enterprises will not comply with the standard as long as it is cheaper to pay fines than pay for the introduction of safety measures.
- (d) *Systematic negligence. Ventilation.* The union states that the accident at Pasta de Conchos was not an isolated tragic incident but evidence of systematic negligence in the application of safety and health standards. It states that it can prove that the accident was due not only to a lack of “dusting” but also to a lack of adequate ventilation. It claims that this is important for the future since the Government continues to maintain that it did not know what happened to cause the accident and this claim of not knowing has allowed the suspicion to remain, in the history of coalmining in Mexico, that it could have been a worker who was responsible and has enabled the Government to shirk its responsibilities in OSH. The union adds that the Government is responsible for determining unequivocally the cause of the accident. The union also claims that there are plans to exploit the methane gas connected with the coal and that the Government states that it will extract the methane gas beforehand and this will make for greater safety, but in reality this will lead to more fatalities because there are no applicable safety and health standards. The union also mentions that workers were reportedly recruited to locate the bodies of the deceased workers without any inspection of the site and with the only available methanometer non-operational.
- (e) *Compensation and treatment of the victims’ families.* The union states that the relevant benefits were calculated incorrectly, payments started at the end of 2009 but without being adjusted to wage levels, that the Pasta de Conchos Family Support Association was not included in dialogue, that the victims’ families have been improperly treated by various state bodies and that their lawyers have been subjected to harassment, threats and intimidation and their offices have been raided.

***The Committee requests the Government to supply information on the communication from the trade union and, in particular, on the points referred to by the Committee in the above paragraphs, taking account of the general context of the follow-up to the Governing Body’s report, including the relevant comments indicated below.***

**C. The Government’s report.** The Committee will examine in the following paragraphs the information supplied by the Government as follow-up to the recommendations of the Conference Committee on the Application of Standards and the Committee’s observation of 2009, relating to the measures adopted to comply with the recommendations made in the aforementioned Governing Body report (GB.304/14/8).

*Request for information on any developments concerning the possible ratification of the Safety and Health in Mines Convention, 1995 (No. 176), based on Official Mexican Standard NOM-032-STPS-2008 concerning safety in underground coalmines. Ventilation. Protection against undue consequences in the event of interruption of work.* In its previous observation the Committee noted the adoption of Official Mexican Standard NOM-032-STPS-2008 of 23 December 2008 concerning safety in underground coalmines, drawn up with the technical assistance of the Office. Moreover, while noting the Government’s indication that this standard includes provisions from Convention No. 176, the Committee hoped that this could facilitate the ratification of that Convention and asked the Government to supply information on any developments in this respect. The Committee notes that, according to the report, the STPS recommended in 1998 that the Convention should not be ratified on the grounds that the labour legislation does not have such specific labour standards as those laid down within *Article 7(f)* of Convention No. 176 which establishes the obligation of the employer to ensure adequate ventilation for all underground workings to which access is permitted, and *Article 13(e)*, concerning the right of workers to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health. The Government indicates that no amendments have been made to date to the Federal Labour Act in relation to these two aspects of the

Convention because the reasons why Convention No. 176 has not been ratified continue to apply. The Committee notes that Chapter 8 of the recently adopted NOM-032-STPS-2008 contains detailed provisions on ventilation in coalmines and that it ascertained in previous comments that *Article 13* of Convention No. 155 applies in practice in Mexico. The Committee refers to this last matter in its direct request. ***The Committee requests the Government to contemplate the possibility of requesting technical assistance from the Office with a view to overcoming the remaining obstacles to the possible ratification of Convention No. 176. The Committee requests the Government to continue to supply information in this regard.***

***I. Measures to be adopted in consultation with the social partners***

*Articles 4 and 7 of the Convention. National policy and reviews, either overall or in respect of particular areas.* The Committee notes that the Governing Body, in paragraph 99(b) of its report, invited the Government, in consultation with the social partners, to continue to take the necessary measures in order to:

- (i) *ensure full compliance with Convention No. 155, and, in particular, continue to review and periodically examine the situation as regards the safety and health of workers, in the manner provided for in Articles 4 and 7 of Convention No. 155, with particular attention given to hazardous work activities such as coalmining.* The Committee notes that, according to the Government's report, the National Advisory Committee on Occupational Safety and Health (COCONASHT) is working on nine projects, including the development of a national information system on occupational accidents and diseases, and that the Government also provides information on online training workshops and diplomas. ***The Committee requests the Government to supply information on the aforementioned system and requests it to provide further details of the application of Articles 4 and 7 of the Convention to hazardous types of work such as coalmining. The Government is also requested to indicate whether it has a register of existing mines, including pocito mines, and to provide information on OSH policies adopted or planned in relation to large, medium-sized and small enterprises;***
  - (ii) *conclude and adopt the new regulatory framework for OSH in the coalmining industry, taking into account the Safety and Health in Mines Convention, 1995 (No. 176), and the ILO code of practice on safety and health in underground coalmines, 2006.* The Committee notes the indication in the Government's report that, in relation to NOM-032-STPS-2008, a special inspection operation for underground coalmines was launched on 25 March 2009. The Government indicates that an inspection protocol was used for this operation which was submitted to the members of the Subcommittee for the Coalmining Region at its ordinary session of 17 March 2009 and that this was updated for the actions of 2010, including the material relating to training and skills. The Government also indicates that between March and October 2010 a total of 11 underground mines and 20 pits (*pozos*) were inspected in Coahuila. ***The Committee requests the Government to continue to supply information on its application in practice, also taking into account the comments made by the SNTCPF.***
- Article 9. Adequate and appropriate inspection system.* The Committee also notes paragraph 99(b)(iii) and (iv) and 99(d) of the Governing Body's report, in which the Government was asked, in consultation with the social partners, to continue to take the necessary measures in order to:
- (iii) *ensure, by all necessary means, the effective monitoring of the application in practice of laws and regulations on occupational safety and health and the working environment, through an adequate and appropriate system of labour inspection, in compliance with Article 9 of Convention No. 155, in order to reduce the risk that accidents such as the accident in Pasta de Conchos occurs in the future;*
  - (iv) *monitor closely the organization and effective operation of its system of labour inspection taking due account of the Termination of Employment Convention, 1982 (No. 158), including its paragraph 26(1);*
- ...
- (d) *review the potential that the Labour Inspection Convention, 1947 (No. 81), provides to support the measures that the Government is taking in order to strengthen the application of its laws and regulations in the area of occupational safety and health in mines.*

The Committee notes the Government's statement that the STPS is undertaking various actions within the context of the sectoral objective aimed at promotion and monitoring of compliance with labour standards. This objective seeks to increase the number of workplaces which comply with OSH standards, undertake actions relating to the supervision and monitoring of inspection, generate a culture of self-evaluation, and impose penalties designed to have a heavy impact on offenders. The Government highlights the strategy implemented to strengthen the enforcement of labour standards with a view to ensuring that all large and medium-sized coalmining companies comply with the laws and regulations relating to OSH and implement remedial measures. The Government indicates that, in cases where conditions endangering the health, safety and lives of the workers and posing a risk to installations are detected, the Federal Labour Inspectorate restricts coalmining activities from the date of the inspection visit in question until such time as safety and health measures are complied with, and proceeds to issue a warning. The Committee notes the Government's indication that the text of the warning is as follows: "Imminent danger. The Ministry of Labour and Social Security (STPS) restricts the access of workers to this area .... In the event that work operations continue, they shall be the exclusive responsibility of the employer". The Committee notes that the trade union considers in its communication that the abovementioned measure is inadequate and refers to the example of the Felber mine. ***The Committee requests the Government to ensure that the***

*labour inspectorate enforces the interruption of work in areas where there is imminent danger, and to examine these matters in consultation with the social partners and provide information in this respect.*

With reference to its previous comments, the Committee also notes the information on the follow up given to labour inspection measures. It notes that 931 measures were ordered, 899 of which were not upheld (owing to various situations such as areas to which measures applied no longer being exploited, and therefore being closed and sealed off, or machinery and equipment to which the measure applied being withdrawn from service), 32 measures were upheld and, of these, 20 were complied with and 12 were not complied with. ***The Committee considers that, in the light of the report on the representation, it is essential to verify that action is taken to follow up on the measures issued, and requests the Government, in consultation with the social partners, to examine ways of creating mechanisms enabling it to substantially increase its activities to uphold or verify the implementation of the measures issued and to continue to supply information in this regard.***

*Degree of application and impact of the measures taken.* The Committee notes that, according to the Government, inspections are undertaken on the basis of the “Protocol of inspection for underground coalmines”, which coincides with the provisions of the procedure for the evaluation of conformity (PEC), provided for in Chapter 18 of NOM-032-STPS-2008. The Committee also notes the Government’s indication that in April 2010 it launched the special inspection operation to inspect underground coalmines, including 20 pits (*pozos*) and open-cast mines, and that 28 workplaces were visited with 88 inspections, of which 30 related to general safety and health conditions. The Committee observes that, since the accident, the Government has established a particular standard and a protocol of application. It notes, however, that the figures supplied do not provide a clear picture of the degree of application of OSH standards in coalmines. In order to verify the improvements made and progress achieved, it would be necessary to have reliable data on the number and types of mines that exist in the state where the accident occurred, drawing a distinction between large, medium-sized and small mines (*pocitos*), the estimated percentage of unregistered mines, workers and accidents. This would enable progress to be measured at intervals. ***The Committee therefore requests the Government to provide information on the mines existing in the state of Coahuila, drawing a distinction between large, medium-sized and small mines (pocitos), indicating if possible the number of registered and unregistered pocitos, the number of accidents and fatalities each year, and existing policy for ensuring compliance with OSH standards in the three abovementioned sectors. Finally, the Committee repeats the request for information made by the Conference Committee on the Application of Standards, including on the risk evaluation methods used in the mining sector.***

## II. Other measures

*Compensation.* The Committee noted that the Governing Body, in paragraph 99(c) of the document referred to above, asked the Government to:

- (c) *ensure, considering the time that has elapsed since the accident, that adequate and effective compensation is paid, without further delay, to all the 65 families concerned and that adequate sanctions are imposed on those responsible for this accident.*

*Humanitarian aid.* With reference to its previous comments, the Committee notes the elements laid out by the Office of the Federal Attorney for the Defence of Labour (PROFEDET) in its requests representing the widows and children of 56 deceased workers. It also notes that 750,000 pesos were granted to 63 out of 65 beneficiaries and 80,800 pesos were granted to 61 families and that this money was not by way of compensation but by way of “humanitarian aid”. The Committee notes that the trade union disagrees with various aspects of the criteria used and the amounts due. The Committee considers it essential with respect to the workers who died in the accident at the Pasta de Conchos mine that their families receive amounts of money which enable them to live decently and that the State and the employers assume their responsibilities in this regard. ***The Committee indicates that it will deal with this matter in depth in its next comment and requests the Government to make comments on the matters raised by the trade union in its communication and also to indicate whether, in addition to this “humanitarian aid”, the families of the workers have received adequate and effective compensation and the amount thereof. Furthermore, it is unclear to the Committee, from the information supplied, how the amounts of 750,000 and 80,800 pesos were determined which, according to the Government, are not compensation (for example, whether wage supplements were counted and, if so, which) and the criteria for changing the amount from the initial offer made by Industrial Minera México (IMMSA), which was the equivalent of ten years’ wages according to paragraph 26 of the report, to the subsequent amount, which was lower, and it requests the Government to indicate clearly which of the two amounts was actually granted to the workers.***

*Compensation.* The Committee notes the Government’s indication that the amounts determined by way of compensation and other benefits to the family members of the 65 deceased miners were determined in each specific case in the legal proceedings instituted by the families. The Government indicates that IMMSA, on its own behalf or acting on behalf of General Hulla (GH), has deposited credit instruments in 58 cases which the Government indicates with their numbers; in five cases the corresponding cheques have not been displayed and two are still being processed. The Committee points out to the Government that it cannot fully understand from this information whether adequate and effective compensation was paid rapidly in accordance with the national legislation. It also notes the disagreement of the trade union and the families on this point. ***The Committee requests the Government to provide clearer information in***

***this respect, also taking into account the comments of the trade union, and any other information that contributes to an understanding of the effect given to this recommendation.***

*State and social benefits.* The Committee notes the Government's indication that, through the Ministry of Social Development, support amounting to 1 million pesos was provided to cater for 65 productive projects of up to 15,000 pesos per person; a pledge was made to provide workshops on productive support; a pledge was made to support a project for the construction and equipment of a social, cultural and childcare centre for women belonging to the families of the accident victims; basic products were also provided; INFONAVIT liquidated the total balance of the credits previously taken out by the deceased workers as well as measures relating to mortgages, while the National Fund for Public Housing provided support with a grant of 33,000 pesos so that the persons concerned could obtain housing. While noting the information supplied by the Government, the Committee cannot fail to note that the communication from the trade union, including its appendices such as the report from the *Pastoral Laboral* National Team, seriously questions the payments and benefits and the attitude of the state bodies, including PROFEDET, as regards treatment of the deceased workers' widows. The Committee recalls that the Governing Body in its report made special mention of the families of the victims. ***The Committee requests the Government to provide detailed information on all aspects of the communication which relate to the families of the victims in order to gain a clearer picture of the situation and of the existing disputes and court cases. In general, the Committee trusts that the Government will take all necessary steps to find an appropriate solution, including by means of dialogue, to the complaints submitted by the families of the victims of the Pasta de Conchos accident. The Committee also trusts that the families will be given support by the Government, and it requests the Government to provide information in this regard. It also requests information on the allegations of harassment of the lawyers representing the victims' families.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2011.]***

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1987)**

*Legislation.* The Committee notes with *satisfaction* the adoption of Mexican Official Standard NOM-030-STPS-2006 concerning occupational safety and health services, which lays down the guidelines for developing and promoting such services and the adoption of which has been requested by the Committee for a number of years with reference to Instruction No. 24, which formed the basis for this Mexican Official Standard. The Committee notes, however, that it requires more detailed information in order to clarify certain points, which will be dealt with in a direct request.

The Committee is raising other points in a request addressed directly to the Government.

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1990)**

*Article 8(2) of the Convention. Measures to ensure cooperation between employers and workers undertaking activities simultaneously at one site; Article 20(1). Good construction of cofferdams and caissons; Article 22. Design and construction of structural frames and form work to ensure that workers are guarded against dangers arising from any temporary state of weakness or instability of a structure; and Article 23. Work done over or in close proximity to water.* In its previous comments the Committee noted that the provisions referred to by the Government do not give legislative effect to the aforementioned Articles and that an official Mexican standard was being drawn up which would include the regulation of the subjects mentioned in these Articles. The Committee notes that, according to the report on the 2008 National Standardization Programme, the estimated date for completion of the draft standard referred to above was December 2009. ***The Committee requests the Government to continue to supply information on any progress made on the draft of the official Mexican standard and to take the necessary steps pending its adoption to ensure the application of these Articles of the Convention and to supply detailed information in this respect.***

*Article 9. Safety and health of workers in the design and planning of a construction project.* The Committee notes that, according to the report, a forum was held in 2006 concerning good working practices in the construction industry. This gave rise to a publication, concluded in October 2007, which included safety and health guidelines in the design and contracting of works, safety and health planning and administration, and general and specific working procedures. While noting these promotional measures, the Committee points out that it is necessary to adopt measures which ensure the application of the provisions of the Convention and not merely the promotion of them. ***The Committee therefore urges the Government to take the necessary steps to ensure that the persons responsible for the design and planning of a construction project take account of the safety and health of construction workers and requests it to supply detailed information in this respect, both on the manner in which the application of this provision is ensured and on its application in practice.***

*Article 12. Right of workers to remove themselves from danger entailing an imminent and serious risk to safety or health, and obligation of the employer to take immediate steps to stop operations.* In its previous comments the Committee expressed the hope that, in order to bridge the existing legislative gap, the Government would adopt a law or regulations explicitly providing for the right of workers to remove themselves from serious danger to their safety and imposing an obligation on employers to stop operations and, if necessary, evacuate the workers. The Committee notes that, on this point, the Government merely states that there is no existing proposal for amending the Federal Safety, Health

and Working Environment Regulations. The Committee refers to its direct request of 2010 relating to the application of the Chemicals Convention, 1990 (No. 170), in which it states, inter alia, with reference to the application of *Article 18* of that Convention, that workers, as a result of their presence in a specific setting, may perceive dangers that may go unnoticed outside that setting and therefore should have the right to remove themselves if necessary. ***The Committee therefore requests the Government to take all necessary steps to ensure the recognition and protection of this right in practice and also to impose the duty on the employer to take immediate steps to stop operations, and requests the Government to supply information in this respect.***

*Article 16(2). Safe and suitable access ways and control of traffic to ensure the safe operation of vehicles and earth-moving or materials-handling equipment.* In its previous comments the Committee pointed out that the standard indicated by the Government (NOM-004-STPS.1994) does not contain any provisions relating to safe and suitable access for the use of vehicles and equipment, or to the organization and control of traffic in relation to such vehicles and equipment, and it asked the Government to indicate the measures contemplated to give effect to this provision of the Convention. The Committee notes that, according to the report, these matters are dealt with in the document entitled “Safe practices in the construction industry”, and in particular chapter 4 on specific working procedures, which the Government mentioned in the information supplied in relation to *Article 9* of the Convention. As already stated in its previous comments on that Article, the Committee repeats that, while noting these promotional measures, it is necessary for measures to be adopted which ensure the application of the provisions of the Convention rather than merely promote them. ***The Committee therefore requests the Government to take the necessary steps to ensure the application of Article 16(2) and supply detailed information in this respect, including on its application in practice.***

*Article 19(a), (b), (d) and (e). Adequate precautions to guard against danger to workers from a fall or dislodgement of earth, the fall of persons, materials or objects, consequences of fire or an inrush of water or material, and underground dangers; and Article 21(2). Physical aptitude required for work in compressed air.* While noting the Government’s general reference to Part I of its report, in which all the official Mexican standards in force are listed, the Committee draws the Government’s attention to the fact that this general reference does not constitute a reply to its request. ***The Committee therefore again requests the Government to supply information on the manner in which effect is given, in law and in practice, to these provisions of the Convention.***

*Part VI of the report form. Application in practice.* The Committee notes that the Government’s report includes comments from the Confederation of Workers of Mexico and considers that the Confederation is complying with the requirements of the Convention, listing the titles of the official Mexican standards which, in its opinion, give effect to the Convention. It also notes the detailed information from the Government on the various orders of competence in the Mexican legal system, including in relation to labour inspection. As regards labour inspection, the Committee notes that the Federal Labour Inspectorate held various meetings in 2009 with the Mexican Construction Industry Board for the purposes of inspection operations concerning safety, health and training in enterprises in the industry. The purpose of the work was to define procedures for the inspections planned for the second half of 2009. One of the main agreements achieved entails the employers’ association providing the competent authority with an up-to-date directory of its members, in which the domicile and workplaces currently in operation are listed. Coordination between the authority and the employers also has the objective of laying down a commitment to provide information on inspections and keep affiliated enterprises informed in order to dispel any doubts. These meetings go under the title of “Technical sessions on inspection procedures relating to general safety and health conditions and on training in the construction industry”. ***The Committee requests the Government to continue to supply information on the application of the Convention in practice, including the results of the inspections referred to above, the most frequent types of occupational accidents and diseases according to those inspections, and the measures taken or contemplated for dealing with them.***

### **Chemicals Convention, 1990 (No. 170) (ratification: 1992)**

*Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the Constitution of the ILO).* The Committee notes the detailed communication sent by the above union, alleging non-observance by the Government of Mexico of the recommendations formulated by the Governing Body in its report on the above representation (document GB.304/14/8). The communication was transmitted to the Government on 2 August 2010. The Committee notes that the Government has not yet provided its comments on this matter. The Committee points out that it will follow up that communication and the action taken in response to the recommendations made by the Governing Body in the context of the examination of the application of the Occupational Safety and Health Convention, 1981 (No. 155), and refers to its comments concerning the application of that Convention.

## **Mongolia**

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1998)**

The Committee notes that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the observations by the Confederation of Mongolian Trade Unions (CMTU), received by the ILO on 5 November 2008 and transmitted to the Government on 12 December 2008, which raise problems with regard to the application of Convention No. 155. The Committee notes that the CMTU considers that several railroad accidents, resulting in injured workers, have occurred due to a number of shortcomings regarding the application of the provisions of the Convention, including inadequate training of workers; lack of enforcement of safety measures in relation to chemical hazards; failure to notify the competent authority in cases of occupational accidents; and omitting to take into account the importance of mental elements affecting health, which is directly related to safety and health at work. *The Committee asks the Government to respond to the observations made by the CMTU in its next report.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Netherlands

### **Asbestos Convention, 1986 (No. 162) (ratification: 1999)**

*Part V of the report form. Application in practice.* The Committee notes with *interest* the comprehensive information provided by the Government in its latest report, including statistical information on the application of the Convention in the Netherlands and information on compensation entitlements for asbestos victims suffering from mesothelioma. The Committee notes the comments submitted by the Netherlands Trade Union Confederation (FNV) and received by the Office on 30 August 2010 which indicate that only half of the victims of mesothelioma receive the full fixed standard amount of compensation. The Committee welcomes the detailed ten-year survey report published by the Dutch Institute for Asbestos Victims (IAS) and its informative website which contains relevant asbestos-related information from all over the world. The Committee also notes the significant work undertaken by IAS in the field of asbestos, including the development of a database on asbestos victims; research on the diagnostic techniques and medical panels on mesothelioma; research on asbestos-related lung cancer; and research on the possible link between the method of asbestos exposure and the nature of its carcinogenic effect. The Committee further notes the information indicating measures that have been taken to control work with asbestos, including the enhancement of the procedures and the enforcement of local authorities; a more integrated enforcement approach and higher fines; enhancement of the system of certification; and the possible incorporation of new scientific conclusions (in particular, possible limit values) in legislative measures. The Committee notes that the comments of FNV call for close monitoring of the effects of such measures. *The Committee asks the Government to continue to provide information on the application of this Convention in practice, in particular on the outcome of measures taken to address the hazards involved when undertaking demolition work where there is exposure to asbestos and on the allocation of compensation for victims suffering from mesothelioma, in light of the comments received from FNV.*

## Niger

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1993)**

The Committee notes the Government's most recent report which is essentially a repetition of information previously transmitted, and which indicates that national legislation does not contain any specific provisions regarding air pollution, noise and vibration, and that no progress appears to have been made as to the draft legislation which is reportedly under development in order to give effect to the Convention. *With reference to the fact that a significant period of time has passed since the Government ratified this Convention and undertook to implement it in the country, and that no progress appears to have been made in this direction, the Committee yet again urges the Government to take the necessary measures, and to submit any relevant legislation to the Committee to enable it to examine the effect given to the Convention in the country.*

*[The Government is asked to report in detail in 2012.]*

## Norway

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1982)**

*Article 4 of the Convention. National policy.* The Committee notes the comments from the Norwegian Confederation of Trade Unions (LO) transmitted by the Government indicating that while LO recognizes the extensive legislation regulating occupational safety and health (OSH) matters in the country, it questions whether this reflects a coherent national OSH policy covering both workplaces under the authority of the labour inspectorate and those under the Petroleum Safety Authority. *The Committee requests the Government to provide further information in relation to the question raised by the LO.*

*Part V of the report form. Application in practice. Statistical information.* The Committee notes that in its reports submitted in 2010 on the application of ratified Conventions on occupational safety and health, the Government refers to statistical information from different sources. This includes information from 2005–08 based on reports from physicians on diseases caused by exposure to chemicals (excluding asbestos-related diseases). According thereto the

number of reported cases decreased from 196 in 2005 to 130 in 2008. The Committee also notes the Government's statement that although, according to the Working Environment Act (WEA), reporting on work-related diseases to the labour inspectorate is obligatory, only 4–5 per cent of Norwegian medical practitioners fulfil their reporting duties. The reported figures may therefore not be representative of the actual number of incidents. In this context, the Committee refers to the comments by LO, also transmitted by the Government, on the apparent discrepancy regarding the number of neoplasms reported in 2005–08. According to the above referenced information from physicians included in the report on the application of the present Convention there had been 45 such cases, but according to information submitted in the context of the application of the Occupational Cancer Convention, 1974 (No. 139), there had been 378 such cases. Another source for statistical information the Government refers to are reports on chemical-related injuries transmitted to the social insurance agency. Such reports are reportedly sent either by workers or employers to the Norwegian Labour and Welfare Service and are registered by the labour inspectorate. According thereto the total number of injuries appears to have decreased, while the percentage of injuries caused by chemicals appears to have been stable at 1.4 per cent in the period 2004–07 with a slight increase to 1.6 per cent in 2008. The Committee also notes the information that the most frequently violated sections of the Ordinance respecting protection against exposure to chemicals at the workplace included; sections 6 (Risk assessment), 7 (Concrete measures to reduce chemical exposures) and 9 (Safety training and information). ***While the Committee welcomes the efforts to provide statistical information, it notes with some concern the reported shortcomings and discrepancies in the data that has been made available and requests the Government to indicate measures taken to address these shortcomings. Noting the crucial importance of reliable statistical data to enable the tracking of progress and to inform national policy in this area, the Committee invites the Government to provide more detailed information on current national systems for recording and notification of occupational accidents and disease and on any other methods used by the Government to assess the impact of measures taken to improve the application of the Convention in the country.***

### **Chemicals Convention, 1990 (No. 170) (ratification: 1993)**

***Implementing laws and regulations.*** The Committee notes with *interest* the detailed information regarding amendments to implementing laws and regulations. It notes that the new amended Act No. 62 of 17 June 2005 which came into force on 1 January 2006 relating to the working environment, working hours and employment protection (WEA) does not include any changes affecting the implementation of this Convention. It also notes that the amendment by Ordinance No. 415 of 20 March 2003 to Ordinance No. 443 of 30 April 2001 on protection against exposure to chemicals at work (Chemicals Ordinance) widens the rules on carcinogens to include mutagenic substances and introduces a limit value for wood dust from hardwoods. The Committee understands that further amendments to this Act were adopted in 2005 introducing, inter alia, special rules for work carried out with cement containing chromium IV. It also notes that the amendments to Ordinance No. 443 of 2001 with respect to protection against exposure to chemicals at the workplace (Chemicals Ordinance), most recently through Ordinance No. 363 of 2005; the amendments to Ordinance No. 1139 of 2002 with respect to the classification, marking, etc. of dangerous chemicals – most recently through Ordinance No. 121 of 2006; the amendments to Ordinance No. 412 of 2000 with respect to the production and use of hazardous substances in enterprises – most recently through Ordinance No. 792 of 2005 and the adoption of the Ordinance No. 516 of 2008 with respect to the registration, evaluation authorization and restriction of chemicals (REACH) give further effect to the Convention. The Committee notes the information regarding the Product Control Act No. 79 of 1976 and its Regulations (Ordinance of 1 June 2004) giving effect to *Article 5*. The Committee also notes that since 2001 the Norwegian list of limit values has been revised twice and that a new revision is due by the end of 2010. Finally it notes the details provided regarding the enforcement mechanisms based on the Coercive Fulfilment Act, section 19–1 of the WEA as well as regarding the information that the Jotun case was closed due to lack of evidence. ***In addition to this detailed information, the Committee welcomes the helpful translations provided of relevant changes in legislation which are not publicly available in one of the working languages of the ILO.***

***Articles 3 and 4 of the Convention. Consultations with employers' and workers' organizations on national policy related to chemicals.*** The Committee notes the information that the competent authority for the implementation of REACH, the Norwegian Pollution Control Authority, has representatives in various forums and working groups responsible for monitoring and implementing REACH, and that the Norwegian Labour Inspection Authority is responsible for the implementation of the parts of the Reach Regulation which are related to the working environment and concern workers. It also notes that the Norwegian Labour Inspection Authority has established a REACH office to stay up to date on REACH areas that concern the working environment in Norway. ***The Committee notes with interest the institutional arrangements for collaboration between the Norwegian Pollution Control Authority and the Norwegian Labour Inspection Authority and requests the Government to provide further information on the mandate and activities of the REACH Office and how employers and workers' organizations are consulted in this process and in the periodical review of the national policy related to chemicals.***

***Article 6. Classification system of chemicals.*** With reference to its previous comments the Committee notes the information through amendments adopted on 22 April 2009 to Ordinance No. 1139 of 2002 on classification, labelling, etc. of dangerous chemicals, and taking into account corresponding EU Directives, the number of exceptions from the required classification and labelling of individual substances containing organic solvents has been reduced from 12 to three substances (acrylamide, methylamideoxyglycolate and methylacrylamidomethoxyacetate). The Committee also notes

the information that the relevant competent authorities are the Norwegian Pollution Control Authority, the Labour Inspection Authority, the Directorate for Civil Protection and Emergency Planning and the Petroleum Safety Authority and that while these authorities may act independently in their areas of responsibility, the Norwegian Pollution Control Authority has a contact role for subjects of common interest. Inspection activities may be independent, coordinated or simultaneous and a common inspection database has been established. ***The Committee welcomes this information and invites the Government to provide additional information on experiences gained of the collaborative efforts between these institutions and the efficiency of the monitoring of relevant laws and regulations in this area.***

*Part V of the report form. Application in practice. Enforcement campaign.* The Committee notes the detailed information provided on the national three-year campaign regarding chemicals launched in 2003. This campaign focused on four trade sectors with a relatively high risk for harmful chemical exposures including automobile workshops, plastic boat industry, the graphics industry and mechanical workshops. The primary goals of the campaign were to increase the knowledge of chemical health hazards, to reduce workers' exposure to mutagenic and carcinogenic substances and to reduce the likelihood of workers developing skin and respiratory diseases. A three-pronged strategy was applied including the conduct of inspections, specific efforts to meet the need for information and guidance of the four target groups, and to ensure close cooperation with other inspection authorities, industry organizations and occupational health providers. Two rounds of inspections were carried out in 2003–06. The first round revealed that about 75 per cent of the companies at issue had not performed or completed the required risk assessments; over 50 of the inspected companies had not measured exposures in the workplace atmosphere; a third of the employees had not received the required training for the job; and the use of personal protective equipment and ventilation was also lacking. All of these points are obligatory requirements according to the WEA. A large number of these companies were followed-up with a second round of inspections. The results were that significant improvements could be noted including that: the number of automobile workshops that had performed risk assessments increased from 25 to 75 per cent; exposure measurement in the work atmosphere for the graphic industry increased from 40 to 72 per cent; significant improvements were observed on all measures concerning chemical hazards (safety training, exposure measurements, provision of occupational health, safety management plans, etc.). Members of the Norwegian tripartite ILO committee had occasion to comment on these inspections reports and the Norwegian Confederation of Trade Unions (LO) observed that the findings demonstrated the need for continued inspections concerning the implementation of the Convention. ***Noting this detailed information with interest, the Committee invites the Government to ensure a longer term follow-up to this experience and to indicate the possible impact of this experience on the Government's overall strategy in the area of enforcement of national legislation in this area.***

*Part V of the report form. Application in practice. Statistical information.* Reference is made to the comments made in the context of the application of the Occupational Safety and Health Convention, 1981 (No. 155), regarding statistical information provided and the request for further information in that context.

## Peru

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1976)**

*Article 1(1) and (3) of the Convention. Periodic determination of carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control.* In its previous comments, the Committee pointed out that the prohibition, authorization and control of substances and agents that are periodically determined to be carcinogenic to which occupational exposure shall be prohibited or controlled are very important aspects of the application of the Convention, and noted that the Ministry of Labour and Employment Promotion and the Ministry of Health had established the Occupational Cancer Prevention and Control Commission. It expressed the hope that the Government would, in the near future, complete the process of determining the carcinogenic substances and agents to which exposure shall be prohibited or made subject to authorizational control, and asked the Government to provide information on progress made in this respect. The Committee notes with ***satisfaction*** Supreme Decree No. 15-2005-SA approving the Regulation on maximum permissible values for chemical agents in the workplace, and repealing Supreme Decree No. 025-75-SA on the grounds that its coverage was limited because it omitted certain chemicals currently in use. The Regulation applies countrywide and covers all areas of work involving the use of chemical or carcinogenic agents or substances which may present risks and/or be harmful to the health and safety of workers. The values must be applied by professionals who are well versed in occupational safety and health issues. ***The Committee asks the Government to specify how often and in what manner it determines and updates the carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control, and those to which other provisions of this Convention apply.***

*Article 3. Establishment of a system of records.* The Committee notes that, according to the Government's report, the National Centre for Occupational Health and Environmental Protection for Health which reports to the National Health Institute, has been conducting occupational medical assessments since 2003 though it keeps no occupational cancer records. Furthermore, technical guidelines have been produced – jointly by public and private entities – for medical diagnosis in occupational health and they include guidance on the diagnosis of pneumoconiosis (silicosis, asbestosis and other forms) and are awaiting approval. The Government also refers to other measures. However, the Committee again



notes that the country has not as yet any system for recording cases of occupational cancer and/or occupational diseases. ***It again reminds the Government that this Article of the Convention requires the establishment of an appropriate system of records, and asks the Government to take the necessary steps to ensure that such a system is established in the near future and to provide detailed information on any developments in this regard.***

*Communication from the General Confederation of Workers of Peru (CGTP).* The Committee notes the comments of the CGTP sent by the Government with its report in 2009. ***Noting that the comments appear not to be directly related to this Convention the Committee suggests that the CGTP, should it see fit, provide information on the manner in which its comments relate to the provisions of this Convention.***

The Committee raises other matters in a request addressed directly to the Government.

## Portugal

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1985)**

The Committee notes with *satisfaction* the National Occupational Safety and Health Strategy (SST) for the period 2008–12, which defines two key priorities: the development of coherent and effective public policies and the promotion of occupational safety and health (OSH). The strategy also sets the following ten objectives: (1) develop and strengthen a culture of prevention in accordance with the provisions of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); (2) improve the information systems and create a single model for the monitoring of occupational accidents; (3) include occupational safety and health systems in education; (4) boost the national occupational hazard prevention system; (5) improve the coordination of the competent public services; (6) enforce, improve and simplify the specific occupational safety and health standards; (7) implement the organizational model of the authority responsible for working conditions which brings together the promotion of occupational safety and health and labour inspection; (8) promote the application of the occupational safety and health legislation, in particular small and medium-sized enterprises; (9) improve occupational safety and health services; and (10) strengthen the role of the social partners in improving occupational safety and health conditions. Noting with *interest* that objective 6 of the strategy includes the intention to ratify the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Agriculture Convention, 2001 (No. 184), as well as the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Committee refers to the plan of action to achieve widespread ratification and effective implementation of the occupational safety and health instruments (Convention No. 155, its 2002 Protocol and Convention No. 187), adopted by the Governing Body in March 2010, and draws the Government's attention to the possibility of requesting technical assistance from the Office in the context of the plan of action in order to achieve these objectives in the best possible conditions. ***Noting also that the strategy provides for an interim assessment as well as a final assessment of the implementation of the strategy, the Committee requests the Government to provide a copy of these assessments once finalized.***

*Article 4(1) of the Convention. National policy on occupational safety and health.* The Committee notes the comments of the General Workers Union (UGT) attached to the Government's report, as well as the Government's reply. According to the UGT, most of the agreements concluded with the social partners, and included in the national action plan on prevention adopted in 2001, have not been implemented. The UGT hopes that the national occupational safety and health strategy will be a critical instrument that will lead to a thorough reworking of the OSH framework, which it regards as lacking. However, the UGT maintains that gaps and shortcomings persist and that the National Health Service is failing to fulfil its responsibilities to protect and monitor the health of workers. Furthermore, according to the UGT, although Portugal has a system of statistics on occupational accidents and diseases, the data are not up to date and are not reliable. For example, in the case of occupational accidents, there are several statistical sources but none are up to date. With regard to occupational diseases, the UGT indicates that the number of cases reported is lower than the reality. According to the Government, the alleged failings in the National Health Service were due to the lack of occupational physicians but this problem has now been solved by Decree No. 176/2009 establishing a degree course in occupational medicine. With regard to the statistics, it indicates that the Portuguese Insurance Institute (ISP) is responsible for compiling, processing and publishing statistics. The Government indicates that the type of data collected and points out that the statistics compiled are available on the ISP's website ([www.isp.pt](http://www.isp.pt)). With regard to occupational diseases, the Government indicates that cases are published in an annual report on occupational diseases. With regard to the allegations made concerning the inadequacy of the statistics especially in relation to under-reporting, the Government indicates that this is a wider problem which requires the coordination of several bodies, such as the labour inspectorate, the occupational safety and health services within enterprises and the National Health Service. The Government also indicates that some physicians are not aware of the obligation to report cases. It indicates that a project to systematize statistics is being considered and that the country is participating in a European project on statistics of occupational diseases. Noting the matters raised by the UGT and the efforts made to overcome them reported by the Government, the Committee recalls that, under *Article 4* of the Convention, the Government, in consultation with the social partners, should formulate, implement and periodically review its national policy on occupational safety and health (see also the General Survey of 2009 on occupational health and safety, paragraph 55). Regular review is a crucial step in ensuring that the effectiveness of implementation is assessed

and areas for future improvement are identified. The Committee notes that the National Occupational Safety and Health Strategy for the period 2010–12 provides for an interim assessment as well as a final assessment, which fulfils the requirements of review contained in *Article 4*. ***The Committee therefore requests the Government to review, in consultation with the social partners, the matters raised by the UGT (especially the failure of the National Health Service to monitor the health of workers, failure to update statistics and reporting failures) in the context of the interim assessment of the strategy, to take all further steps that are necessary to facilitate the implementation of its national policy and to provide information in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

### **Asbestos Convention, 1986 (No. 162) (ratification: 1999)**

*Article 1 of the Convention. Scope of application. Legislation.* In its previous comments the Committee referred to Legislative Decree No. 284/89, which excluded maritime and air transport from the scope of the legislation protecting workers against the risks arising from exposure to asbestos in the course of their work. The Committee notes the adoption of Legislative Decree No. 266/2007 of 24 February 2007, transposing Directive 2003/18/EC of the European Parliament and of the Council amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work. It notes with *satisfaction* that this Decree applies to all activities or operations in which workers are exposed or likely to be exposed to asbestos and that it explicitly repeals Legislative Decree No. 284/89.

The Committee is raising other points in a request addressed directly to the Government.

### **Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2002)**

*Articles 5(1) and 16(b) of the Convention. Competent authority responsible for monitoring and regulating various aspects of safety and health in mines. Appropriate inspection services.* The Committee notes with *interest* the organizational changes that appear to reinforce technical competency in the inspection of mines. It notes in this connection that in 2006, occupational safety and health underwent basic restructuring, as a result of which the body now responsible for promoting improvements in conditions of work and supervision is now the Working Conditions Authority. It further notes that in 2007, the Directorate General of Energy and Geology was established, which oversees energy and geological resources and safety and health in mines; and that it has administrative autonomy and is involved in administration of the State under the Ministry of the Economy and Innovation, the Basic Act of which was issued by Legislative Decree No. 208/2006 of 27 October. In this context, responsibility for labour inspection is now shared by the Ministry of the Economy and Innovation and the Ministry of Labour. In 2007, pursuant to Orders Nos 535/2007 and 566/2007 of 30 April, duties were allocated and the Supervision and Regional Coordination Division was established by a notice published in the *Official Journal* of 29 November 2007 and is in charge of mining support and oversight. ***The Committee requests the Government to continue to provide information on coordination between these bodies, including information on the sharing of mining inspection duties between the Working Conditions Authority and the Supervision and Regional Coordination Division, and on overall responsibility for matters such as decisions to close and reopen a mine, and on the results achieved through the practical application of this reform.***

*Article 7(c). Measures to maintain ground stability.* With reference to its previous comments, the Committee notes that, according to the Government, sections 27 and 29 of Legislative Decree No. 88/90, read in conjunction with section 69 of Legislative Decree No. 162/90, ensure application of this provision. Section 69 refers to “ground sustenance”. ***However, bearing in mind that, when applied, these provisions may give rise to different interpretations, the Committee asks the Government to provide information on the manner in which full compliance with this obligation is ensured, to reconsider the matter when revising its national policy, and to examine, with the social partners, the possibility of giving effect in a more explicit manner to this provision of the Convention, and to provide information in this regard.***

*Article 7(d). Provision of two exits, each of which is connected to separate means of egress to the surface.* With reference to its previous comments, the Committee notes that according to the Government, section 36 of Order No. 198/96 establishes that in all underground mines there must be at least two exits of solid and stable construction, and the five underground mines currently operating meet this requirement.

*Article 7(e). Monitoring, assessment and regular inspection of mines, and Part V of the report form. Practical application.* With reference to its previous comments, the Committee notes the information supplied by the Government to the effect that the legislation is applied in the five underground mines; that in the mining companies supervision is carried out by persons appointed by the technical director and by officers and miners under the supervision of the mines engineer; and that the services of specialized and certified companies is enlisted, and these submit their reports to the labour inspectorate on the latter’s request. As to opencast mines, Legislative Decree No. 270/2001 of 6 October introduced more stringent requirements on the qualifications of technical officers and made submission of a safety and health plan mandatory.

*Article 8. Preparation of specific emergency response plans.* The Committee notes that in replying to its previous comments, the Government states: that according to section 151 of Legislative Decree No. 162/90, companies must have their own risk assessment systems and that Legislative Decree No. 324/95 requires employers to draw up a safety and health plan before operations begin; that the competent departments of the Ministry of the Economy and Innovation must

provide technical guidance for enterprises in preparing safety and health plans, which must contain intervention scenarios for the most serious incidents such as fires, floods and explosions, this provision being compulsory for all extraction work. In addition, section 33 of Order No. 198/96 of 4 June establishes that without prejudice to the provisions of section 3 of Legislative Decree No. 324/95, employers must ensure that the safety and health plan provides for adequate measures to protect the safety and health of workers both in normal situations and in critical circumstances.

*Article 10(a). Training and instruction of miners.* The Committee notes that in reply to its comments, the Government states that there have been considerable improvements in this area, including an increase in ongoing and comprehensive instruction for miners, which was pioneered by the Neves-Corvo mine and has now been adopted by the country as a whole and applied in certain areas. **The Committee requests the Government to continue to provide information on the practical application of this provision.**

*Article 10(b). Supervision of mine work.* The Committee notes that the Government refers to section 3(5) and section 24(4) of Order No. 198/96 of 4 June, which contain rules on the supervision of workers in isolated posts and provides that such posts must be monitored at least once per daily work period. Each shift is monitored by means of radio transmitters and checks are carried out by appointed persons.

*Article 10(c). System whereby the names and location of persons underground can be known.* The Committee notes the information supplied by the Government which refers to various identification arrangements pertaining to this provision. **The Committee reminds the Government that it is essential, regardless of the system, to know at all times the name and location of persons underground, and asks the Government to state whether the mechanisms currently applied allow these objectives to be met, and, if not, to reconsider the matter when reviewing the national policy and to examine, with the social partners, the possibility of giving effect to this provision of the Convention in a more explicit manner, and to provide information in this regard.**

*Article 13(1)(e). Right of workers to remove themselves from any location posing a serious danger, and Article 13(2)(b),(c),(e) and (f). Selection and duties of safety and health representatives in mines.* The Committee notes that according to the Government, pursuant to section 274(2) of the Labour Code issued by Act No. 99/2003, workers are allowed to leave the place of work in the event of danger and that section 177(7) of Legislative Decree No. 162/90 makes the same provision. The Committee notes that the Government has sent no information on the practical application of this provision of the Convention, or on *Article 13(2)(b),(c),(e) and (f)*, of the Convention, on which the Committee sought information in earlier comments. **It again asks the Government to provide more extensive information on the practical application of these provisions.**

## Rwanda

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1962)**

*National legislation.* The Committee notes with *interest* the information in the Government's report regarding the application of section 3 and Title V of Law No. 13/2009 of 27 May 2009 to workers in the informal economy. The Committee also notes that the process of drafting a Ministerial Order on health and safety at the workplace in the building industry to fill the legal void created by the abrogation in 2001 of Ordinance No. 21/94 of 23 July 1953 is still ongoing. **Concerned about the current situation, the Committee urges the Government to take relevant action without further delay. It would like to inform the Government that the Office is available to provide relevant technical assistance to the Government to assist it in its efforts to bring national law and practice into conformity with this Convention and requests the Government to transmit a copy of any new legislation once it has been adopted.**

*Articles 4 and 6 of the Convention, in conjunction with Part V of the report form.* On taking note of the Government's reply, the Committee looks forward to receiving the Government's annual report on the latest statistical information in relation to the number and classification of accidents, including those relevant to workers in the informal economy. The Committee also notes that the Government has indicated that it is in the process of raising the awareness and building the capacity of the labour inspectors. **The Committee asks the Government to provide information on this process and any supporting legislative provisions.**

*Revision of this Convention.* The Committee would also like to draw the Government's attention to the Safety and Health in Construction Convention, 1988 (No. 167), which revises Convention No. 62 of 1937 and could well be better adapted to the current situation in the building sector. The ILO Governing Body invited States parties to Convention No. 62 to envisage the ratification of Convention No. 167, which entails, ipso jure, immediate denunciation of Convention No. 62 (GB.268/8/2). **The Committee requests the Government to provide information on all possible developments in this respect.**

**[The Government is asked to reply in detail to the present comments in 2011.]**

## Sierra Leone

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the Government's summary report submitted in June 2004 indicated that the Government had no new developments to report.

For a number of years, the Committee has drawn the attention of the Government to the fact that the national legislation does not contain provisions to give effect to Part II of the Convention (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of *Article 17 of the Convention* (which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.

With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to Part II of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. *Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the abovementioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Slovakia

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1993)**

*Legislation.* The Committee notes the information regarding newly adopted legislation including Act No. 355/2007, Coll. on Protection, Support and Development of Public Health and Regulation No. 345/2006, Coll. on basic safety requirements for protection of the health of workers and the general public against the effects of ionizing radiation, which give effect, inter alia, to *Article 12 of the Convention*.

*Articles 3 and 6 of the Convention. Permitted dose limits. Pregnant workers. Article 7(1)(b). Exposure limits for young persons between 16 and 18 years of age.* With reference to its previous comments, the Committee notes with *satisfaction* the information that Regulation No. 345/2006, Coll., referred to above, provides, inter alia, that the exposure limit for pregnant women working in a workplace with sources of ionizing radiation shall be such that from the time when the woman informs the operator until the end of her pregnancy the sum of the effective doses from external exposure and the committed effective doses from internal irradiation of the foetus does not exceed 1 mSv, and that the prescribed dose limits for exposure to radiation of young persons between 16 and 18 years of age are in conformity with the relevant exposure limits recommended by the International Commission on Radiological Protection (ICRP), that is: (a) an effective dose of 6 mSv in a year; (b) an equivalent dose to the lens of the eye of 50 mSv in a year; and (c) an equivalent dose to the extremities or the skin of 150 mSv in a year.

The Committee is raising other points in a request addressed directly to the Government.

## Spain

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1980)**

*Article 1 of the Convention. Scope. Particular branches.* In its previous comments, the Committee referred to aviation and maritime crews, who were excluded from the application of Royal Decree No. 1316/1989, and asked the Government to indicate which standards give effect to the Convention and, ultimately, guarantee the protection it affords to air and maritime transport workers. The Committee notes with *satisfaction* that the Government states that Royal Decree No. 286/2006 of 10 March 2006 on protection of the safety and health of workers against hazards arising from exposure to noise repealed Royal Decree No. 1316/1989 and that the exceptions provided for in section 1(2) of the repealed Decree relating to aviation and maritime crews were no longer present in the new text. Royal Decree No. 286/2006 also provides in its single transitional provision that the obligation laid down in section 8 – that on no account shall exposure of workers, determined in accordance with section 5.2 (comparison with exposure limits), apply to staff on board maritime vessels only – will apply as from 15 February 2011. *The Committee requests the Government to supply detailed information on the practical application of the Convention to workers in the aviation and maritime sectors.*

The Committee is raising other points in a request addressed directly to the Government.

## **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 1985)

The Committee notes the debate which took place in the Conference Committee on the Application of Standards in June 2007 and the conclusions resulting from the debate. The Conference Committee observed that this case should serve as an example of good practices. It congratulated the Government on the considerable efforts made to improve the situation of all workers with regard to occupational safety and health (OSH) and asked the Government to continue to supply information in this regard, including on migrant workers.

*Legislation.* The Committee notes with *interest* the legislation adopted in the area of OSH for various sectors and spheres (such as, inter alia, self-employment, subcontracting, construction workers), the heavy penalties for violations of the relevant legislation, and the updating of the list of occupational diseases. It notes that section 8.1 of Act No. 20/2007 of 11 July 2007 (Self-Employment Regulations) states that the competent public administration shall assume an active role in the prevention of occupational hazards to self-employed workers by means of activities promoting prevention, technical advice, monitoring and controls on compliance with OSH standards. It also lays down conditions regarding the right to stop work and abandon the workplace when the activity in question entails a serious imminent hazard. It also regulates the application, in cases where self-employed workers and workers from another enterprise or other enterprises are working together, of the obligation to cooperate and also the obligations to provide information and training as laid down in section 24(1) and (2) of Act No. 31 of 1995 on coordination of business activities. The Committee also notes Royal Decree No. 1299/2006 of 10 November 2006, approving the schedule of occupational diseases in the social security system. The Government reports that Act No. 32/2006 of 18 October 2006 concerning subcontracting in the construction industry lays down a set of guarantees to avoid any lack of controls in this sphere. The guarantees include: requiring compliance with specific conditions so that subcontracting beyond the third level meets objective criteria, in order to avoid practices which endanger OSH; the requirement for these enterprises to meet quality and solvency criteria and the strengthening of guarantees concerning training in occupational risk prevention; and increasing the participation of workers. Furthermore, new regulations have been adopted in relation to infringements arising from non-compliance by subcontractors, contractors and promoters of their obligations regarding risk prevention. These provisions are set out in Royal Decree No. 1109/2007. The Government refers to the adoption of Royal Decree No. 597/2007 of 4 May 2007 concerning the publication of penalties for serious infringements relating to occupational risk prevention. Finally, the Committee notes Royal Decree No. 1027/2007 of 20 July 2007 approving regulations on heating installations in buildings and Royal Decree No. 1644/2008 of 10 October 2008 laying down standards regarding the sale and installation of machinery.

*Articles 4 and 7 of the Convention. National policy and overall reviews or reviews in respect of particular areas.* The Committee notes with *interest* that, in accordance with the provisions of these Articles, national policy on OSH is being reviewed and updated, as borne out by numerous recent legislative changes in this area, adopted as part of the Spanish Strategy on Occupational Safety and Health (2007–12), which was supported by the National Occupational Safety and Health Committee, in which the General Administration of the State, the Autonomous Administration and the most representative employers' and workers' associations are represented. The Committee notes that the strategy in general terms encompasses occupational risk prevention policies in the short, medium and long term, and seeks to transform the values, attitudes and conduct of all stakeholders in occupational hazard prevention, with the aim of reducing accident rates and progressively improving working conditions. The Government states that the strategy is based on the idea that, in order to achieve these general objectives, eight operational objectives have been established, which, for structural reasons and taking account of the main stakeholders, have been grouped into two major sections: (a) those relating to the prevention of occupational hazards in the workplace; and (b) those relating to public policies. Each objective has given rise to various lines of action and the latter in turn have resulted in various specific measures giving practical expression to the objectives, designating the person responsible for implementation of the measures and establishing a time frame for launching and implementing them. The Committee notes that, in connection with the evaluation and follow-up of the strategy, a working group on follow-up action to the Spanish OSH strategy has been set up within the National Occupational Safety and Health Committee. The Government also indicates that it has drawn up an initial plan of action, an evaluation of which was carried out up to October 2008, and has drawn up a second plan of action up to June 2010, when a further review of the strategy was due to be carried out and another phase of work to be prepared. ***The Committee requests the Government to continue to supply information on the manner in which the review of the national OSH policy was carried out and also on any other review which may be undertaken. It also requests the Government to supply information on the conclusions and changes arising as a result of any review and to continue to supply information on national policy trends in this area.***

*Application of the strategy for small and medium-sized enterprises (SMEs).* The Committee notes with *interest* objective 1 of the strategy, "Achieving better and more effective compliance with social security and occupational health regulations, especially in relation to SMEs," and also the particular measures contemplated in this context to promote compliance with OSH legislation by SMEs. For example, provision has been made for the National Occupational Safety and Health Institute (INSHT) to draw up a code of practice specifically concerning the application of prevention regulations by SMEs and micro-enterprises. Furthermore, all INSHT guides on prevention regulations must contain a specific chapter on their application by SMEs. The strategy also provides that all future standards on occupational hazard

prevention must contain a report on their application in SMEs and, if applicable, differentiated measures for SMEs must be included. With a view to the simplification of their occupational hazard prevention obligations, enterprises of up to ten workers will be provided with public advice regarding the organization of their prevention activities, with the promotion of self-evaluation involving standard models for various sectors and specifying activities or hazards which require specialized technical help. Simplified procedures are established for enterprises employing fewer than 50 workers. The “Spanish Occupational Safety and Health Network” will be developed as an instrument for promoting and supporting cooperation and the exchange of information and experience among its members. The INSHT as administrator of the network and focal point for the European Agency for Safety and Health at Work will promote awareness and dissemination of information relating to occupational hazards among SMEs. Recalling that the plan of action for achieving satisfactory levels of ratification and effective application of OSH instruments, approved by the Governing Body in March 2010, pays particular attention to SMEs and to research into particularly relevant applications or practices in OSH that also improve productivity and are attainable for SMEs, the Committee considers that the particular focus placed on SMEs by the Spanish strategy could contribute towards establishing good practices in this area. ***The Committee therefore requests the Government to supply detailed information on the implementation of OSH measures aimed at SMEs and on their results, including achievements and any problems encountered, and also requests the Government to supply copies of materials which have been devised, such as the INSHT codes of practice referred to by the plan.***

The Committee is raising other points in a request addressed directly to the Government.

## Turkey

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)**

*Article 17 of the Convention. Applicability of the Convention to all branches of economic activity.* The Committee notes that the regulation on the health and safety conditions in using work equipment, attached to the Government’s report, applies only to workplaces covered by the Labour Law dated 22 May 2003 (No. 4857), and that the implementing regulation on duties, competence, responsibilities and working principles of the engineers or technical personnel in charge of occupational safety, dated 20 January 2004, No. 25352, applies only to industrial workplaces employing at least 50 permanent workers and where permanent work over six months takes place. ***Noting that section 4 of Labour Law No. 4857 excludes a number of workplaces and economic activity from its scope of application, the Committee asks the Government to take measures in law and in practice to ensure full effect is given to the provisions of this Article.***

*Part V of the report form in conjunction with Article 15. Application in practice and appropriate inspection services for the purpose of supervising the application of the provisions of the Convention.* The Committee notes the information provided by the Government in its reports under the Occupational Safety and Health Convention, 1981 (No. 155), and the Labour Inspection Convention, 1947 (No. 81), however the Committee notes that the Government has not responded to the concerns raised by the Confederation of Progressive Trade Unions of Turkey (DİSK) and the Turkish Confederation of Public Workers Associations (TÜRKIYE KAMU-SEN). ***The Committee therefore reiterates its request that the Government provide information on the application of the Convention, with particular regards to Articles 2, 6 and 10 of the Convention, on the availability of appropriate inspection services as required by Article 15, and on measures taken or envisaged to address the high number of workplace fatalities and accidents caused by machinery.***

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2005)**

The Committee notes the information in the Government’s latest report, the attached comments by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employer Associations (TİSK), and the comments submitted on 1 September 2009 by the International Trade Union Confederation on behalf of TÜRK-İŞ, which indicate that the draft bill on occupational safety and health (OSH) has not yet been adopted. The Committee further notes that the Government has provided information which appears to give further effect to *Articles 7 and 11(b) and (f) of the Convention*. ***The Committee hopes that the proposed legislation will be adopted soon and asks the Government to provide a copy of the relevant legislation, once adopted, indicating the specific provisions that give effect to Articles 1(2) and 2(2) on the scope of application; Article 5(b) on relationships between the material elements of work and the persons who carry out or supervise the work; Articles 5(d) and 19(b) on communication and cooperation at the level of the undertaking; Articles 13 and 19(f) on the right to removal; Article 17 on collaboration between two or more undertakings engaged in activities simultaneously at one workplace; and Article 19(e) on the right of workers or their representatives to inquire into, and be consulted by the employer on all aspects of OSH associated with their work.***

*Article 12(b) of the Convention. Measures to make available information and undertake studies concerning the correct installation and use of equipment and the correct use of substances.* The Government indicates that there are provisions in place regarding the information to be provided by producing or supplying companies, and that it would be useful to receive the text of the machinery safety regulations from the Ministry of Industry and Commerce. ***The Committee reiterates its request that the Government supply the text of the abovementioned regulations, and to indicate the specific provisions that ensure that those who design, manufacture, import, provide or transport machinery,***

*equipment or substances for occupational use, make available information concerning correct installation and use, and information on hazards and instructions on the way these are to be avoided, as required by Article 12(b).*

*Article 18. Measures to deal with emergencies, accidents and first-aid arrangements.* In its comments, TISK raises their concerns regarding the Government's intention to abolish the current threshold of 50 workers when requiring enterprises to employ one or more physicians and set up a health unit as they fear that this will result in heavier burdens on employers in small and medium-sized enterprises and may encourage enterprises to engage in undeclared employment. *The Committee refers the Government to paragraphs 181–191 of its 2009 General Survey on occupational safety and health for further information on the application of Article 18, which may vary depending on the size and activity of the undertaking. The Committee asks the Government to indicate in its next report the measures taken or envisaged to ensure full effect is given to this Article of the Convention in enterprises that employ less than 50 persons.*

*Part V of the report form. Application in practice.* The Committee welcomes the information provided by the Government on the projects undertaken to ensure the harmonization of the administrative records of the Ministry of Labour and Social Security, and affiliated and related institutions, with the national and European definitions, classifications and standards, and for the improvement of the statistical system in Turkey. The Committee also notes the comments which indicates a 12 per cent decrease in the number of workplace accidents between 2005 and 2007 as a result of increasing countrywide effectiveness of OSH services. The Committee further notes the comments submitted by TÜRK-İŞ indicating that a new OSH policy document has been adopted by the National Health and Safety Council for 2009–13. TÜRK-İŞ alleges, however, that there are still shortcomings in OSH measures in practice as far as subcontracting is concerned. *The Committee asks the Government to provide information on measures taken or envisaged to address the application of the Convention to subcontracted workers; to provide a copy of the 2009–13 OSH policy document; and to continue to provide information on the application of this Convention in practice, with particular reference to ongoing activities under the National Pneumoconiosis Prevention Action Plan.*

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 2005)**

The Committee notes the information in the Government's latest report; the attached comments by the Confederation of Turkish Trade Unions (TÜRK-İŞ), the Confederation of Public Employees Trade Unions (KESK) and the Turkish Confederation of Employer Associations (TISK); as well as the comments submitted on 2 September 2009 by the International Trade Union Confederation, on behalf of TÜRK-İŞ. The Committee notes that a number of the provisions of the Convention are applied through now repealed regulations and that new legislation has been drafted but not yet adopted. *The Committee hopes that this legislation will be adopted soon and asks the Government to provide a copy of the relevant legislation once adopted indicating the specific provisions that give full effect to the provisions of the Convention, in particular Article 3(1) on the progressive development of occupational health services for all workers, including those in the public sector, and all undertakings, in response to the comments submitted by KESK which allege that public sector employees are not covered; Article 5 on the functions of the occupational health services; Article 8 on cooperation between employers, workers and their representatives; Article 11 on required qualifications for occupational health services personnel; Article 12 on health surveillance at no cost to the workers; and Articles 14 and 15 on ensuring health services receive relevant information.*

*Article 4 of the Convention. Consultations with the most representative organizations of employers and workers.* The Committee notes the comments by TÜRK-İŞ and KESK which allege that social partners have not been consulted on the draft legislation relevant to the Convention. *The Committee asks the Government to provide information on the consultations undertaken with the most representative organizations of employers and workers, as required by Article 4 of the Convention.*

*Part VI of the report form. Application in practice.* The Committee notes the statistical information provided by the Government in its report, and the information provided by the Government on the practical application of the Occupational Safety and Health Convention, 1981 (No. 155). The Committee notes the comments by TÜRK-İŞ alleging that the majority of occupational accidents occur in undertakings employing less than 50 workers, and that *Articles 14 and 15* of the Convention are not properly implemented. *The Committee asks the Government to indicate measures taken or envisaged to address the issues raised by TÜRK-İŞ, and to continue to provide information on the application of the Convention in practice.*

## **United Kingdom**

### **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (ratification: 2008)**

The Committee notes the Government's comprehensive first report including the legislative texts attached. The Committee also notes the comments of the Trade Union Congress (TUC), submitted on 31 August 2010, and the Government's response thereto of 15 October 2010.

*Article 4(2)(c) of the Convention. Mechanisms for ensuring compliance with national laws and regulations, including systems of inspections.* The Committee notes the information in the Government's report that section 19 of the Health and Safety at Work Act 1974 (HSWA) provides the criteria for the appointment of inspectors, while

sections 20–25 set out the inspectors' powers; that as of 1 April 2009 the Health and Safety Executive (HSE) has 1,323 full-time inspectors; and that, according to the HSE Enforcement Policy Statement, enforcement law is based on the principle of proportionality: "Those whom the law protects and those on whom it places duties expect that action taken by enforcing authorities to achieve compliance or bring dutyholders to account for non-compliance should be proportionate to any risks to health and safety, or to seriousness of any breach, which includes any actual or potential harm arising from a breach of law." The Committee also notes that, according to the TUC comments, the level of inspections carried out in the country is both low and inconsistent, that in the ten-year period from 1999 to 2009, the number of recorded inspections decreased 69.5 per cent, and that, based on the number of premises covered by the Field Operations Divisions (FOD), the average premises could expect a visit by an HSE inspector every 38 years. The Committee notes that, in its response, the Government indicates that it has not set targets for the number of inspections to be undertaken, and has neither maintained nor created system routines so as to record them, and that the Government considers that the number of inspections carried out by the FOD should be evaluated in the context of the preventive activities the FOD actively carries out including the safety and health awareness days and the introduction of new supply-chain initiatives. The Government also indicates that the figures quoted by the TUC do not take into account the fact that the rapid turnover of small businesses distorts the figures. **The Committee requests the Government to continue to provide information on the functioning of, and efforts to maintain, progressively develop and periodically review its labour inspection system.**

*Article 4(3)(d). Occupational health services in accordance with national law and practice.* The Committee notes that the Government reports that the main occupational health services (OHS) responsibilities lay with the dutyholder, and that any worker who suffers an illness due to their occupation is eligible for treatment by the National Health Service (NHS); that by virtue of Regulations 6 and 7 of the Management of Health and Safety at Work Regulations 1999, the employer is under a duty to provide OHS in accordance with national law and practice; and that it launched, in January 2010, a pilot programme for a voluntary UK accreditation scheme for OHS based on standards developed by the Faculty of Occupational Medicine (FOM), and that this scheme will become operational in 2011. The Committee also notes that, according to the TUC, there is no national occupational health provision in the United Kingdom and that, as few employers have access to private providers, a vast majority of workers have no coverage. The Committee further notes that, in its response, the Government emphasizes the regulated employers' duties in this respect where particular risks are thought to occur and where medical surveillance might be necessary. The Government also refers to the introduction, in 2001, of the "NHS Plus" project offering a range of OHS for large and small employers. **The Committee requests the Government to continue to provide information on efforts to maintain, progressively develop and periodically review its occupational health service system, and on the experiences gained in relation to the OHS voluntary UK accreditation scheme and the 2001 "NHS Plus" project.**

The Committee is raising other points in a request addressed directly to the Government.

## Uruguay

### **Safety and Health in Agriculture Convention, 2001 (No. 184)** (ratification: 2005)

*Article 4 of the Convention. National policy. Formulation, implementation and periodic review after consultation of the social partners.* The Committee notes with **satisfaction** the adoption of Decree No. 321/009 of 9 July 2009 concerning safety and health in agriculture, which gives effect to the present Convention and was drawn up in consultation with the social partners. The Committee emphasizes that a Tripartite Group for the Rural Sector was set up in 2007 with the aim of giving effect to the Convention. The Group was composed of the Rural Association of Uruguay, the Rural Federation, the National Association of Milk Producers, the Inter-Union Assembly of Workers – National Confederation of Workers (PIT–CNT) and the General Labour and Social Security Inspectorate of the Ministry of Labour and Social Security. Advice was provided by the ILO and the Group's work culminated in the adoption of Decree No. 321/009. Moreover, section 95 of the Decree provides for the establishment of the Tripartite Committee on Safety and Health in the Rural Environment (CTR), which will follow up the application of the Decree and take decisions by consensus. Section 3 of Decree No. 321/009 establishes the objectives of national policy, while section 4 of the Decree states that national policy shall be formulated, implemented and periodically reviewed in conjunction with the social partners. **The Committee requests the Government to supply information on the work of the CTR and on any developments relating to the implementation and periodic review of its national policy on safety and health in agriculture.**

The Committee is raising a number of other points in a direct request to the Government.

## Zimbabwe

### **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 2003)

*Legislation.* The Committee notes the information from the Government indicating that there have been no legislative changes which affect the application of the Convention but that a new occupational safety and health (OSH) law is under review by the Ministry of Labour and Social Service. In this context, the Committee hopes that the



Government will take into account the comments that have been made by the Committee in the context of the application of the present Convention as well as the other OSH Conventions ratified by Zimbabwe. ***The Committee requests the Government to keep the Office informed of the developments in this regard and to transmit copies of any new legislation once it has been adopted.***

*Part V of the report form. Article 9(2) of the Convention. Application in practice. Adequate penalties for violations of the laws and regulations. Statistical information.* The Committee notes that in response to its previous comments, the Government refers to the monitoring functions entrusted to the inspectorate services, including the requirements related to the registration and licensing of hazardous substances also monitored by the inspectorate services. In terms of statistical information, the Government merely notes that there are about 1,300,000 workers covered by national legislation in the formal sector, and an unknown number of workers in the informal economy, and that there were 146 (unspecified) contraventions. The Government does not provide any further statistical data, nor more detailed information based on the work of the inspectorate services. In this context, and with reference to the ILO Plan of Action (2010–16) to achieve widespread ratification of Convention No. 155, its 2002 Protocol and Convention No. 187 (see [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/genericdocument/wcms\\_125616.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_125616.pdf)), the Committee invites the Government to consider developing its recording and notification systems and to consider a ratification of the Protocol of 2002 to the present Convention, which regulates issues related thereto. As regards the comments by the Zimbabwe Congress of Trade Unions (ZCTU) that the penalties and fines for non-compliance with the law on occupational health are too low, the Government indicates that, although under current legislation violations were fined and properly followed up, the new OSH law which is under review will provide for stiffer penalties for violations of the OSH law. Levels of fines in Zimbabwe range from levels one to 14, where one is the lowest. The penalties provided for in the new law will range from ten to 14. The Committee also notes that in comments made on the application of other OSH Conventions ratified by the Government, the ZCTU further considers that the main shortcomings in the application lies in the monitoring and enforcement of relevant national legislation and that another notable challenge is the court system where OSH cases are allegedly not given priority and prosecutions can take more than two years to be brought before the courts. ***Against this background, the Committee requests the Government to respond to the comments by the ZCTU by providing further detailed information on the application in practice of both existing, as well as any future, legislation with regard to the present Convention; to submit information regarding the sanctions which apply for breaches of national OSH legislation and the follow-up thereto; and to keep the Committee informed of any developments regarding the recording and notification system in the country.***

The Committee is raising other points in a request addressed directly to the Government.

### **Chemicals Convention, 1990 (No. 170) (ratification: 1998)**

*Article 6(1) of the Convention. Classification systems.* With reference to the comments from the Zimbabwe Congress of Trade Unions (ZCTU) submitted in 2006, the Government indicates that the Environment Management Act, Chapter 20:27, sections 72, 74 and 75, and the Hazardous Substances Regulations, provide for the classification and labelling of hazardous substances, which consists of four groups and that the labelling is approved by the Environment Management Board. It also notes that, as a complement thereto, pictograms in the form of warning triangles are also applied. The Committee notes, however, that the Government did not provide any further information on the specific criteria for the classification of all chemicals and for assessing the relevance of the information required to determine whether a chemical is hazardous. In additional comments submitted in 2009, the ZCTU submits that the shortcomings of relevant national legislation is, inter alia, a lack of monitoring and enforcement and the fact that the relevant penalties for sanctions are not a deterrent. ***The Committee requests the Government to provide additional information on specific criteria for the classification of all chemicals and on procedures of labelling, in law and in practice. With reference to the comments submitted by the ZCTU, the Committee also requests the Government to provide further information on monitoring and enforcement of relevant national legislation, in particular as regards the registration and labelling of chemicals, including the imposition of penalties against violations.***

*Part V of the report form. Application in practice.* The Committee refers the Government to the comment made this year regarding the application of the Occupational Safety and Health Convention, 1981 (No. 155).

## **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 13** (Afghanistan, Argentina, Azerbaijan, Benin, Bosnia and Herzegovina, Cambodia, Cameroon, Chile, Colombia, Comoros, Croatia, Cuba, Estonia, Finland, Guinea, Italy, Luxembourg, Russian Federation, Senegal, The former Yugoslav Republic of Macedonia, Togo); **Convention No. 45** (Angola, Argentina, Azerbaijan, Bangladesh, Plurinational State of Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cameroon, China, Côte d'Ivoire, Croatia, Cuba, Cyprus, Ecuador, Egypt, Fiji, Gabon, Ghana, Guatemala, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Japan, Malawi, Nigeria, Papua New Guinea, Sierra Leone, Solomon Islands, Tajikistan, United Republic of Tanzania; Tanganyika, Turkey, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar); **Convention No. 62** (Belgium, Egypt, France, Guinea, Honduras, Ireland); **Convention No. 115** (Belgium, China: Hong Kong Special Administrative Region, Denmark, Egypt, Germany, Ghana, Guyana, Hungary, Japan, Kyrgyzstan, Lebanon, Norway,

Russian Federation, Slovakia, Turkey); **Convention No. 119** (Bosnia and Herzegovina, Brazil, Croatia, Cyprus, Dominican Republic, Ecuador, Finland, Kyrgyzstan, Russian Federation, Tajikistan, Ukraine); **Convention No. 120** (Plurinational State of Bolivia, Central African Republic, Finland, Ghana, Indonesia, Japan, Jordan, Kyrgyzstan, Lebanon, Russian Federation, Senegal, Slovakia); **Convention No. 127** (Algeria, France, Hungary, Lebanon, Malta, Turkey); **Convention No. 136** (Bosnia and Herzegovina, Côte d'Ivoire, Finland, France, Guyana, Hungary, India, Malta, Spain, The former Yugoslav Republic of Macedonia, Zambia); **Convention No. 139** (Afghanistan, Argentina, Bosnia and Herzegovina, Czech Republic, Denmark, Egypt, Finland, France, Germany, Guyana, Hungary, Iceland, Ireland, Norway, Peru, Portugal, Slovakia); **Convention No. 148** (Azerbaijan, Belgium, Bosnia and Herzegovina, China: Hong Kong Special Administrative Region, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Malta, Norway, Portugal, Russian Federation, San Marino, Seychelles, Slovakia, Spain, The former Yugoslav Republic of Macedonia, Zambia); **Convention No. 155** (Albania, Algeria, Antigua and Barbuda, Australia, Bosnia and Herzegovina, Cape Verde, Central African Republic, China, China: Macau Special Administrative Region, Cyprus, Czech Republic, Denmark, Fiji, Hungary, Iceland, Ireland, Kazakhstan, Republic of Korea, Lesotho, Luxembourg, Mexico, Mongolia, Nigeria, Portugal, Russian Federation, Sao Tome and Principe, Seychelles, Spain, The former Yugoslav Republic of Macedonia, Zimbabwe); **Convention No. 161** (Antigua and Barbuda, Bosnia and Herzegovina, Chile, Colombia, Czech Republic, Finland, Germany, Guatemala, Hungary, Mexico, Slovakia, The former Yugoslav Republic of Macedonia, Zimbabwe); **Convention No. 162** (Belgium, Bosnia and Herzegovina, Canada, Chile, Cyprus, Denmark, Finland, Germany, Norway, Portugal, Russian Federation, Spain, The former Yugoslav Republic of Macedonia, Uganda, Zimbabwe); **Convention No. 167** (China, Czech Republic, Denmark, Hungary, Iraq, Lesotho, Norway, Slovakia); **Convention No. 170** (Burkina Faso, China, Colombia, Germany, United Republic of Tanzania); **Convention No. 174** (Albania, Armenia, Belgium, Estonia, India, Saudi Arabia, Zimbabwe); **Convention No. 176** (Albania, Armenia, Austria, Botswana, Brazil, Czech Republic, Finland, Germany, Ireland, Lebanon, Norway, Slovakia, Spain, Zambia, Zimbabwe); **Convention No. 184** (Argentina, Finland, Slovakia, Uruguay); **Convention No. 187** (Cuba, Czech Republic, Finland, Republic of Korea, United Kingdom).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 13** (Czech Republic, France: French Polynesia, France: New Caledonia, Norway); **Convention No. 45** (Afghanistan, Lesotho); **Convention No. 120** (Brazil, Czech Republic, Denmark, France: French Polynesia, Guatemala, Norway); **Convention No. 136** (Croatia, Slovakia); **Convention No. 155** (Slovakia).

## Social security

### Algeria

#### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1962)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that the new schedules of occupational diseases are established by the Interministerial Order of 5 May 1996 fixing the list of diseases presumed to be of occupational origin (*Official Journal* No. 16 of 23 March 1997). The Government states in this connection that the 84 schedules set forth in the abovementioned Order were so drafted as to be consistent with Convention No. 42 and after consultation of the Occupational Diseases Commission. It adds that the Committee's comments will be brought to the attention of this commission with a view to the updating of the schedule.

While taking due note of this information, the Committee can but observe that despite the comments it has been making for many years, the Government did not seize the opportunity offered by the adoption of the abovementioned Order of 1996 to bring its legislation fully into line with the Convention. *It nevertheless hopes that the Occupational Diseases Commission will be in a position to consider the matter promptly and that the Government will indicate in its next report the measures that have been taken to amend the schedules to take account of the points below:*

- (i) *the lists of the various pathological manifestations related to toxic substances enumerated by the Convention (appearing in the left-hand column of the various schedules) must be of an indicative nature;*
- (ii) *the wording of the items pertaining to poisoning by arsenic (schedules Nos 20 and 21), manifestations caused by the halogen derivatives of hydrocarbons of the aliphatic series (schedules Nos 3, 11, 12, 26 and 27), and poisoning by phosphorous and certain of its compounds (schedules Nos 5 and 34) must, pursuant to the Convention, which is worded in general terms on these points, cover all the manifestations that may be caused by the above substances;*
- (iii) *the list of activities in which there is a risk of exposure to anthrax infection (schedule No. 18) must include the "loading, unloading or transport of merchandise" in general.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### Australia

#### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1959)**

The Government explains in its report received in September 2010 that a national independent tripartite body, Safe Work Australia, has been set up in partnership with the state and territory governments, whose functions include the development of national policies on workers' compensation and the formulation of proposals for the harmonization of workers' compensation arrangements across jurisdictions. The Government points out that the issues raised by the Committee have been drawn to the attention of the concerned state and territory governments and these will also be considered in the broader context of the activities of Safe Work Australia. *While taking note of the Government's indication that workers' compensation and occupational health and safety issues are primarily the responsibility of the legislature of the state and territory governments, the Committee observes that the responsibility to implement the Convention lies with the Government and hopes that the Government will spare no effort, within the new institution concerned with the harmonization of the legislation, to bring the state and territory legislations in conformity with the Convention.*

*Queensland.* The Committee *regrets* to note that for many years the State Government of Queensland has failed to comply with the obligation contracted by Australia under *Article 2* of the Convention to recognize the presumption of occupational origin of the diseases listed by the Convention for workers engaged in the corresponding occupations or industries, and to amend the Workers' Compensation and Rehabilitation Act of 2003 accordingly. *The Committee hopes that the State Government of Queensland will make an effort to consider the solutions implemented by other constituent territories of Australia, which are fully applying the Convention, and will amend the present workmen's compensation scheme by supplementing it with a list of occupational diseases and corresponding trades covering at least all those enumerated in the Convention, so as to provide for the presumption of their occupational origin.*

*Australian Capital Territory.* The Government states in its report received in August 2010 that Schedule 1 of the Workmen's Compensation Act shall be amended at the end of 2010 to establish the presumption of the occupational origin of anthrax infection contracted in employment related to the loading and unloading or transport of merchandise in general. *The Committee welcomes this report and requests the Government to supply a copy of the amended Act in the next report.*

*South Australia.* *The Committee invites the State Government of South Australia to follow the example of the Australian Capital Territory in expressly establishing in the legislation the presumption of the occupational origin of anthrax infection of workers employed in loading and unloading or transport of merchandise.* The Committee notes that the aim of such recognition of the occupational origin of this infection consists precisely in freeing the worker concerned from the obligation to prove on the balance of probabilities that the disease has arisen out of employment.

## Cape Verde

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1987)

*Article 1 of the Convention. Equality of treatment.* With reference to its previous comments on the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), and Convention No. 19, the Committee notes with *satisfaction* that a new Labour Code has been adopted in 2007 according to which foreign workers, their families or dependants, who have been victims of occupational accidents, are granted the same treatment in respect of compensation as the nationals of Cape Verde (section 18(1)).

The Committee is raising other points in a request directly addressed to the Government.

## Chile

### **Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)** (ratification: 1935)

#### *Follow-up to the recommendations of the Tripartite Committee* (representations made under article 24 of the Constitution of the ILO)

1. *Representation made by the National Trade Union Coordinating Council (CNS) and a number of national trade unions of workers of the Private Sector Pension Funds (AFPs).* The Committee recalls that the non-observance by Chile of Convention No. 35 and the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), following the reform of the pensions system in 1980 has been recognized for many years. This issue has given rise to several representation procedures under article 24 of the ILO Constitution, in the context of which, in 1986 and 2000, the Governing Body concluded that the Conventions in question were not complied with and entrusted the Committee of Experts with the task of supervising the implementation of its conclusions and recommendations. These conclusions and recommendations called on the Government to amend the national legislation to ensure that the privately managed pension system established by Legislative Decree No. 3.500 of 1980 is administered by non-profit-making organizations; that representatives of the insured are able to participate in the administration of the system; and that employers contribute to the financing of the old-age and invalidity benefits. The Committee recalls that, in view of the absence of adequate measures taken by the Government to give effect to the recommendations of the Governing Body, this case has already been discussed on repeated occasions in the Conference Committee on the Application of Standards in 1987, 1993, 1995, 2001 and, most recently, in 2009. During the most recent Conference Committee discussion of the case, the Government recognized that the privately managed pension system established in 1980 was not in accordance with the basic principle for social security systems encouraged by the ILO in a context of tripartism and the Government indicated that a legislative reform in 2008 (Act No. 20.255) had resulted, with ILO technical assistance, in the most significant social reform through the establishment, in addition to the existing pension system of a system of minimum pensions based on the principle of solidarity, under which the total number of beneficiaries in December 2008 would be 600,000, rising to nearly 1,200,000 beneficiaries in December 2012.

In its examination of the present case in 2009, the Committee considered that this reform did not give effect to recommendations of the Governing Body as the 2008 reform did not modify the general logic of the Chilean pension system, which remains based on individual saving capacity: persons who are in employment are still required by law to be affiliated to a profit-making pension fund and have to pay into their individual capital accumulation account a percentage of their remuneration, without employers also being required by law to contribute to the financing of benefits. In this respect, the Committee observed that the reform not only maintained the private pension fund administrators (AFPs) as the principal mechanism for old-age protection, but in effect reinforced their position because, if their private management generates pensions that are not sufficient to cover at least the essential needs of the pensioner, these insufficient amounts will be supplemented by an old-age pension (APS) financed through national solidarity and paid to persons whose retirement pensions do not reach a minimum threshold.

In its latest report, the Government confines itself to confirming that the privately managed pension system is administered by profit-making institutions. According to the information provided by the Worker members during the discussion of the case at the Conference in 2009, 30 per cent of the profits made on the funds resulting from the contributions paid by workers thereby go to pension fund administrators, in addition to the management fees for the funds. The Committee notes with continuing *concern* that the management of the system by private profit-making companies gives rise to considerable losses for workers, who are thereby denied part of the profits made by the contributions that they pay into their capital accumulation accounts.

With regard to the issue of the participation of insured persons in the administration of the system, the Government indicates that the reform introduced by Act No. 20.255 was intended to ensure better representation of insured persons in the administration of pension funds by establishing a users' commission composed of representatives of workers, retirees, public institutions and private institutions, and that the commission is chaired by a university professor. According to the Government, the function of this commission is to ensure the accuracy of the information provided to users on the basis of

which they make their decisions when selecting their pension fund. On 10 May 2010, the users' commission issued its first report containing, inter alia, proposals relating to the various aspects of the operation of the pensions system. In this respect, the Committee notes that the creation of the users' commission, although representing a step in the right direction, still does not guarantee the representatives of insured persons the right to be able to participate in the administration of their pension funds, as required by the Conventions under examination. ***The Government is therefore requested to take the necessary measures to ensure, in accordance with the Conventions under examination, that the representatives of insured persons participate in the administrative bodies of AFPs, and in particular those that determine investment policies. The Committee emphasizes in this respect that other countries which have also adopted capital accumulation systems have established systems of administration that guarantee the participation of insured persons.***

Finally, with regard to the need to ensure the collective financing of pensions, the Government indicates in its latest report that the reform of the system introduced by Act No. 20.255 of 2008 has had the effect of making employers responsible for invalidity and survivors' insurance contributions. In the case of enterprises employing 100 persons or more, this new measure entered into force on 1 June 2009 and will be extended to all enterprises from 1 July 2011. The Committee notes that this reform has not had an impact on the financing of old-age pensions, which remain exclusively financed by workers. The Committee nevertheless welcomes that it establishes the practice of contribution by employers to the invalidity and survivors protection scheme, thereby introducing the principle of the collective financing. The Committee notes, however, that the level of the contributions that are solely to be paid by employed persons (namely old-age contributions and deductions from wages for the administration of pension funds) represents 11.5 per cent of the monthly wage of employed persons, while the contribution of employers to the financing of invalidity and survivors' benefits is equivalent to only 1.87 per cent of the wage. ***The Committee hopes that this is only a first step by the Government with a view to establishing a better balance between the contributions of employers and of workers to the financing of old-age, invalidity and survivors' insurance schemes. As an informational matter, the Committee observes in this respect that Social Security (Minimum Standards) Convention, 1952 (No. 102), provides that the total of the insurance contributions to be paid by protected employed persons should not exceed 50 per cent.***

***In view of all of the substantive questions arising in relation to the application of the Convention, the Committee encourages the Government to continue having recourse to the technical assistance of the Office, as it has done in recent years, with a view to continuing the reform of the Chilean retirement pensions system based on the principles of solidarity, the sharing of risks, and collective financing, which are the essence of social security, combined with the principles of transparent, responsible and democratic administration of the pensions scheme by institutions that are not profit making, with the participation of the representatives of the insured persons.***

2. *Representations made by the College of Teachers of Chile AG.* In 1999 and 2007, in the context of two representations made by the College of Teachers of Chile AG alleging non-observance by Chile of Conventions Nos 35 and 37 on the grounds of non-payment of part of the social security contributions based on the gross remuneration of teachers, the Governing Body approved the reports of the tripartite committees established by virtue of article 24 of the ILO Constitution. These reports found that the Conventions had not been observed and called on the Committee of Experts to follow up the recommendations in the reports. In the first case, the Government was called upon to guarantee the payment by municipal authorities of the social security contribution arrears for teachers so that they could lay claim to full social security benefits, and particularly old-age and invalidity benefits. In the second case, the Governing Body concluded that it was the responsibility of the State to guarantee the payment of the debt in relation to the social security system resulting from the non-payment to teachers by the municipal authorities of an education subsidy which constituted a component of remuneration on the basis of which social security contributions are calculated and which therefore results in a decrease in social security benefits.

The Committee notes that, according to the information provided by the Government in its latest report, action has been taken with a view to preventing delays in the payment of social security contributions in combination with an unprecedented reform to improve the operation of the labour justice system. The Government nevertheless indicates that the education system is prone to disputes relating to the problem of the payment of certain components of wages, and particularly special subsidies, in view of the complexity of the structure of remuneration, which complicates the determination of arrears, and that these issues are the responsibility of the Court of Accounts (*Contraloría General*) and the directorate of labour, which have had to resolve these disputes in an appropriate manner. The Government adds, with regard to the special problem of teachers employed by municipal authorities, that the Basic Act on the municipal sector has been amended to provide for adequate penalties against the mayors of municipal authorities who do not comply with their obligations, including the payment of the social contributions owed in respect of their employees. The legislation henceforth includes the dissuasive concept of "significant failure to discharge a duty", which may lead to the removal from office of those responsible and the prohibition on their holding public office in the future. Finally, the 2008 reform of the social insurance system has reinforced the responsibility of mayors and other competent authorities in relation to the payment of social contributions.

***The Committee takes due note of this information and invites the Government to describe the manner in which the new legislation is applied in practice, including with an indication of the number of inspections carried out, particularly by the labour directorate and the Court of Accounts, with a view to ensuring the payment by municipal authorities of the education subsidy; the number and nature of the violations reported; and the number and nature of***

***the penalties imposed. The Government is also requested to indicate whether the situation of the arrears in the case of municipal authorities has been resolved and to indicate any amounts that remain unpaid; the number of municipal authorities that are still in arrears in the payment of the education subsidy, the amounts involved and the number of workers affected; as well as the amounts of the reimbursements made.***

3. *Representation made by the College of Teachers of Chile AG.* On 9 November 2009, the College of Teachers of Chile AG, under article 24 of the ILO Constitution, presented a representation alleging non-observance by Chile of Convention No. 35 and Convention No. 37. At its 308th Session (June 2010), the ILO Governing Body found this representation receivable and decided “to postpone the appointment of the Committee to examine the representation pending the examination of the case by the Committee of Experts at its next session, in November–December 2010”. The Governing Body also decided “to transmit the information provided by the complainant to the Committee of Experts with a view to the examination of this issue in the context of the follow-up given to the recommendations previously adopted by the Governing Body on similar matters, as envisaged by Article 3, paragraph 3, of the Standing Orders concerning the procedure for the examination of representations”.

The Committee notes the mandate assigned by the Governing Body in conformity with article 3, paragraph 3, of the Standing Orders concerning the procedure for the examination of representations. In accordance with this provision, “if a representation which the Governing Body decides is receivable relates to facts and allegations similar to those which have been the subject of an earlier representation, the appointment of the committee charged with examining the new representation may be postponed pending the examination by the Committee of Experts on the Application of Conventions and Recommendations of the follow-up given to the recommendations previously adopted by the Governing Body”. The recommendations of the Governing Body in respect of the previous representations presented by the College of Teachers regarding similar facts and allegations were adopted in 1999 and 2007 and the follow-up given is examined under point 2 above.

The 2009 representation procedure led the Committee to suspend its examination under article 22 of the ILO Constitution of the issues related to this representation, pending a decision by the Governing Body on this matter. The Committee recalls that it had treated these matters in its observations of 2008 and 2009 based on the information supplied by the College of Teachers A.G. of Chile and the Government and also on the information emanating from the discussion in 2009 by the Conference Committee on the Application of Standards of the implementation by Chile of Convention No. 35.

The Committee notes that the College of Teachers of Chile AG indicates that in 1980 Legislative Decree No. 3.551 issuing standards respecting remuneration in the public sector established, as from 1 January 1981, a special untaxed subsidy for teachers under the authority of the Ministry of Public Education. Calculated as a pro rata of the basic wage, this subsidy amounted to 90 per cent of the wage for graduate teachers and 50 per cent for non-titularized teachers. In 1982, a law transferred to the municipal authorities teachers who had previously been under the responsibility of the Ministry of Public Education, while placing them under the remuneration system of the private sector. This transfer resulted in the ending of the payment of the subsidy. The College of Teachers asserts that the non-payment of this component of their remuneration is at the origins of a “historic debt” of the State in relation to teachers. Furthermore, according to the College of Teachers of Chile AG, as social security contributions represent a percentage of gross remuneration and are paid by the employer to the competent social security bodies, the ending of the payment of the special subsidy also resulted in a decrease in the contributions of the employers to their capital accumulation retirement accounts and therefore a decrease in the amount of the pensions of around 80,000 teachers, in violation of the general principles set out in Conventions Nos 35 and 37, ratified by Chile.

According to the information supplied by the Government in its reports under article 22 of the ILO Constitution in 2009 and 2010, the special subsidy established by Legislative Decree No. 3.551 of 1980 constitutes a non-taxable supplement to remuneration paid only to public employees not subject to old-age and invalidity contributions. The Government adds that all teachers were transferred to the private remuneration system by Act No. 18.196 of 1982, which explicitly provides that the legislative texts governing the public sector remuneration system, including Legislative Decree No. 3.551 of 1980, shall no longer be applicable to the persons concerned. The Government also indicates that since 1991 the conditions of service of teachers employed by municipal authorities have been governed by Act No. 19.070, which does not provide for the maintenance of the subsidy referred to above, and that the Supreme Court has found that the fact that agreements may in certain cases have been concluded for the maintenance of the previous remuneration system cannot be considered as legitimately applying to employment contracts concluded following the adoption of Act No. 18.196, which prohibits such agreements. Furthermore, the Court of Accounts (*Contraloría General de la República*) has considered that, although certain teachers transferred to the municipal authorities may have continued to receive a wage supplement of a nature similar to the special subsidy established by Legislative Decree No. 3.551, this amount was the result of an agreement concluded by the latter with the municipal authorities employing them. It accordingly considers that there is no “historic debt” in relation to those teachers, but that it consists of a political claim by the latter.

The Committee notes that the new representation made by the College of Teachers of Chile AG bears similarities with the two previous representations since all three cases concern allegations relating to the non-payment of social contributions with an impact on the level of the teachers’ old-age and invalidity pensions. The Committee notes that the first two representations concerned the non-observance by the competent authorities of the legal provision of the national

legislation, and that the existence at the national level of a legal basis regarding the entitlement of teachers to the payment of arrears of social contributions was clearly established. However, the new representation made in 2009 by the College of Teachers raises the question of whether there exists in national law a legal basis establishing the entitlement of teachers to maintain a benefit derived from the conditions of service of public employees, which no longer applied to them due to their transfer under different conditions of service.

The Committee observes, therefore, that the status of teachers, in the context of the 2009 representation, raises new questions governed by contested domestic law. The Committee notes that although the new representation concerns allegations similar to those raised by the 1999 and 2007 representations, the legal facts on which the 2009 representation is based are different from these earlier representations. Accordingly, the Committee, replying to the mandate assigned by the Governing Body, concludes that the follow-up to the recommendations adopted previously by the Governing Body are not relevant in the context of the examination of the 2009 representation.

## Chile

### ***Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)*** ***(ratification: 1935)***

Please refer to the comments made under Convention No. 35.

## Democratic Republic of the Congo

### ***Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980]*** ***(No. 121) (ratification: 1967)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

In reply to the Committee's previous comments, the Government had stated previously that it is not in a position to provide information that would enable the Committee to assess the application of *Articles 13, 14 and 18* (in relation with *Articles 19 and 20*), as well as *Articles 21, 23 and 24(2) of the Convention*, in view of the difficult political and economic situation experienced by the country. With regard to the draft text to add to the schedule of occupational diseases, in accordance with *Article 8* of the Convention, diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series and diseases caused by benzene or its toxic homologues, the Government had undertaken to transmit the extended schedule of occupational diseases as soon as it has been adopted by the National Labour Council. *The Committee hopes that, despite the difficulties to which the Government is confronted, the extended schedule of occupational diseases will be adopted in the near future in order to give full effect to Article 8 of the Convention and that the Government will make every effort to provide information concerning the application of the other provisions of the Convention referred to above, as requested in its 1995 observation. The Committee would also be grateful if the Government would indicate any progress achieved in the formulation and adoption of the new Social Security Code.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Djibouti

### ***Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)*** ***(ratification: 1978)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

Ever since the Convention was ratified in 1978, the Committee has been drawing the Government's attention to the need to amend section 29 of Decree No. 57-245 of 1957 on the compensation of occupational accidents and diseases in order to bring the national regulations into conformity with *Article 1(2) of the Convention*. According to this provision, the nationals of States that have ratified the Convention and their dependants must receive the same treatment as Djibouti grants to its own nationals in respect of workers' compensation. Under the terms of this section of the Decree, unlike nationals, foreign workers injured in industrial accidents who transfer their residence abroad no longer receive a periodical payment but a lump-sum payment equal to three times the periodical payment they received previously. The Government previously referred to a draft reform of the labour legislation aimed at the full application of the principle of equal treatment and the formal repeal of the residence requirement laid down by the Decree of 1957. The Government also stated that this residence requirement has only been applied occasionally to foreigners. In its last report, the Government indicates that the Committee's observations will be studied by the National Council for Labour, Employment and Vocational Training with a view to bringing the national legislation into conformity with the Convention. It hopes that the conditions allowing for this process to resume will be met as soon as possible. Nevertheless, the Government points out that the Djiboutian system does not apply any reduction to the amount of the periodical payment transferred abroad. *The Committee trusts that, in view of the situation which prevails in practice, the Government will seize the opportunity represented by the reform of the system of social protection currently under way and will formally repeal section 29 of Decree No. 57-245 so as to bring both the letter and spirit of the national legislation into full conformity with Article 1(2) of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Ecuador

### **Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)** (ratification: 1978)

The Committee *regrets* to note that the report supplied by the Government in 2007 reproduced the text of its report of 2001 and is therefore not at all responsive to the Committee's observation of 2005. ***It therefore expects the Government to supply a new detailed report containing reliable information on the application of all Articles of the Convention according to the report form adopted by the Governing Body, covering the developments in pension insurance for the whole period since 2001.*** Meanwhile, the Committee has examined the Law on Social Security of 2001, the statistics of the Ecuadorian Social Security Institute (IESS) annexed to the report and the Government's reply to the questions raised in the Committee's previous observation. It has also examined the recent ILO study *Assessment of the social security system of Ecuador (June 2008) (Diagnóstico del sistema de seguridad social del Ecuador)* (hereinafter the *Assessment*).

*Part I (General provisions). Article 4(2) and (3) of the Convention, in conjunction with Articles 9(2)(a), 16(2)(a) and 22(2)(a). Scope of coverage.* In reply to the Committee's previous observation, the Government has supplied the statistics of the IESS for the year 2003, which contain data on the population covered (1,184,484 persons) by the Statutory General Insurance (*Seguro General Obligatorio – SGO*). The Committee observes however that the statistics supplied by the Government still do not permit the Committee to ascertain whether the scope of coverage required by these provisions of the Convention (25 per cent of all employees in the country) is attained in Ecuador, as they do not specify the number of employees protected in the prescribed classes in relation to the total number of employees in Ecuador. ***The Committee hopes that these numbers will be specified by the Government in its next report.***

*Part II (Invalidity benefit). Articles 7–13 and Part VI (Common provisions). Article 32. Suspension of benefits.* ***The Committee notes that the information concerning the application of these Articles of the Convention was missing in the reports supplied by the Government in 2001 and 2007 and asks the Government to furnish it as soon as possible.***

*Part V (Standards to be complied with by periodical payments). Article 29. Review of benefits.* According to section 204 of the Law on Social Security, the IESS has the authority to determine the periodicity and the rate of pension adjustments depending on the evolution of the Technical Reserve of the Pension Fund. The Government's report of 2007 on the Social Security (Minimum Standards) Convention, 1952 (No. 102), indicated, for example, that in 2006 pensions were increased twice by Resolutions CD 088 of 4 January and CD 107 of 24 April 2006. ***The Committee would like the Government to provide the statistical information for the time period starting from 2001 on the effective adjustments of pensions in comparison with the corresponding evolution of the cost-of-living index. It would also like the Government to state its position regarding the need to establish in law a mechanism for the regular periodic adjustment of pensions highlighted in the ILO Assessment, page 100.***

*Part VII (Miscellaneous provisions). Article 38. Coverage of agricultural employees.* Upon ratifying the Convention, Ecuador has availed itself of the temporary exclusion from its provisions of the employees in the sector comprising agricultural occupations on condition that it shall gradually increase the number of agricultural employees protected and regularly report the progress achieved in the application of the Convention to such employees. Such exclusion is permitted by the Convention in case agricultural employees were not protected by the legislation of the country in question at the time of the ratification and may be maintained until the legislation applying the provisions of the Convention in respect of the persons protected is extended to cover also agricultural employees. The Committee recalls that, after the ratification of the Convention in 1978, agricultural workers were incorporated into the social security system under a special scheme for the protection of agricultural workers by virtue of Decree No. 21 of 1986. The statistics of the IESS supplied by the Government for the year 2003 are structured by the regime of affiliation to the SGO and include, besides such categories as employees in the banking, domestic and construction sector, the category of agricultural affiliates (*agricolas*), whose number amounted to 18,664 persons out of the total number of 1,184,484 persons covered by the SGO. With respect to those categories, the new Law on Social Security of 2001 establishes a special scheme only for workers in the construction sector and does not refer to any special scheme for agricultural workers. Moreover, according to sections 2a and 9a of the Law on Social Security of 2001, workers in a relation of dependency, irrespective of the nature of their occupation or place of work, are subject to the SGO, which includes an intergenerational solidarity pension scheme providing old-age, invalidity and survivors' benefits required by the Convention. The Committee understands therefore that agricultural employees are now fully covered by the Ecuadorian legislation applying the Convention in the same manner as employees in industrial undertakings and that the initial reason for excluding agricultural employees from the application of the Convention subsists no more. ***It would like the Government to furnish in its next report all the appropriate explanations and statistics requested in Article 38(2) of the Convention. If agricultural employees are indeed covered, the Committee invites the Government to consider renouncing its right to avail itself of the exclusion authorized by this Article as from a stated date.***

The Committee is raising other points in a request addressed directly to the Government.



## **Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1978)**

The Committee *regrets* to note that the report supplied by the Government in 2008 reproduced the text of its report of 1998 and is therefore entirely unresponsive to the Committee's observation of 2007. Both reports did not contain any information concerning the application of *Articles 21–32 of the Convention*. The Committee would like to believe that the Government of Ecuador takes its reporting obligation under article 22 of the ILO Constitution seriously and endeavours to apply international Conventions in good faith. ***It therefore expects the Government to supply a new detailed report containing reliable information on the application of all Articles of the Convention according to the report form adopted by the Governing Body, covering the developments in medical care and sickness insurance for the whole period since 1993.*** Meanwhile, the Committee has examined the Law on Social Security of 2001, the statistics of the Ecuadorian Social Security Institute (IESS) annexed to the report and the Government's brief reply to the questions raised in the Committee's previous observation. It has also examined the recent ILO study – *Assessment of the social security system of Ecuador* (June 2008) (*Diagnóstico del sistema de seguridad social del Ecuador*) (hereinafter the *Assessment*).

*Part I (General provisions). Article 2, in conjunction with Articles 11(a) and 20(a). Scope of coverage.* The Committee observes that the statistics of the IESS for the year 2003 do not permit it to ascertain whether the scope of coverage required by these provisions of the Convention (at least 25 per cent of all employees in the country) is attained in Ecuador, as the statistics do not specify the number of employees protected in the prescribed classes in relation to the total number of employees in Ecuador. ***The Committee hopes that these numbers will be specified by the Government in its next report.***

*Article 3. Coverage of agricultural employees.* Upon ratifying the Convention, Ecuador has availed itself of the temporary exclusion from its provisions of the employees in the sector comprising agricultural occupations on condition that it shall gradually increase the number of agricultural employees protected and regularly report the progress achieved in the application of the Convention to such employees. Such exclusion is permitted by the Convention in case agricultural employees were not protected by the legislation of the country at the time of the ratification and may be maintained until the legislation applying the provisions of the Convention is extended to cover also agricultural employees. The Committee recalls that, after the ratification of the Convention in 1978, agricultural workers were incorporated into the social security system under a special scheme for the protection of agricultural workers by virtue of Decree No. 21 of 1986. The statistics of the IESS are structured by the regime of affiliation to the Compulsory General Social Security (*Seguro General Obligatorio* – SGO) and include, besides such categories as employees in the banking, domestic and construction sector, the category of agricultural affiliates (*agricolas*), whose number in 2003 amounted to 18,664 persons out of the total number of 1,184,484 persons covered by the SGO. With respect to those categories, the Law on Social Security of 2001 establishes a special scheme only for workers in the construction sector and does not refer to any special scheme for agricultural workers. Moreover, according to sections 2a and 9a of this Law, workers in a relation of dependency, irrespective of the nature of their occupation or place of work, are subject to the SGO, which includes the General Health Insurance Scheme providing medical care and sickness benefits required by the Convention. The Committee understands therefore that agricultural employees are now fully covered by the Ecuadorian legislation applying the Convention in the same manner as employees in industrial undertakings and that the initial reason for excluding agricultural employees from the application of the Convention subsists no more. ***It would like the Government to furnish in its next report all the appropriate explanations and statistics requested in Article 3(2) and (3) of the Convention. If agricultural employees are indeed covered, the Committee invites the Government to consider renouncing its right to avail itself of the exclusion authorized by this Article as from a stated date.***

*Part II (Medical care). Articles 11(a) and 12, in conjunction with Article 14 (Coverage of the wives and children of insured persons).* In reply to the Committee's previous observation concerning the need to extend coverage by health insurance of the family members of the insured person, the Government states that medical care is given to children of the insured person during the first year of their life. The Government's report repeats however under *Articles 5 and 12* of the Convention the statement made in 1998 that medical care for the family members of the insured person was not developed in Ecuador. The description of the health insurance provided by the IESS and attached to the Government's report (Annex 2) begins by stating that coverage is extended to affiliated persons and children of affiliated women (*los afiliados y los hijos de las afiliadas*), which means that children of male affiliates are not covered. In contrast, section 102 of the Law on Social Security extends comprehensive medical care to the affiliated person, his or her spouse or partner, and children under 6 years of age. However, the 2008 ILO *Assessment* (pages 52–53) determined that in practice this provision has not been implemented, medical coverage has not been extended to the wives of insured persons, and their children remain covered by medical care only for the first year of their life.

Notwithstanding the contradictory character of some of the above information, which the Government is invited to clarify, the Committee understands that, with regard to medical coverage of the wives and children of insured persons in Ecuador, there exists a huge gap between what is prescribed in law and what is achieved in practice. Besides undermining the effectiveness of law, such situations point to the lack of a resolute and consistent public policy in the area of health care of the population. The Committee notes that there has been no apparent progress in the extension of coverage over the last ten years. Failure to provide basic medical care to children of small age results subsequently in an adult population becoming less healthy and requiring more medical care during their productive life, thus increasing the social and

economic costs for the society as a whole. *The Committee considers that recalling the country's legal obligation under the Convention to raise the level of medical care to the internationally agreed minimum could be, together with the related international technical assistance, an important factor inducing the Government to elaborate effective policies and measures for improving the state of health of the nation and its labour resources. Fulfilling its obligations under the Convention would require of the Government, inter alia, to put in place a clearly defined national programme for the development of medical coverage of the wives and children of the insured persons. Such programme should be time-bound and result-oriented, setting out benchmarks to monitor progress particularly with respect to children of defined age, which should be progressively raised. For additional guidance in the elaboration of such a programme the Government may wish to turn to the Medical Care Recommendation, 1944 (No. 69), as well as to the advice from the technical departments of the Office.*

The Committee is raising other points in a request addressed directly to the Government.

## Greece

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1955)

The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with regard to the observations communicated by the Greek General Confederation of Labour (GSEE) with the support of the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) on the impact of the measures introduced in the framework of the mechanism to support the Greek economy, on the application of the Convention.

The GSEE refers to the adoption of Act No. 3845 of 5 May 2010 on "Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the International Monetary Fund". The appendix to this Act contains two Memorandums of Understanding concerning economic and financial policies and specific economic conditionality concluded between the Greek Ministry of Finance and the Governor of the Bank of Greece on one side and the President of the Eurogroup, the European Commission, the European Central Bank and the International Monetary Fund on the other side, which list a series of time-bound commitments to be undertaken by the Government, including efforts to moderate pensions. According to the GSEE these commitments resulted in the adoption on 8 July 2010 of Act No. 3863/2010 on the "New Social Security System and relevant provisions" (FEK A'115) introducing a radical reform of the pension system for all current and future employees, which provides for the withdrawal of the State from the obligation to co-fund the social security system and limits its liability only to the funding of basic pensions as of 2015, as well as for the withdrawal of the State's guarantee as regards payment of supplementary pensions. The unified statutory retirement age is raised to 65 years by December 2015 and the retirement age of women in the public sector is raised to 65 by 2013. The Act also provides for the calculation of pensions on the basis of the entire working career; the rise of the minimum contribution period from 37 to 40 years by 2015; the restriction of early retirement and the increase of the minimum retirement age of 60 years by 1 January 2011, including for workers in heavy and arduous professions and those with 40 years of contributions; the introduction of reduced pension benefits for people retiring between the ages of 60–65 with less than 40 years of contribution; indexation of pensions on the basis of GNP and the consumer price index; the introduction of a means-tested minimum guaranteed pension for people aged above 65 years of age.

According to the GSEE, these substantial parametric changes established by Act No. 3863/2010 without adequate consultations with the social partners violate workers' social security rights and negate their entitlements and rightful expectations, as the reform will result in a reduction in the replacement rate of pensions by 20 per cent on average. The GSEE further refers to a decision of the Greek Court of Audit which confirmed the existence of constitutional irregularities and the reversal of acquired rights in this Act. The GSEE considers that by introducing permanent reforms the Government has failed to observe the Convention and disregarded alternative ways to address the long-term viability and efficiency of the social security system, which do not inflict so much hardship on the persons protected.

The Committee recalls the importance it attaches to the general responsibility to be assumed by the State for the sustainable financing and management of the national social security system, which is set out in *Articles 71(3) and 72(2)* of the Convention. *The Committee therefore asks the Government to provide detailed information in its next report on the application of each Article of the Convention in accordance with the report form adopted by the Governing Body, including as regards the concrete provisions of the new legislation and precise the basis of the calculation of the replacement level of pensions according to the new rules.* The Committee will examine the comments by the GSEE, along with the Government's observations thereto, as well as the Government's report due in 2011, at its next session.

## Guinea

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1967)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 5 of the Convention. Payment of benefits in case of residence abroad.* The Committee recalls that the Government, in its earlier reports, indicated that the new Social Security Code, when adopted, would give full effect to *Article 5* of the Convention under which the provision of old-age benefits, survivors benefits and death grants, and employment injury pensions must be guaranteed in the case of residence abroad, irrespective of the country of residence and even in the absence of agreements with such country, both to nationals of Guinea and to nationals of any other State which has accepted the obligations of the Convention for the corresponding branch. However, in its last report, the Government indicates that the new Social Security Code does not entirely fulfil the requirements of the provisions of *Article 5* of the Convention, in that it does not provide for maintenance of payment of the various benefits in case of change of residence, and that this restriction is a constant feature of the legislation governing the field in the States in the subregion. However, the Government hopes that further negotiation of bilateral agreements with other States will make good this weakness in the Social Security Code.

In this connection, the Committee notes that under section 91, paragraphs 1 and 2, of the new Code, benefits are cancelled when the beneficiary definitively leaves the territory of the Republic of Guinea, or are suspended while she or he is not resident on national territory. It notes however that, under the last paragraph of that section, these provisions "are not applicable in the case of nationals of countries which have subscribed to the obligations of the international Conventions of the International Labour Office regarding social security ratified by the Republic of Guinea, or where there are reciprocal agreements or multilateral or bilateral social security agreements on the provision of benefits abroad". *Since, by virtue of this exception, the nationals of any State which has accepted the obligations of Convention No. 118 for the corresponding branch, may in principle now claim benefits in case of residence abroad, the Committee requests the Government to indicate whether this is in fact the case and, if so, whether a procedure for the transfer of benefits abroad has been established by the national social security fund, to meet the possible demands for such foreign transfer. In addition, the Committee requests the Government to state whether the exception provided in the last paragraph of section 91 is also applicable to Guinean nationals in the event of their transferring their residence abroad, in accordance with the principle of equal treatment established under Article 5 of the Convention as regards the payment of benefits abroad.*

*Article 6. Payment of family allowances.* With reference to the comments it has been formulating for many years regarding the provision of family allowances in respect of children residing abroad, the Committee notes that, under section 94, paragraph 2, of the new Code, to obtain the right to family allowances, dependent children "must reside in the Republic of Guinea, subject to the special provisions of the international Conventions on social security of the International Labour Office, reciprocal agreements or bilateral or multilateral agreements". With respect to reciprocal agreements or bilateral or multilateral agreements, the Committee recalls that to date Guinea has concluded no agreement of this sort for the payment of family allowances in respect of children residing abroad. Regarding the special provisions of the ILO Conventions, it recalls that under *Article 6* of Convention No. 118 any State which has accepted the obligations of the Convention for *branch (i)* (family benefit) must guarantee payment of family allowances both to its own nationals and to the nationals of any other member which has accepted the obligations of this Convention for that branch, as well as for refugees and stateless persons, in respect of children who reside on the territory of any such State, under conditions and within limits to be agreed upon by the States concerned. In this connection, the Government states in its report that the payment of family benefits is guaranteed to families of whom the breadwinner has been regularly insured by the social security system, and is in order regarding the payment of his own contributions, and those of his successive employers. *The Committee therefore hopes that the Government will be able to confirm formally in its next report that the payment of family allowances will also be extended to cover insured persons up to date with their contributions, whether they are nationals, refugees, stateless persons or nationals of any other States which have accepted the obligations of the Convention for branch (i), whose children reside on the territory of one of these States and not in Guinea. The Committee would also like to know in these cases how the condition of residence is dispensed with for the application of section 99, paragraph 2, of the new Code, which only recognizes as dependent those children "that live with the insured person", and also for section 101, which makes payment of family allowances subject to an annual medical examination of the child, up to the age where she or he comes under the school medical service, and the regular medical care for beneficiaries of school age attending courses in educational or vocational training establishments.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980]** (No. 121) (ratification: 1967)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 8 of the Convention. Occupational diseases.* *The Committee asks the Government to provide a copy of the list of occupational diseases revised in 1992, indicating whether it is now in force.*

*Article 15(1). Conversion of periodical payments into a lump sum.* In accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). *The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.*

*Articles 19 and 20. Amount of benefits.* *In the absence of the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity*

and death of the breadwinner, reaches the level prescribed by the Convention, the Committee once again asks the Government to indicate whether it avails itself of Article 19 or of Article 20 of the Convention in establishing that the percentages required by Schedule II of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under Article 19 or 20, depending on the Government's choice.

*Article 21. Review of employment injury benefit rates. In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government's next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.*

*Article 22(2). Payment of employment injury benefits to dependants. The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.*

The Committee notes the Government's statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full satisfaction as regards social coverage. *It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.*

*Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Guinea-Bissau

### **Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

In reply to the Committee's previous comments, the Government states in its last report that the National Social Insurance Institute, which has competence for workers' compensation for occupational accidents and diseases, is having difficulty in identifying occupational diseases. The situation therefore remains unchanged in that, having been unable to determine occupational diseases, the Ministry of Public Health has not been able to adopt a list of such diseases.

The Committee takes note of this information. It can only note once again with regret the lack of progress in amending the national legislation to include a list of occupational diseases. *In view of the importance of this matter, the Committee again expresses the hope that the Government will take all necessary steps in the very near future to ensure the adoption of a list of occupational diseases including at least those set out in the Schedule to Article 2 of the Convention.* The diseases in question can then be recognized as occupational where contracted in the conditions prescribed in the Schedule. The Committee reminds the Government that it may seek technical assistance from the Office.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 1(1) of the Convention. Equality of treatment. In its previous comments, the Committee drew the Government's attention to section 3(1) of Decree No. 4/80 of 1981, concerning compulsory insurance against industrial accidents and occupational diseases. It pointed out that the abovementioned provision is inconsistent with the Convention in that it lays down reciprocity as a requirement for equal treatment between foreign workers employed in Guinea-Bissau and Guinean workers. In response, the Government states that the matter is still receiving its attention but that, as yet, no text has been adopted regarding the reciprocity required by section 3(1) of the abovementioned Decree. The Committee recalls in this connection that the Convention lays down a system of automatic reciprocity between member States which have ratified it. In these circumstances, it hopes that the Government will very shortly take all necessary steps to bring the abovementioned provision of its legislation into line with Article 1(1), of the Convention by ensuring that all nationals of States which have ratified this Convention are automatically afforded the same treatment as nationals of Guinea-Bissau with regard to accident compensation.*

*Article 1(2). Transfer of benefits abroad. The Committee asks the Government to provide information on any compensation paid for injured persons or their dependants residing outside the country.*

*Article 2. Temporary or intermittent work. In its previous comments the Committee noted that section 3(3) of Decree No. 4/80 which excludes from the scope of the Decree foreign workers temporarily employed in Guinea-Bissau by foreign undertakings or international bodies is not fully consistent with this provision of the Convention. Article 2 of the Convention allows the exclusion of workers employed temporarily or intermittently in the territory of one Member on behalf of an undertaking located in the territory of another Member only under a special agreement concluded between the Members concerned. The Government indicated that, in practice, such workers have labour contracts under which they are protected by the legislation of their country of origin or the country of the undertaking or international body. The Government further stated that a bill had been drafted to regulate the conditions of foreign workers employed temporarily in Guinea-Bissau on behalf of a foreign undertaking. The Committee notes that the Government's last report provides no information on the bill – to which the Government has been referring since 1987. It asks the Government to keep it informed of progress made in ensuring better application of this provision of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Guyana

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee recalls that it has been drawing the Government's attention since 1971 to the need to amend the list of occupational diseases attached to Regulation No. 34 of 1969, implementing Act No. 15 of 1969 on national insurance and social security. It notes with regret, from the information communicated by the Government in its last report, that this list has still not been amended but that the competent authorities have been requested to accelerate the review procedure of the relevant regulation. It further notes that the Government no longer refers to the legislative reform regarding occupational safety and health. *The Committee trusts that the Government will be able to take the measures necessary as soon as possible to amend the list of occupational diseases to ensure full application of the Convention on the following points:*

- (a) *No. 1(x), (xi), (xii) and (xiv) on this list are to be replaced by a heading containing in general terms all halogen derivatives of hydrocarbons of the aliphatic series;*
- (b) *No. 7, which refers to certain disorders due to radiation should include all pathological manifestations due to radium and other radioactive substances or X-rays and the list of processes likely to induce these should be completed;*
- (c) *No. 1(i) and (v) relating to poisoning by lead and its compounds and mercury and its compounds should include lead alloys and mercury amalgams respectively;*
- (d) *No. 1(iii), which refers to poisoning by phosphorus and its compounds, should include the inorganic compounds of phosphorus;*
- (e) *No. 2 should include, among the processes likely to induce anthrax infection, all loading and unloading or transport of merchandise of any kind;*
- (f) *silicosis with or without pulmonary tuberculosis and the industries or processes involving the risk of this infection should also be added to the list.*

The Committee wishes to remind the Government that it may request technical assistance from the ILO in this domain.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Hungary

### **Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1928)**

With reference to its previous observation, the Committee notes with *interest* that Act I of 2008 on health insurance offices based on Bill T/4221, which aimed at privatizing health insurance funds and moving the social partners away from participation in the management of these funds, has been repealed by Act No. XXIV of 2008. The Government reports that the reason for repeal was that the health model specified in this Act has led to discord in the political, social and professional opinions.

According to the Government, given the current economic and political situation, the reform of health insurance management is no longer a topical issue in Hungary. *The Committee invites the Government, in its next detailed report on the Convention due in 2012, to explain its plans or proposals for the future model of health insurance management in Hungary. The Committee further invites the Government to explain its plan to administrate sickness insurance in line with Article 6 of the Convention.*

## Libyan Arab Jamahiriya

### **Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1975)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Part IV of the Convention. Unemployment benefit.* With reference to its previous comments, the Committee notes the adoption of Decision No. 109 of 2006 (1374 H) on the establishment of an employment fund aimed at contributing to economic and social development through the provision of decent and productive job opportunities to specific categories of jobseekers. It also notes that section 15 of the Decision lays down the granting of a monetary benefit worth 60 dinars a month for jobseekers of specific categories. *The Committee would like the Government to indicate whether these categories cover all persons protected, both from private and public sectors, who have lost employment involuntarily and who are unable to obtain suitable employment and are capable of, and available for, work. It would also like the Government to indicate the net and gross wage of the ordinary adult male labourer determined in accordance with Article 66 of the Convention, and to indicate whether the 60 dinars are net or gross benefit, its duration, the qualifying conditions (length of employment, etc.), if any. It would also like the Government to communicate the text of Decision No. 109.*

The Committee wishes again to draw the Government's attention to the fact that the Convention is intended to afford effective protection against unemployment by means of a system of social security which makes it possible to finance unemployment benefit through collective contributions from all those concerned, thereby avoiding the situation in which they are

payable directly by employers, which may become too burdensome if the level of unemployment in the country rises. *The Committee therefore hopes that the Government would endeavour, with the help of the ILO, to adopt the necessary rules to permit the Social Security Fund to receive contributions and to pay unemployment benefit, thereby giving effect to Part IV of the Convention through a system of social security and taking into account more fully the principles of organization and financing set out in Articles 71 and 72.*

*Part VII. Family benefit.* In its previous comments, the Committee noted that section 24 of Act No. 13 of 1980 only provided for the granting of family allowances to pensioners under the social security system, whereas *Article 41* of the Convention covers other categories of employees or residents. In its report, the Government indicates that section 18 of the Order taken by the Council of Ministers, which relates to the regulations of employees with contracts, promulgated on 14 December 1971 specifies that the provisions of the Civil Service Act No. 55 of 1976 and the regulations issued thereof, shall apply to employees hired with contracts. The provisions of other laws and regulations also apply to them, in accordance with section 18 of the regulations on employees who have contracts as non-nationals, who become entitled to family benefits such as their national counterparts. The Committee notes this information. *It would like the Government to communicate in its next report information on the application in practice of the above legislation, providing detailed statistics on the different categories of workers protected and the benefits provided, covering both the public and the private sectors, in accordance with Article 44 of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Malaysia

### Peninsular Malaysia

#### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1957)**

For many years, the Committee of Experts as well as the Conference Committee on the Application of Standards, have been drawing the Government's attention to the fact that the national legislation and practice need to be brought in compliance with the principle of equality of treatment between nationals and non-nationals with regard to compensation for industrial accidents, in conformity with *Article 1(1) of the Convention*. In 1993, foreign workers were transferred from the Employees' Social Security Scheme (ESS) which provides for periodical payments to victims of industrial accidents and their dependants, to the Workmen's Compensation Scheme (WCS), which only guarantees the payment of a lump sum. In 1997, the Conference Committee concluded that the level of benefits granted under the ESS was significantly higher than that guaranteed by the WCS and insisted that foreign workers benefit from the same protection as Malaysian nationals. An ILO high-level technical advisory mission visited the country in May 1998 to examine ways of giving effect to the conclusions of the Conference Committee. As a result, the Government stated in its 1998 report that it was planning to review the coverage of foreign workers under the ESS and to propose amendments to the Social Security Act of 1969 in this regard. Since then, however, no steps were undertaken to bring the law and practice into conformity with the Convention.

In its previous observation of 2008, the Committee noted that, taking into account the large number of foreign workers concerned and their high accident rate, the situation called for special efforts from the Government of Malaysia to overcome administrative and practical difficulties, that were impeding equal treatment of foreign workers who suffer industrial accidents. The Committee invited the Government to avail itself of the technical assistance of the Office in this respect. In particular, the Government was asked to demonstrate the actuarial equivalence of the lump sum paid under the WCS to foreign workers in cases of temporary or permanent incapacity, invalidity or survivors' rights to the amount of the periodical payments granted under the ESS to Malaysian workers in similar cases. With respect to the difficulties mentioned by the Government concerning the payment of compensation abroad, the Committee pointed out that these difficulties could be overcome by way of special arrangements between the Members concerned in line with *Article 1(2)* of the Convention. Such arrangements should be concluded in the first place with the main countries supplying workforce to Malaysia. Among the 1.9 million foreign workers currently employed in Malaysia, more than 1.5 million come from Indonesia, followed by India, Myanmar, Bangladesh, the Philippines, Thailand, Pakistan and China. All of these countries are parties to the Convention.

In its response to the Committee's observation, the Government limited itself to reiterating its position that the WCS is a suitable and practical approach for managing compensation of industrial accidents for foreign workers in Malaysia, and expressed the opinion that the system is reliable and suitable to the needs of the workforce in Malaysia.

The Committee *regrets* to note that the Government, in its reply received on 30 July 2010, sees no need to modify the national law and practice to bring it into conformity with the Convention or to resort to the technical assistance which the international community is willing to provide for this purpose. In such a situation, it is the obligation of the Committee to advise the Government that it is breaching its obligations under international law by not observing the principle of equality of treatment between nationals of any other member State which has ratified the Convention and its own nationals. Such violation of the Convention by the Government of Malaysia undermines the system of automatic reciprocity in granting equality of treatment to nationals of ratifying States that the Convention establishes between them. *Given the gravity of the situation, the Committee requests the Government to reconsider its position.*

*[The Government is asked to supply full particulars to the Conference at its 100th Session and to report in detail in 2011.]*

## Mauritania

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1968)

The Committee notes that pursuant to Decree 008/2006 of 9 January 2006 increasing the minimum wage (SMIG), the minimum monthly pension has been increased by 267 per cent (from 4,715 Ouguiya (MRO) to MRO12,600) and that new pensions paid as of 1 January 2005 have been readjusted. Pensions not concerned by the increase of the SMIG have been increased by 30 per cent. Furthermore, the Committee notes the information received in 2009 and 2010 from the Association of Pensioners of the National Social Security Fund (CNSS), stating that pensioners have not benefited from the increase of pensions, despite the increase of the SMIG. The Association states further that the CNSS acts in breach of the national laws and decrees and escapes the necessary supervision by the Government.

*In the light of these allegations, the Committee would like the Government to give a general appreciation of the manner in which the Convention is applied in Mauritania including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.*

## Mauritius

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1969)

The Committee, for many years, has been drawing the Government's attention to the fact that the Workmen's Compensation Act (Cap. 220), which covers certain categories of workers excluded from the application of the National Pensions Act, 1976, does not contain any provisions giving effect to *Article 5* (the principle of the payment of compensation in the form of periodical payments in the case of permanent incapacity or death), *Article 7* (additional compensation for workmen injured in such a way as to require the constant help of another person), *Article 9* (free entitlement to the necessary medical and surgical aid), *Article 10* (supply and renewal of artificial limbs and surgical appliances) and *Article 11* (guarantees against the insolvency of the employer or insurer) of the Convention. Since 1999, the Government has indicated that a merger was envisaged of the Workmen's Compensation Act and the National Pensions Act (NPA) to ensure the full application of the Convention. In its latest report, the Government indicates that the delay in finalizing the Bill is due to the fact that the Ministry of Social Security, National Solidarity and Reform Institutions has embarked on a wider examination of the NPA with a view to amend it holistically. The draft Bill will be introduced to the National Assembly as soon as it has been approved by the State Law Office. *The Committee hopes that the draft law will be adopted soon and that it will include the provisions giving full effect to the abovementioned Articles of the Convention. It would also appreciate receiving a copy of the draft Bill when the State Law Office review process has been completed.*

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1969)

*Article 1 of the Convention. Equal treatment.* For many years, the Committee has been drawing the Government's attention to section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978, as amended by the National Pensions Act (NPA), under which foreign nationals may not be affiliated to the insurance scheme unless they have resided in Mauritius for a continuous period of not less than two years. Foreign workers who do not meet this residence condition are covered by the Workmen's Compensation Act of 1931 (WCA), which does not ensure a level of protection equivalent to that guaranteed under the national pension scheme in the event of employment injury. The Committee has been reminding the Government that under the terms of *Article 1(2)* of the Convention, the nationals of other member States that have ratified the Convention as well as their dependants should be guaranteed equality of treatment in respect of industrial accidents without any condition as to residence.

In its reports since 2006, the Government states that a bill has been introduced to revise section 3 of the Order of 1978. The delay in finalizing the necessary amendments is due to the fact that the Ministry of Social Security, National Solidarity and Reform Institutions has embarked on a wider examination of the NPA with a view to amend it holistically, taking into account other issues requiring review, such as the need to merge the WCA into the NPA. The Government states that the draft bill will be introduced to the National Assembly as soon as it has been accepted by the State Law Office. *The Committee hopes that the Government will be able to amend section 3 of the Order of 1978 in the very near future, so as to bring its legislation into conformity with the Convention. The Committee would appreciate receiving a copy of the draft Bill when the State Law Office review has been completed. The Committee thanks the Government for providing very detailed statistics on the number of work permits issued to foreign nationals and the number and nature of occupational accidents of foreign workers.*

## Mexico

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1961)

The Committee took note of the Government's report received in September 2008 containing a reply to the Committee's previous comments, in which the Committee has also referred to the Government's reply of 27 November 2007 to the observations of a number of trade unions (the Trade Union of Workers of the National Autonomous University of Mexico; the National Trade Union of Workers of the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food; the Single Trade Union of Workers of the Nuclear Industry; the Independent Trade Union of Workers of the Autonomous Metropolitan University; the National Union of Education Workers (14 sections); the Trade Union of the National Council for Culture and the Arts; the Administrative Union of the Autonomous University of San Luis Potosí) in 2007 alleging breaches of the Convention by the new Act on the State Workers' Social Security and Services Institute (ISSSTE). Further observations on this issue, dated 26 August 2008, were received from the Union of Lawyers of Mexico acting in the name of the Alianza de Tranviarios de Mexico, Single Union of Government Workers of the Federal District (SUTGDF), de la Sección XVIII (Michoacan) of the National Union of Education Workers (SNTE) y de la Sección XXII (Oaxaca) del SNTE. The United Trade Union of Government Workers of the Federal District (SUTGDF) has supplied additional observations in the communication dated 27 August 2008. The Committee notes that the trade unions' allegations contest the application by Mexico of virtually every Article of the Convention. In view of the volume and the detailed nature of these allegations and the fact that the next report of the Government should be a detailed report containing full information on the application of every Article of the Convention according to the report form adopted by the Governing Body, the Committee decided to concentrate its present comments on the main questions, which would help the Government to prepare a fully informative report for the Committee's examination next year. ***To conduct such an examination in full knowledge of the situation, the Committee needs the report to enlighten it in particular on the following two issues: on the legal certainty as to the state of the current legislation in view of the constitutionality of the ISSSTE being challenged in the Supreme National Court of Justice, and certainty as to the level and sustainability of benefits provided by the reformed social security system after the previous defined benefit collectively financed pay-as-you-go scheme was replaced by a defined contribution individual savings account system.***

#### ***Legal certainty as to the state of the applicable national legislation***

According to the information communicated by the trade unions, 85 per cent of the 2.3 million public employees insured by ISSSTE consider that this Act violates their acquired rights and imposes stricter conditions for entitlement to certain benefits. Hence, more than 2 million public workers submitted constitutional complaints (*amparos constitucionales*) contesting the constitutionality of the Act and of the Regulation on the exercise of the right of option under section Ten of the transitional provisions ((Décimo Transitorio o BONOISSSTE). According to the Law on constitutional complaints (*Ley de Amparo*), any such complaint has to be resolved in the period of 60 days and suspends during this period the application of the contested provision of the legislation. To deal with the mass of these complaints, the Supreme National Court of Justice (SCNJ) has set up two special tribunals mandated to consider these complaints.

The Committee notes that the Government's report was received in September 2008 when the Supreme Court had just started to consider these cases and therefore contained no information in this respect. ***To the extent that the application of the contested provisions of the ISSSTE might have been suspended, the Committee asks the Government to explain the decisions taken by the Supreme Court in these cases and their effect on the application of the ISSSTE Act in law and practice.*** The Committee further notes that the Supreme Court declared unconstitutional sections 20, 25, 60 final part, 136, 251 and subsection IV of section ten transitional, as well as, in June 2008, the provision on the calculation of pension on the basis of average wage received for the last three years before retirement, which reduced the possibility for public employees to receive a higher pension, and decided instead that the pension should be calculated taking into account only the last year's wage. ***The Committee asks the Government to indicate whether there were other decisions of the Supreme Court declaring unconstitutional the provisions of the ISSSTE and to supply the new text of all provisions, which were modified.***

#### ***Certainty as to the level and sustainability of benefits***

In its previous observation, the Committee pointed out that the reform of the ISSSTE made it necessary to conduct an overall actuarial valuation of the entire social security system to ensure the financial equilibrium of the new system and assess estimated level of benefits, in particular the replacement rate of the new scheme. Such actuarial valuation should be comprehensive and, henceforth include all liabilities of the new ISSSTE scheme, and asked the Government to indicate whether such a valuation has been carried out and, if so, to provide the results thereof. The Government's report of 2008 has not provided the information requested, indicating that the information processing systems of the two social security institutions – ISSSTE and IMSS – are in the process of coordination. In the meantime, the managing board of the ISSSTE has approved the actuarial report for 2008, which concludes that in the period 2008–13 the resources available to the Institute would on average cover only 88 per cent of the total cost of benefits it would have to deliver under the new law.



***The Committee asks the Government to supply a copy of this report and to indicate measures taken or envisaged by the Government to make up the deficit and ensure the due provision of benefits under the ISSSTE scheme.***

Taking into account that the reform of the state workers' scheme necessitated transfer to the ISSSTE of the social security funds from the general scheme (IMSS), the Committee once again stresses the importance of an actuarial evaluation of the entire social security system, which should cover the various pension schemes recapitulating at a specific evaluation date the fixed and contingent liabilities, as well as all the debts and commitments of the State deriving from the old and the new social security systems. Indeed, only an overall actuarial valuation of the entire system will make it possible to estimate the contingent deficits to be underwritten by the State and to make the corresponding forecasts. ***The Committee accordingly asks the Government to take the necessary measures to conduct such an actuarial study, as required by Article 71(3) of the Convention.***

With regard to the question of the level of benefits, which the Committee has been addressing to the Government in its previous comments under *Part XI of the Convention (Standards to be complied with by periodical payments)*, in the fully funded defined contributions scheme the amount of the pension is not determined in advance but depends on the capital saved in the workers' personal accounts and on the return thereon. ***The Committee therefore requests the Government to explain, with reference to the relevant actuarial forecasts, what replacement level the ISSSTE scheme aims to achieve after 30 years of contributions and whether the replacement level of 40 per cent required by the Convention would be attained for the standard beneficiary. If such is the case, The Committee requests information on the standard assumptions of the actuarial in terms of real interest rate, density of contribution that would guarantee the 40 per cent required by the Convention. Also the Committee requests to describe the mechanism of the adjustment of changes in the cost of living and the general level of wages.***

Pursuant to section 92 of the ISSSTE Act, for workers meeting the requirements on age and qualifying period laid down in section 89 of the Act, the State provides a "guaranteed pension" in a monthly amount of 3,034.20 pesos. The Government indicated in its report of 2008 that this amount represents the double of the minimum pension level established by the Convention and that the amount of the average pension equalled four minimum wages and was four times higher than the Convention's minimum. The Committee notes this information with *interest*. However, it has not found in the Government's report the statistical information requested in its previous observation under Article 66 of the Convention, to enable the Committee to ascertain whether the minimum amount of the old-age pension attains the percentage prescribed by the Convention. ***The Committee asks the Government to substantiate the above statements by comparing the amount of the guaranteed pension with the reference wage of an ordinary adult male labourer, as required in the report form under Article 66 of the Convention.***

In the general IMSS scheme, under section 170 of the Social Security Act, the State guarantees to workers who fulfil the age conditions and qualifying periods set out in section 162 of the Social Security Act, the provision of a "guaranteed pension", the amount of which is equal to the general minimum wage for the Federal District. According to the statistics provided previously by the Government, the amount of the minimum guaranteed pension for 2006 attained 42.95 per cent of the wage of an ordinary adult male labourer selected in accordance with the provisions of *Article 66* of the Convention. ***The Committee wishes the Government to explain the difference between the guaranteed pension under the ISSSTE, which, according to the Government, represents the double of the minimum pension level established by the Convention, and the guaranteed pension of the IMSS, which is hardly above this minimum.***

The Committee notes in this respect that, according to the trade unions' observation of 2007, neither the guaranteed pension under section 92 of the ISSSTE, nor the old-age and invalidity pensions under sections 91, 121 and 139 of the ISSSTE ensured the replacement level of 40 per cent required by the Convention. Referring to the Government's reply to the trade unions' observation, the Committee observes that in contesting these allegations the Government does not refer to any statistical data and seems to confuse the general minimum wage for the Federal District with the wage of an ordinary adult male labourer, which should be used as the reference wage for measuring the replacement level of the guaranteed pensions. ***The Committee therefore once again asks the Government in its next detailed report due in 2011 to provide the statistical information requested by the report form under Article 66 of the Convention (Titles I, II and IV). It also asks the Government to indicate whether the guaranteed pension also applies to the pension arising out of death and, if so, under which provisions.***

*Communications from representative organizations on the application of the Convention.* The Committee notes the information transmitted by the Trade Union of Telephone Operators of the Mexican Republic in the communication dated 22 February 2010 concerning the situation of the AVON company workers and the settlement reached with the IMSS, which were the subjects of the Committee's previous comments. The Committee will examine this communication at its next session together with the comments that the Government would wish to formulate in this respect.

## Netherlands

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1966)**

The Committee notes the Government's reply dated 23 February 2009 to the direct request of 2007 and the detailed report on the application of the Convention received in October 2009. It also notes the observations of the Netherlands Trade Union Confederation (FNV) supplied in October 2008, August 2009 and August 2010, where it maintained that the new Dutch legislation on employment injury benefits, the Work and Income (Employment Capacity) Act of 2006 (WIA), is not compatible with the Convention. In light of the trade union's observations, the Committee has decided to limit the present comments to the examination of the main aspects of the WIA. The Committee will consider changes in other implementing legislation on the occasion of the Government's next detailed report on the application of the Convention, which is due in 2011.

The Committee recalls that, since the adoption of the Disablement Benefits Act (WAO) in 1967, in the Dutch social security system the employment injury insurance scheme was merged with the general invalidity scheme and ceased to exist as a separate branch. Since 1 January 2006, the WAO has been replaced by the WIA, which establishes social security benefits for total and partial incapacity for work. As was true for the WAO, the WIA does not distinguish between employment injuries and general invalidity and covers both risks. This design of disability benefits in principle is compatible with the Convention, which does not prevent the possibility of covering the risks of employment injury through compensatory benefits provided by other branches of social security (medical care, sickness benefit, invalidity benefit and survivors' benefit). However, these compensatory benefits should then satisfy the more stringent requirements of the Convention as regards provision of the employment injury benefits for the contingencies covered by the Convention. In this respect, the Committee notes the following developments and would like to draw attention to the following questions.

According to *Article 6 of the Convention*, employment injury may result in the following covered contingencies, which are covered by different branches of the Dutch social security system:

- (a) A morbid condition covered by the medical care and allied benefits (*Article 11*), which in the Dutch system are provided by the health care branch.
- (b) Temporary or initial incapacity for work covered by cash benefit (*Article 13*), which in the Dutch system is provided by the mixed private/public system based on employers' civil liability to maintain wages during the first two years of sickness underpinned by the public safety net established by the Sickness Benefit Act (ZW).
- (c) Total or partial loss of earning capacity likely to be permanent or corresponding loss of faculty compensated by cash benefits (*Article 14*), which in the Netherlands are provided by the mixed public/private system under the WIA and the PEMBA Act, 1998, which empowers employers to assume the risk themselves for five years or to have recourse to private insurance.
- (d) The loss of support due to death of the breadwinner covered by cash benefits (*Article 18*), which in the Netherlands are provided under the General Surviving Relatives Act (ANW).

***The Committee requests the Government to give particular attention in its forthcoming detailed report to examining the extent to which the Dutch legislation, especially following the privatization of the health-care branch and the sickness benefit, continues to ensure protection against contingencies (a), (b) and (d) on conditions and at the level required by the Convention. In view of the fact that, as indicated in the Government's report, victims of employment injuries are required to share costs for certain types of medical care, and are subject to limitations in duration and number of treatments, the Committee asks the Government to examine whether victims of employment injuries in need of prolonged care or particularly expensive treatment find themselves in a situation of hardship.***

Within the above continuum of benefits ensured by the Convention, the Committee understands that the WIA provides the following benefits in case of loss of earning capacity:

- Under Income Provision Scheme for Fully Occupationally Disabled Persons (IVA) benefit for full and permanent incapacity until pension age at the rate of 70 per cent of the monthly wage (Chapter 6).
- WGA benefit for fully but not permanently disabled.
- WGA *wage-related* benefit for employees who are partially capable of working, 70 per cent of the (maximum) daily wage plus wage supplement for those working, paid for up to five years depending on employment history.
- WGA wage supplement benefit for those performing sufficient paid work.
- WGA follow-up *flat rate* benefit at the rate of 70 per cent of the legal minimum wage (or daily wage, if lower) multiplied by the percentage of disability for unemployed persons.

#### **Prescribed degree of the loss of earning capacity**

According to sections 1.2.2 and 2.2.4(3) of the WIA, partial disability is recognized and compensated only when 35 per cent or more of earning capacity is lost. If an employee experiences a loss of capacity for work of less than 35 per

cent, he will not qualify for any WIA benefit (sections 7.1.3(2) and 7.2.3(6)). The Committee notes that this threshold is set too high to comply with the Convention. *Article 14(1)* of the Convention permits to prescribe a minimum degree of loss of earning capacity for which cash benefits become payable. Incapacity below this degree (e.g. less than 10 per cent) may be disregarded for the purpose of compensation under the Convention. *Article 14(3)* further permits to prescribe a higher degree of incapacity giving entitlement to *periodical* cash benefit for “substantial partial loss of earning capacity” (e.g. over 25 per cent). Between the minimum degree of loss of earning capacity, which marks the entry point into the scheme, and the higher degree for substantial loss, *Article 14(4)* covers the range of incapacity corresponding to the partial loss of earning capacity which is not substantial and which could be compensated not by the periodical pension but by the lump-sum payment. The Committee has accepted in some cases that a minimum degree of incapacity fixed below 10 per cent may be compatible with the Convention and that incapacity below 25 per cent could be regarded as not substantial and compensated by lump-sum payments. Depending on the existence of other complementary income guarantees, lump-sum compensation has been admitted by the Committee in certain cases for incapacity up to 35 per cent. The WIA Act does not include lump-sum benefits and does not pay any benefit at all for incapacity below 35 per cent. Thus, persons with less than 35 per cent incapacity are excluded from protection against employment injury, which is contrary to the Convention. The possibility for them to apply for unemployment benefit or for social assistance is not relevant within the legal framework of the Convention.

The Committee notes that in the opinion of the FNV the situation with workers suffering less than 35 per cent capacity loss is alarming. The labour market in the Netherlands is extremely tight and thousands of persons with disabilities less than 35 per cent lost their jobs and are no longer entitled to a disability benefit because of the high incapacity threshold. According to the Institute for Employee Benefit Schemes (UWV) monitoring report, only 52 per cent of all workers who became less than 35 per cent disabled between 2006 and mid 2007 worked in 2008. The Committee further notes that, according to the Government, it is the employers who bear the responsibility for the employees with less than 35 per cent disability. Employers should seek solutions within their own company and, in case of failure to do so, the possibility exists to start working for another employer. The Government sees the finding of the in-depth monitoring of the group of employees with less than 35 per cent capacity loss as promising: while in January 2007 only 46 per cent of the interviewed individuals were working, in February 2008 already 62 per cent of them were employed, showing an increase of 16 per cent. The report states that “the Dutch Government therefore does not intend to change policy in this regard. The main focus for this group of less than 35 per cent disability now lies in giving both employers and employees time and space to continue to improve the situation”. ***The Committee regrets the Government’s position, and notes that the Government, while recognizing non fulfilment of its international obligation under the directly applicable provision of the Convention, has not yet brought national law and practice into compliance with the Convention on this point and leaves victims of employment injuries with incapacity up to 35 per cent without any form of compensatory benefit.***

#### ***The Income Provision Scheme for Fully Occupationally Disabled Persons (IVA)***

According to the FNV, income protection for the fully disabled has been well organized, as all of them will receive at least 70 per cent of their former wage. However, the eligibility for full disability benefits has become too strict because of the sharpened assessment of disability. Under the terms of the WIA, an employee (section 1.3.1) who is fully and permanently incapable of work (section 6.1.1, subsection 1(b)) shall be entitled to an incapacity benefit of 75 per cent of the monthly wage (section 6.2.1, subsection 1), provided that the benefit shall be reduced by 70 per cent of the income earned by this person from employment or self-employment during this month (section 6.2.2, subsections 1 and 4). The Government’s report states that the eventual earnings or assets of the members of the family of the beneficiary are not taken into account in determining the IVA benefit. The Committee notes that the amount of the incapacity benefit payable to a fully and permanently incapacitated employee who is not engaged in any gainful employment or self-employment, exceeds the level of 60 per cent of the previous wage prescribed by the Convention. The Convention, however, does not authorize any reduction of the benefit in case a fully incapacitated person (80–100 per cent disabled) finds the force to earn additional income from any gainful occupation, leaving him free to combine invalidity benefit with work. ***The Committee observes that the IVA scheme could be made fully consistent with the Convention by deleting section 6.2.2 of the WIA. It would therefore invite the Government to consider this option with a view to enhance the social protection and well-being of fully disabled persons in line with the Convention, taking into account the likely minimal financial impact of this measure on the insurance scheme.***

#### ***The Return to Work Scheme for the Partially Disabled (WGA)***

Section 1.1.1 of the WIA defines the WGA benefit not as a compensatory benefit for a disablement, but as “work resumption benefit for persons partially capable of work”. The WGA scheme consists of two phases: the wage-related WGA benefit and the subsequent phase, during which the benefit is related to the statutory minimum wage. The Committee recalls that it had previously examined the benefits provided by the WGA scheme in its conclusion of 2008 on the application by the Netherlands of the European Code of Social Security in the context of the invalidity benefit.

***Wage-related WGA benefit.*** Under the wage-related WGA benefit scheme, a person with partial disability of between 35–80 per cent retains a certain working capacity and is for that remaining part considered to be unemployed, and as a consequence is obligated to register as a jobseeker, to make sufficient attempts to obtain suitable work, and to accept an offer of such work (section 4.1.4(1) of the WIA) – all conditions which normally apply to unemployment benefit

recipients. By combining the unemployment benefit (WW) with the previous disability benefit (WAO), the WIA makes it possible for a partially disabled person to apply for a single benefit, instead of for two benefits, which is calculated so that it is equal to the sum of the WW and the WAO benefits that he would have received.

The Committee observes that this new design integrating social security benefits for unemployment and partial disability is unique and could not have been foreseen by the Convention. The Committee recognizes that this arrangement has the merit of ensuring on the one hand that a partially disabled person automatically receives compensation for his loss in earnings as a result of unemployment and, on the other hand, that he is immediately stimulated to resume work and to use the employment service to speed up the reintegration process. However, subjecting the employment injury benefit to the conditions laid down in section 4.1.4 (being partially capable of work, available for work and actually seeking work) transforms it into an unemployment benefit, as defined in the ILO standards. The entitlement to WGA benefit depends on the insured being also entitled to unemployment benefit. Those not eligible for unemployment benefit are not entitled to the WGA wage-related benefit and can get only WGA wage supplement benefit or the follow-up benefit (section 7.1.1(4)). The Committee considers that under such conditions the wage-related WGA benefit falls outside the scope of the Convention because its eligibility requirements are those of the unemployment benefit and not of the employment injury benefit.

According to section 7.1.1(1) of the WIA, an insured person who becomes sick shall be entitled to the benefit for partial incapacity (WGA) if (a) he has completed the qualifying period, and (b) he is partially capable of work. Section 7.1.5(1) specifies that the entitlement to the WGA benefit is subjected to the qualifying period of performing work as an insured person for at least 26 weeks during the 39 weeks immediately preceding the loss of entitlement to wage in case of sickness or to the sickness (ZW) benefit. The Committee has pointed out in its previous comments that under *Article 9(2)* of the Convention, eligibility for benefits may not be made subject to the length of employment or the duration of insurance and has asked the Government to explain whether the above requirement (see also sections 7.1.1(3 and 4) of the WIA) of having a period of previous insured employment is applied also in case of sickness and incapacity resulting from employment injury. In reply, the Government states that no conditions with regard to the duration of the employment history are imposed on the entitlement to a WGA benefit, which satisfies all the standards of the Convention. ***While noting this statement, the Committee requests the Government to explain in further detail to what benefits the abovementioned sections 7.1.1 and 7.1.5 of the WIA refer and how one should understand their provisions.***

Section 7.2.1 subjects the duration of the wage-related WGA benefit to the length of previous employment history, the rules of the computation of which are laid down in the three pages of section 1.6.1. As the Convention does not permit the benefit to be affected in this way by the length of previous employment, the wage-related WGA benefit can be taken into account for the purpose of the application of the Convention only in its minimum duration of six months. Furthermore, by virtue of section 7.2.1(3) this benefit may be reduced by the period of previously received unemployment benefit, which is not permitted by the Convention. These provisions and the above qualification requirement impose restrictive conditions, which lead the Committee to believe that the wage-related WGA benefit should be disregarded for the purpose of the application of the Convention. After the wage-related WGA benefit, the disabled person will be entitled either to a wage supplement in case he works and fulfils an income requirement based on his residual earning capacity (section 7.2.3, subsection 3), or to a follow-up benefit (section 7.2.2, subsection 1). Hence, the level of protection guaranteed by the Convention would now be assessed only by reference to the wage supplement benefit and the follow-up benefit.

*Wage supplement.* Of these, the wage supplement benefit is further subjected to the income requirement (section 7.2.2) that the insured person partially capable of work must earn per calendar month an income from work which is at least equal to 50 per cent of his remaining earning capacity. The requirement to use the residual earning capacity as a condition for entitlement is contrary to the basic philosophy of the Convention, which guarantees benefits at the prescribed level without regard to the residual earning capacity and additional income which can be earned by the workers with incapacity. It appears therefore that only the follow-up WGA benefit could be taken into account for the purpose of the application of the Convention.

*Follow-up WGA benefit.* If the WGA recipient does not work, s/he is entitled to the follow-up benefit. The Government indicates that any recipient of the WGA benefit is considered to be unemployed to the extent that his remaining working capacity is not utilized and is therefore placed under the obligation to register as a jobseeker, to make sufficient attempts to obtain suitable work, and to accept such work, if offered (section 4.1.4, subsection 1, of the WIA). The WGA recipients are also obliged to prevent the occurrence of incapacity, to limit the existence of such incapacity, to acquire the potential to perform suitable work and to make sufficient reintegration efforts (sections 4.1.2 and 4.1.3). Non-fulfilment of these obligations or failure to do so properly is sanctioned by the benefit being refused wholly or partially, permanently or temporarily, or by applying fines (Chapter 10 of the WIA). The Committee observes that the nature and the extent of many of these obligations go beyond limitations permissible under *Article 22(1)* of the Convention. ***Taking into account that the Convention does not permit subjecting the entitlement to the benefit to an obligation to make use of the remaining earning capacity, the Committee would ask the Government to consider bringing the regime of legal obligations and sanctions imposed by the WIA on the recipients of the follow-up WGA benefit into line with Article 22 of the Convention.***

### The level of benefits

The WIA scheme includes wage-related benefit (IVA benefit for total incapacity and wage-related WGA benefit) and flat benefit (follow-up WGA benefit). It appears that the replacement level fixed by *Article 19* of the Convention for wage-related benefits – 60 per cent of the reference wage of the skilled manual male employee for a standard beneficiary – would be attained by the IVA and WGA benefits for total incapacity, as well as by the WGA wage-related benefit. The situation however may be more problematic as regards the level of the WGA follow-up benefit for partial incapacity.

According to *Article 14(3)* of the Convention, the benefit for partial incapacity should represent a *suitable proportion* of the benefit for total incapacity. The WGA follow-up benefit should therefore represent a suitable proportion of the IVA benefit calculated on the basis of the monthly wage. This apparently would not always be the case taking into account that the follow-up benefit is a flat rate benefit calculated on the basis of the legal minimum wage and not as a percentage of previous wage. The example given by the FNV shows that an employee with incapacity of 50 per cent will receive the follow-up WGA benefit representing only 12 per cent of his last-earned wage, which is not “suitably” proportional either to the IVA benefit for total incapacity, which would amount to 75 per cent of his last-earned wage, or to the wage-related WGA benefit, which would in that case amount to 60 per cent of the previous wage. The FNV concludes that there is an unacceptably large difference of income protection between the IVA and wage-related WGA benefits on the one hand, and the follow-up WGA benefit, which results in hardship for many recipients of the follow-up WGA benefit.

The FNV points out that since the entry into force of the WIA, the labour participation of the partially disabled in the Netherlands has dropped sharply: while 69 per cent of the beneficiaries of the WAO worked five months after their disability assessment, for the WGA beneficiaries this figure is only 49 per cent. The explanation for this, according to the FNV, is found in the continuously deteriorating health condition of the WGA beneficiaries and the fact that employers are very hesitant to employ partially disabled with severe infirmities. There is no obligation for the employers to employ persons with disabilities. On the contrary, the employers are free to terminate partially disabled workers, who then have to find another job, which is not easy in the Netherlands, particularly in the context of the economic downturn. It is the full responsibility of the employee with disabilities to find and keep a job or else face a very low income. The FNV further observes that the requirement to use the residual earning capacity could cause deterioration of the health condition of the partially disabled. The situation becomes particularly hard for temporary workers, who represent 15 per cent of all workers in the country. It is much more difficult for a partially disabled flexible worker to stay in the labour market because he is not covered by the employer’s responsibility for his sick pay, rehabilitation and reintegration during the first two years of sickness. The FNV does not support a system whereby partially disabled persons who cannot find a job, have to turn to unemployment benefit and to social assistance.

The Committee observes that the disproportionately low level of the follow-up WGA benefit might result, contrary to the objective of *Article 14(5)* of the Convention, in hardship for many partially disabled persons obliging them to apply for social provisions or assistance in case they do not find sufficiently paid employment. This is a situation that the Convention was designed to avoid by obliging the ratifying State to institute a scheme that excluded the need for victims of employment injury to have recourse to social assistance. Means-tested social assistance benefits, such as the TW supplement, therefore are not considered as the appropriate forms of protection under the Convention. It appears that the low level of the follow-up benefit, while encouraging partially incapacitated persons to resume employment, might at the same time push the categories of persons who could not do so, including for labour market reasons beyond their control, into hardship and poverty, which would be against the objectives of the Convention. ***The Committee invites the Government to explain its position, including the provision of additional information with respect to this level of benefit situation.***

## Peru

### ***Unemployment Provision Convention, 1934 (No. 44) (ratification: 1962)***

The Committee notes the Government’s report, received in September 2010. The Committee observes that for the last 20 years the Government continues to refer to the system of compensation on the basis of length of service established by Legislative Decree No. 650 of 1991, which may not be considered as constituting an unemployment protection system in accordance with the requirements set forth in this Convention. The Committee *regrets* to note that the Government has been unable to set up an unemployment insurance scheme, which it had pledged to establish when ratifying the Convention half a century ago. The Committee wishes to draw the Government’s attention to the Committee’s recommendation made in its comprehensive observation published in the report of 2010, concerning the need to elaborate a national strategy in Peru for the consolidation and development of a sustainable social security system, which would allow the State to fully exploit all of the potential offered by international social security standards to ensure the good administration of the schemes and allow the gradual extension of coverage to the entire population. ***In this context, the Committee hopes that the Government will spare no effort in the very near future to set up an unemployment insurance system in accordance with the Convention.***

## Sao Tome and Principe

### **Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1982)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that the change of administration prevented the finalization of the adoption of the schedule of occupational diseases which should have supplemented Act No. 1/90 on social security. However, the Government indicates that its programme includes the reactivation of this process and the reopening of dialogue with UNDP with a view to the adoption of a schedule of occupational diseases recognized in the country. *Recalling that it has been examining the issue of the establishment of the schedule of occupational diseases for many years, the Committee hopes that the Government will spare no effort for the adoption of a schedule of occupational diseases recognized in the country as soon as possible, including at least those enumerated in the schedule attached to Article 2 of the Convention. It also draws the Government's attention to the possibility of having recourse to ILO technical assistance in this respect.* This is a fundamental protection which, in accordance with the Convention, has to be guaranteed to men and women workers in the country engaged in certain industries and occupations involving exposure to the risk of contracting certain diseases, which must therefore be duly recognized and compensated by reason of their occupational origin.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Sierra Leone

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1961)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 5 of the Convention.* In its last report, the Government indicates, in reply to the comments made for many years by the Committee, that a Bill on Workmen's Compensation has been formulated but not adopted as yet. It further states that the abovementioned draft legislation reflects the provisions of the Convention concerning the payment of injury benefits throughout the period of contingency and that copy of the revised legislation will be communicated to the ILO as soon as it is adopted. The Committee notes this information as well as the Government's request for technical assistance from the Office in order to accelerate the implementation process of the revised legislation. *The Committee expresses the hope that the draft legislation will soon be adopted and requests the Government to provide a copy of it. On the basis of the new legislation, the ILO would certainly be able to discuss with the Government the terms of the requested technical assistance.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Slovenia

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1992)**

In its previous direct request of 2007, the Committee had asked the Government to reply in detail in 2008. In September 2008, the Office had received the Government's report on the application of the Convention for the period from 1 June 1999 to 31 May 2006, which had been already furnished to the ILO in November 2006. No reply has been given to the Committee's previous direct requests of 2006 and 2007. The Committee is bound to draw the Government's attention to its obligation under article 22 of the ILO Constitution to comply with the reporting obligation in good faith. It trusts that the Government will do its utmost to supply in 2011 a full detailed report on the Convention, according to the report form adopted by the Governing Body, and that this report will also contain a detailed reply to the Committee's previous direct request, which read as follows:

*Article 8 of the Convention.* The Committee notes from the Government's report that the list of occupational diseases adopted in 1983 under a "self-management agreement" is still in use, but that it shall be replaced by a new list which is currently being prepared for the purpose of harmonizing it with the European legislation. *The Committee hopes that the new list will also be in compliance with the list of occupational diseases contained in Schedule I to the Convention, in particular as regards the list of work involving exposure to the risk concerned (items 1–12, and 15 of Schedule I), and that the Government will supply a copy of it, when adopted.*

*Articles 13 (temporary incapacity benefit), 14 (permanent incapacity benefit) and 18 (survivors' benefit), (in conjunction with Article 19).* *The Committee once again asks the Government to supply, with respect to each of the benefits provided by the abovementioned Articles, the statistical information in the manner set out in the report form adopted by the Governing Body under the corresponding titles of Article 19. The Committee trusts that the Government will have no difficulty to determine the reference wages of a skilled manual male employee as defined in Article 19(6)(d) of the Convention, by using for this purpose the average gross wage in the Republic of Slovenia which it had indicated in its report for the year 1999.*

## Uruguay

### ***Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)*** (ratification: 1973)

In reply to the Committee's previous comments, the Government refers to its report of August 2009, which provides information on Law 18.395 of 24 October 2008 concerning flexible retirement. The Committee however has not found in the text of the report any reply to the questions it has raised in its previous observation and direct request of 2008. In view of the fact that the Government's next report on the Convention due in 2011 will be a detailed report providing information on the application of each Article of the Convention in accordance with the report form adopted by the Governing Body, the Committee trusts that the Government will make an effort to assess the impact of the abovementioned law, as well as other new legislation, on compliance with the relevant provisions of the Convention and that it will reply in detail to the Committee's previous observation which read as follows:

*Article 29 of the Convention. Review of periodical benefits currently payable.* With reference to its previous comments, the Committee notes the information concerning increases of pension benefits in relation to the general level of earnings and the cost of living index corresponding to the 2001–05 period. It notes in particular that during that period the cost of living index was 61.71 per cent, while the index of earnings and the revised amount of cash benefits were 35.69 per cent and 26.89 per cent, respectively. *The Committee therefore hopes that the Government will adopt the necessary measures to revise the amount of cash benefits, at least up to the level of the index of earnings. It requests the Government to supply in its next report the statistical information required under Article 29 in the report form. The Committee further requests the Government to provide information on the observations made by the Inter-Union Assembly of Workers–National Convention of Workers (PIT–CNT).*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 12** (Comoros, Guinea-Bissau, The former Yugoslav Republic of Macedonia); **Convention No. 17** (Guinea-Bissau, United Kingdom: St Helena); **Convention No. 19** (Cape Verde, Central African Republic, Dominica, Guyana, Islamic Republic of Iran, Nigeria); **Convention No. 38** (Djibouti); **Convention No. 102** (Bosnia and Herzegovina, Libyan Arab Jamahiriya, Slovakia); **Convention No. 118** (Guinea); **Convention No. 121** (Bosnia and Herzegovina, Japan); **Convention No. 128** (Ecuador, Slovakia, Uruguay); **Convention No. 130** (Ecuador, Slovakia); **Convention No. 168** (Romania).

The Committee noted the information supplied by the following State in answer to a direct request with regard to **Convention No. 102** (Serbia).

## Maternity protection

### San Marino

#### **Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1998)**

With reference to its previous comments, the Committee notes with *satisfaction* that section 7(2) of the Decree of 11 July 2008 on the protection of pregnant women workers and nursing mothers prohibits explicitly any dismissal on grounds linked to pregnancy or nursing, thus giving better effect to *Article 6 of the Convention*.

The Committee is raising other points in a request addressed directly to the Government.

### Sri Lanka

#### **Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1993)**

The Committee shares the conclusions of the Lanka Jathika Estate Workers' Union (LJEWU) that the application of the Convention is not satisfactory and *regrets* that no measures have been adopted by the Government in response to the Committee's previous comments to comply with the provisions of the Convention.

*Article 3(3) of the Convention. Maternity leave. Compulsory post-natal leave of at least six weeks.* The Government states that a woman worker who is entitled to four weeks' post-natal leave can nonetheless take six weeks following her confinement if she has not taken two weeks before. The Government also states that it has taken note of the Committee's concern of the need to establish compulsory post-natal leave of at least six weeks as requested by the Committee. ***The Committee therefore trusts that the Government's next report will indicate measures taken to ensure full compliance with these provisions of the Convention.***

*Article 3(2) and (3). Distinction in the length of maternity leave based on the number of children.* In Sri Lanka, maternity leave cannot exceed six weeks after the birth of the third child, whereas the Convention provides for maternity leave of at least 12 weeks which must include a minimum period of six weeks post-natal leave irrespective of the number of births given. The Committee regrets that, notwithstanding the promises made by the Government in its previous report to ensure the same benefits for all female workers, no measures have been taken. The Committee notes that the LJEWU requests the Government to amend the national legislation in this respect. ***The Committee therefore trusts that the Government's next report will indicate the legislative measures taken to ensure that full effect is given to this provision of the Convention for all women workers regardless of the number of children.***

*Article 4(4) and (8). Cash and medical benefits.* The Government states that the country is so far unable to provide maternity benefits by means of a compulsory social insurance scheme or out of government funds; cash benefits continue to be provided by the employer. The Government also states that nationals are covered by free medical services provided by the State, including maternal and childcare. ***Recalling that the employer shall not be individually liable for the payment of maternity cash benefits, the Committee hopes that, in its next report, the Government will be in a position to indicate measures taken or envisaged towards ensuring that maternity cash benefits are provided by means of compulsory social insurance or out of public funds.***

*Article 4(1) (in conjunction with Article 3(4), (5) and (6)). Entitlement to cash benefits during supplementary leave.* The Committee notes the reply of the Government stating that, in the event of delayed confinement or sickness resulting from pregnancy or confinement, a woman worker may take supplementary leave without pay and that female employees in the public service can take their own unutilized leave. The Committee recalls that, according to *Article 4(1)* of the Convention, any extension of maternity leave resulting from the application of *Article 3(4), (5) and (6)* must qualify for cash benefits. The Committee notes that the Government has taken note of this matter but that no action has so far been undertaken to amend the law. ***The Committee therefore expresses the hope that the Government will, in the very near future, take all the necessary measures to fully apply these provisions of the Convention.***

*Article 1(1). Scope of coverage. Domestic and agricultural workers.* The Government indicates that, due to constraints with regard to enforcement and especially for the reason that they are not covered by the maternity benefit laws, female domestic workers and subsistence agricultural workers still do not benefit from the protection guaranteed by the Convention. The Committee recalls that, in the previous report, the Government promised to undertake measures to cover, inter alia, female domestic workers in private households, wage-earning women working at home, as well as agricultural workers. ***The Committee would be grateful if the Government would indicate the progress made in this respect in its next report.***

*Article 1(4). Application of the Convention to women workers on plantations.* In reply to the Committee's previous comments, the Government indicates that most estates ceased to apply alternative maternity benefits specified by the Maternity Benefits Ordinance No. 32 of 1939. Since the alternative maternity benefits scheme is now not in operation, action would be taken in consultation with the constituents to repeal the relevant provisions. However, no policy decisions have yet been taken in this regard. ***The Committee once again hopes that such decisions will soon be taken in order to***



*bring the legislation into conformity with existing practice in the country and eliminate any differences between the maternity benefits granted to workers on plantations and those granted to other workers.*

*Article 5. Nursing. The Committee trusts that the Government will, in the very near future, take measures in order to amend the Shop and Office Employees Act No. 19 of 1954 so as to provide for interruptions of work for the purpose of nursing to be counted as working hours and remunerated accordingly.*

*Article 6. Protection against dismissal during maternity leave. The Committee again expresses the hope that in its next report the Government will indicate the measures taken or envisaged to amend the Establishment Code so as to ensure protection for public employees both against dismissal and the receipt of a notice of dismissal during the period of maternity leave.*

*[The Government is asked to reply in detail to the present comments in 2011.]*

## Zambia

### Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1979)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee regrets that, despite its previous comments, the Government has maintained the requirement of two years' continuous employment from the date of recruitment as a condition for maternity leave in its national legislation. It also notes that this condition has been reproduced in the text of a number of collective agreements which have been brought to its attention. *The Committee therefore hopes that the Government will take the necessary steps, as soon as possible, to bring the national legislation, particularly section 15(A) of the Employment Act and section 7(1) of the Schedule to the Order of 14 January 2002, into conformity with Article 3(1) of the Convention.*

The Committee is also constrained to note that the Government's report makes no reference to any progress made to ensure the full application of the following provisions of the Convention.

*Article 3, paragraphs 2, 3 and 4. Compulsory nature of six-week postnatal leave.* With reference to its previous comments, the Committee notes that sections 15(A) and 54(1) of the Employment Act, to which the Government refers in its report, do not provide for a compulsory six-week period of postnatal leave or that, when the confinement takes place after the presumed date, prenatal leave must be extended, in all cases, until the actual date of confinement and the period of compulsory postnatal leave must not be reduced. *The Committee once again expresses the hope that the Government will be able to take the necessary steps to bring the national legislation into conformity with these provisions of the Convention.*

*Article 4(4), (6), (7) and (8). Maternity benefits.* The Committee recalls that, under these provisions of the Convention, the employer shall in no case be individually liable for the cost of maternity benefits in cash due to women employed by him. *The Committee therefore requests the Government to ensure that these benefits are provided either by means of public funds or by means of compulsory insurance; the latter does not necessarily call for public financing but can be funded by employers' and workers' contributions.*

*Article 5. Nursing breaks.* The Committee notes that certain collective agreements provide for nursing breaks and considers in this respect that equal treatment must be given to women workers covered by these collective agreements and other women workers covered by the Convention. *The Government is therefore requested to consider the possibility of incorporating provisions in its national legislation which provide for nursing breaks; these interruptions of work must be counted as working hours and remunerated accordingly.*

*Article 6. Protection against dismissal during maternity leave.* *The Committee trusts that the Government will not fail to amend section 15(B) of the Employment Act (the content of which is reproduced in section 7(4) of the Schedule to the Order of 14 January 2002) by establishing a prohibition on the dismissal of a woman during maternity leave or on giving her notice of dismissal at such a time that the notice would expire during her absence, irrespective of the grounds for dismissal.*

*The Committee also requests the Government once again to supply copies of any legal provisions enacted, instructions or directives which have been issued stating the nature and scope of the medical benefits which shall be guaranteed to women workers in conformity with Article 4(1) and (3), of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 3** (Guinea); **Convention No. 103** (Equatorial Guinea, Mongolia, San Marino).

## Social policy

### Democratic Republic of the Congo

#### **Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)** (ratification: 1967)

*Parts I and II of the Convention. Improvement of standards of living.* The Committee notes the Government's report received in June 2010. In its previous comments the Committee expressed concern at the fact that the Government had not provided information on the application of the Convention since June 2002 and had emphasized that technical assistance might be useful to rectify this situation. The ILO undertook a mission to Kinshasa in May 2010 precisely for this purpose. The Government brought to the attention of the Committee the Growth and Poverty Reduction Strategy Paper (GPRSP) of July 2006 and the Priority Action Programme (PAP) 2009–10. The PAP aims to alleviate the effects of the international financial crisis and food crisis on macroeconomic results with a view to improving the socio-economic conditions of the population. According to World Bank estimates, economic growth fell from 6.2 per cent in 2008 to 2.8 per cent in 2009 because of the effects of the global economic and financial crisis on the country. Growth is expected to be positive in 2010. Average growth is expected to be 6.5 per cent in the medium term, with the support of public and private investment and the revival of the economic sector. **The Committee invites the Government to supply up-to-date information in its next report on the manner in which the provisions of the Convention have been taken into account in the drawing up of economic programmes and the implementation of measures established in the context of the Poverty Reduction Strategy and the Priority Action Programme.**

*Part VI. Education and vocational training.* The Committee notes that, in the context of the PAP 2009–10, the Government is seeking to guarantee education for all children by 2010. **The Committee again requests the Government to describe in greater detail the measures taken for the progressive development of broad systems of education, vocational training and apprenticeship, with a view to the effective preparation of children and young persons of both sexes for a useful occupation, as provided for by Article 15 of the Convention.**

### Guinea

#### **Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)** (ratification: 1966)

The Committee notes with *regret* 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 matters raised in its previous comments:

*Parts I and II of the Convention. Improvement of standards of living.* **The Committee requests that the Government provide indications of the way in which the improvement of standards of living is regarded as the principal objective in the planning of economic development within the strategy to combat poverty (Article 2 of the Convention). In this regard, the Committee reminds the Government that, pursuant to Article 1(1), of the Convention, "all policies shall be primarily directed to the well-being and development of the population".**

### Portugal

#### **Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)** (ratification: 1981)

The Committee notes the replies provided by the Government to its 2008 observation. It further notes the remarks by the General Workers' Union (UGT) and the Confederation of Portuguese Tourism (CTP).

*Parts I and II of the Convention. Improvement of standards of living. Article 2.* The Committee notes the measures taken in the context of the global crisis to boost the economy, investments and employment. Various social policy priorities were identified within the Major Planning Options 2010–13 with an aim to combat social inequalities, strengthen social security and improve social protection. The Government indicates that measures taken between June 2008 and May 2010 to support the improvement of standards of living include: a tripartite agreement establishing the increase of minimum monthly wages up to €500 in 2011, the updating of family allowance values and pensions, and the extended duration of compulsory education. Various measures were taken in the framework of the Initiative for Investment and Employment and the Initiative for Employment 2010 which, *inter alia*, were aimed at promoting employment and vocational training for the unemployed and youth and at increasing income support for the unemployed. The UGT indicates that the December 2006 tripartite agreement establishing the minimum monthly wage increase had a positive impact on the fight against poverty, but its impact was minimized by the economic crisis and the new policies adopted to combat its effects. The CTP refers to the social security legislation that may limit employment promotion and suggest that some matters might be renegotiated through a tripartite agreement to better take into account the current socio-economic framework. **The Committee invites the Government to provide, in its next report, an evaluation of the**

*manner in which “the improvement of standards of living”, as required by Article 2 of the Convention, has been taken into account in the social policies pursued in the context of the economic and financial crisis.*

*Part IV. Remuneration of workers.* In reply to the 2008 observation, the Government indicates that Act No. 7 of 12 February 2009 reviewed some provisions of the Labour Code regarding, amongst others, discrimination with regard to employment, working time, the limitation of the use of temporary employment contracts, access to education and vocational training for young workers and labour law enforcement. As regards the measures adopted to apply *Article 12* of the Convention, the Government refers to section 279 of the Labour Code, as amended by Act No. 7 of 12 February 2009. Paragraph 1 of this section provides that, during the duration of the contract of employment, the employer may not make a deduction from the worker’s remuneration for the repayment of a loan made by the employer to the worker, nor any deduction from the worker’s remuneration, except in the case envisaged in section 279(2)(f) of the Labour Code. The Committee further notes that, in conformity with section 279(3), deductions allowed by section 279(2)(f) cannot exceed, in total, one sixth of the remuneration. *The Committee requests the Government to indicate in its next report the manner in which competent authorities or tribunals have given decisions involving questions of principle relating to the application of section 279 of the Labour Code in accordance with Article 12 of the Convention.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 82** (France: French Polynesia, United Kingdom: Bermuda, United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Montserrat); **Convention No. 117** (Plurinational State of Bolivia, Guatemala, Senegal, Zambia).

## Migrant workers

### Benin

#### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** (ratification: 1980)

*Article 14(a) of the Convention. Restrictions on employment and geographical mobility.* The Committee recalls its previous observation in which it urged the Government to adopt without delay measures to repeal Decree No. 77-45 of 4 March 1977, issuing regulations respecting the movement of foreigners and requiring special authorization for foreigners to leave their town of residence. While noting the Government's statement that Decree No. 77-45 of 4 March 1977 is obsolete, the Committee remains concerned that the failure to repeal Decree No. 77-45 gives rise to ambiguity in terms of the legal provisions to apply the Convention, and raises particular difficulties in the application of *Article 14(a)* of the Convention under which migrant workers lawfully in the country should enjoy geographical mobility in the same conditions as nationals. ***The Committee therefore once again urges the Government to adopt without delay the necessary measures to repeal Decree No. 77-45 of 4 March 1977 and to communicate the relevant text to the Office.***

The Committee is raising other points in a request addressed directly to the Government.

### Cameroon

#### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** (ratification: 1978)

*Article 9(1) and (2) of the Convention. Rights arising out of past employment.* The Committee recalls that, pursuant to *Article 9(1) and (2)* of the Convention, migrant workers in an irregular situation shall enjoy equality of treatment for themselves and their families in respect of rights arising out of past employment as regards remuneration, social security and other benefits, and shall have the possibility to present their case to a competent body, either themselves or through their representative, in the case of a dispute regarding these rights. The Committee previously raised issues relating to the difficulties encountered by migrant workers whose contracts of employment were declared null and void to claim their rights arising out of past employment, such as remuneration and social security. The Committee considered that the possibility of recourse to labour inspectors did not afford migrant workers adequate protection, in accordance with the terms of *Article 9(1)* of the Convention. The Committee notes the Government's reply that recourse to the labour inspectors is the only way for these workers to claim their rights, and that no complaints have been received from migrant workers in an irregular situation. ***The Committee asks the Government to take the necessary legislative measures to establish that migrant workers who have been unable to regularize their situation are not deprived of their rights that have been lawfully acquired, and that they and their families enjoy equality of treatment with migrant workers lawfully admitted into the country in respect of rights arising out of past employment as regards remuneration and social security. The Government is also requested to examine any obstacles faced by such migrant workers to submit claims to the labour inspectorate in relation to rights derived from past employment and the progress made in this regard.***

*Article 10. Exercise of trade union rights.* The Committee recalls its previous observation requesting clarification as to whether section 10(1) and (2) of the Labour Code providing that foreign nationals are required to have resided for not less than five years in the territory before being allowed to establish a trade union and take positions of responsibility for its administration or leadership, also makes the possibility for foreign nationals to join a trade union subject to this requirement. The Committee notes the Government's statement that section 10(2) will be addressed in the context of the revision of the Labour Code. ***Recalling the Government's previous statement that membership in a trade union is free for both nationals and migrant workers, the Committee requests the Government to ensure that the new Labour Code explicitly provides for the right of foreign workers to join a trade union on an equal footing with nationals, without being subject to any residence requirements or other preconditions.***

The Committee is raising other points in a request addressed directly to the Government.

### France

#### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1954)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 2, 3, 4 and 6 of the Convention. Measures to assist and inform migrant workers, promote their social and economic integration and address discrimination against them.* The Committee notes that the Government has taken a series of measures relevant to the application of the Convention. In particular, the Act No. 2006-911 of 24 July 2006 concerning immigration and integration introduces a number of changes aimed at facilitating economic integration, such as the residency

permit on competencies and talents and the residency permit for seasonal workers; the possibility for French placement agencies to propose temporary employment contracts; the establishment of lists of occupations for which there is a need for foreign workers and the opportunity for foreign students to seek employment during the six-month period after the completion of their master's degree, or to be engaged in wage employment. The Committee further notes that the Act 2007-1631 of 20 November 2007 concerning immigration control, integration and asylum further simplifies certain provisions of the Act of 24 July 2006. Furthermore, a new Ministry of Immigration, National Identity, Integration and Co-development was established in 2007 with the objectives of controlling migration flows, promoting French national identity, improving integration and encouraging co-development. In addition, a number of bilateral agreements have been concluded relating to the exchange of young professionals and work-holiday programmes. France is further proposing to certain migrant sending countries a new generation of bilateral agreements aimed at organizing regular migration, fighting against irregular migration and promoting co-development and cooperation.

Furthermore, the Committee notes that the Government's policy on the reception and integration of migrants has become a priority since 2002 and that new measures have been taken to improve the reception and integration of migrants such as the creation of the National Agency for the Reception of Foreigners and Migration (ANAEM) and the contract of reception and integration (*contrat d'accueil et d'intégration*) (CAI). The Government has also been taking steps to improve housing conditions in France, such as the Plan to convert "Migrant Workers' Houses" (*Foyers de Travailleurs Migrants*) into social residences, measures to improve living and housing conditions of older immigrants and measures to combat discrimination in housing through the High Authority to Combat Discrimination and in Favour of Equality (HALDE) and the Act respecting the national housing commitment, 2006. The Committee notes in this regard the Government's statement that with respect to housing the fight against discrimination remains one of the main difficulties especially due to the lack of data and the difficulty in proving that discrimination with respect to housing has occurred.

While acknowledging the efforts by the Government to facilitate the reception of migrants and promote their integration and equal opportunities, the Committee notes from the report of the UN Independent Expert on Minority Issues (A/HRC/7/23/Add.2, 4 March 2008) and the concluding observations of the Committee on Economic, Social and Cultural Rights (CESCR) (E/C.12/FRA/CO/3, May 2008), as well as the Committee on the Elimination of Discrimination Against Women (CEDAW/C/FRA/CO/6) that major problems continue to exist with respect to integration of the immigrant population in French society, including a climate of suspicion and negativity, as well as widespread discrimination against migrant workers, having an impact on their general living conditions as well as their educational and employment opportunities. According to the CESCR, migrant workers and persons of immigrant origin "are disproportionately concentrated in poor residential areas characterized by low quality, poorly maintained large housing complexes, limited employment opportunities, inadequate access to health care facilities and public transport, under-resourced schools and high exposure to crime and violence" (E/C.12/FRA/CO/3, May 2008, paragraph 21). The UN Independent Expert states that "when poor immigrants arrive, those belonging to ethnic or religious groups are allocated to the poorest housing in specific neighbourhoods that have become highly ethnicized resulting in a discriminatory pattern of de facto segregation ... Government officials acknowledge areas of some 70 per cent 'foreign' residents and the creation of what has become recognized as the 'ghetto' phenomenon" (A/HRC/7/23/Add.2, 4 March 2008). The Committee also recalls its comments in 2007 on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it had already raised concerns regarding the lack of progress made in addressing racial and ethnic discrimination against migrant workers.

The Committee is aware that the social and economic situation of migrant workers in the country is complex and that an effective strategy to promote the integration and equal treatment of migrant workers involves a combination of measures, some of which are required to achieve full application of this Convention. In particular, the Committee draws the attention of the Government to *Articles 2 and 4* of the Convention emphasizing the importance of adequate measures to assist and inform migrant workers and to facilitate their reception, and *Article 3* of the Convention requiring steps against misleading propaganda, including false information targeting the national population propagating stereotypes on migrant workers generating racism and discrimination. Most importantly, *Article 6(1)(a) to (d)* of the Convention aims to guarantee equality of treatment with respect to conditions of work, social security, trade union rights, accommodation and legal proceedings. With regard to accommodation, the Committee points out that segregating the migrant population from the national population may not be conducive to social integration (General Survey on migrant workers of 1999, paragraph 281). **The Committee requests the Government to provide information on the following:**

- (i) *the activities carried out by ANAEM to facilitate the reception and effective integration in French society of migrant workers from third countries, in accordance with Articles 2 and 4 of the Convention. Please also provide information on the impact of the CAIs on the integration of migrant workers;*
- (ii) *the steps taken to combat the dissemination of misleading and false information, including on certain stereotypes relating to the educational and employment abilities of migrant workers as well as their being more susceptible to crime, violence and diseases, targeting both the national and foreign population. Please also provide any information on the impact of these measures on the incidence of discrimination against migrant workers;*
- (iii) *the measures taken, and the results achieved, to ensure that migrant workers lawfully in the country and their families accompanying them are not being treated less favourably than nationals with respect to housing, whether in law or in practice. Such measures could include further steps to improve the housing and living conditions of migrant workers as well as measures to reduce their de facto segregation with respect to housing;*
- (iv) *the measures taken to ensure that the principle of equal treatment between migrant workers lawfully in the country and nationals is also effectively applied in practice with regard to the other matters listed in Article 6(1)(a)(i) and (ii), (b), (c) and (d) of the Convention. Please include information on any measures particularly addressed to women migrant workers, as well as on any complaints by migrant workers regarding these matters that have been dealt with by HALDE, the courts, or other bodies competent to monitor the application of the relevant national legislation and the Convention.*

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Malaysia

### Sabah

#### ***Migration for Employment Convention (Revised), 1949 (No. 97)*** ***(ratification: 1964)***

The Committee notes the Government's very brief report merely confirming that the Workmen's Compensation Act 1952 is not applicable to domestic workers, and that the amendment to include domestic workers under the Workmen's Compensation Scheme will be applicable throughout Malaysia, including Sabah. The Committee further notes that the Government's report contains no reply to the other points raised in its observation. It is therefore bound to repeat its previous observation, which read as follows:

*Article 6(1)(b) of the Convention. Equality of treatment with respect to social security.* For over ten years, the Committee, as well as the Conference Committee on the Application of Standards, have been pursuing a dialogue with the Government regarding differences in treatment between nationals and foreign workers with respect to payment of social security benefits. The Committee had noted that, as of 1 April 1993, foreign workers in the private sector were no longer covered by the Employees' Social Security Act, 1969 (SOCSO), which provided for periodical payments to victims of industrial accidents and their dependants. Instead they were transferred to the Workmen's Compensation Scheme (WCS) which only guarantees the payment of a lump sum. The Committee had considered that this change was not in conformity with *Article 6(1)(b)* of the Convention. A review of the two schemes had also shown that the level of benefits in the case of industrial accident provided under the Employees' Social Security Scheme (ESS) was substantially higher than that provided under the WCS.

The Committee recalls that foreign workers permanently residing in Malaysia (Sabah) continue to be covered by the ESS, while foreign workers working in the country for a period of up to five years are covered only by the WCS. The Committee notes the detailed comparison provided by the Government of the benefits awarded according to each system in identical circumstances. The comparison shows, however, that the level of benefits in the case of industrial accident provided under the WCS is substantially lower than that provided under the SOCSO. Moreover, the Committee notes that some other differences exist between temporary foreign workers and foreign workers permanently residing in the country and nationals in respect of, for example, the invalidity pension scheme and survivors' pension rehabilitation, as well as accidents outside work. The Committee further notes that the Government maintains its position that the system is reliable and suitable to the needs of the workforce of the country. The Committee notes from the UNDP-Sabah development statistics that in 2005, 24.8 per cent of the population were non-citizens. The Committee understands that the percentage of foreign workers has been increasing ever since, and that many of them are working in manufacturing, plantation work, domestic work, construction, services and agriculture.

The Committee recalls that *Article 6(1)(b)* of the Convention applies to all foreign workers, both those with permanent and temporary residence status, who shall not be treated less favourably than nationals in respect of social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme). The Committee also recalls *Article 10* of the Convention, providing that in cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities shall, where necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of the Convention. ***With respect to industrial accidents, the Committee refers the Government to the comments made under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), with respect to Peninsular Malaysia. With respect to other social security benefits, and taking into account the large number of foreign workers concerned, the Committee hopes that the Government will consider making every effort to take special steps, including the conclusion of bilateral or multilateral agreements, to ensure that migrant workers do not receive treatment which is less favourable than that applied to nationals or foreign workers permanently residing in the country with respect to other social security benefits. ...***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 97** (France, Guyana, Malaysia: Sabah, Nigeria, Saint Lucia, United Republic of Tanzania: Zanzibar, The former Yugoslav Republic of Macedonia, United Kingdom: British Virgin Islands); **Convention No. 143** (Albania, Benin, Cameroon, Guinea, San Marino, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Uganda).

## Seafarers

### Argentina

#### **Food and Catering (Ships' Crews) Convention, 1946 (No. 68)** (ratification: 1956)

*Articles 5 and 6 of the Convention. Setting and enforcing food and catering standards.* The Committee has been formulating observations for a considerable number of years concerning the measures to be taken in order to give effect to various provisions of the Convention, namely: *Article 5(2)* (laws and regulations requiring the provision of food supplies of suitable quality and quantity and the arrangement and equipment of the catering department); *Article 6* (laws or regulations establishing a system of inspection of food supplies and catering spaces and equipment); *Article 7* (duly recorded inspection of ship's food supplies, catering spaces and galley equipment by the master at prescribed intervals); *Article 9* (powers of inspectors and penalties for infringements); *Article 10* (preparation of an annual report on food and catering); and *Article 12* (collection and dissemination of relevant information).

The Government maintains that the quantity and quality of food on board merchant vessels is adequately regulated through collective agreements while the General Confederation of Labour (CGT) refers to food committees (*comisión de gamela*), provided for in collective agreements, as giving effect to the requirements of the Convention. While noting these explanations and while recalling that certain provisions of the Convention may in effect be implemented through collective agreements, the Committee feels obliged to reiterate its view that matters such as fixing standards for food supplies and catering services or setting up and operating a system of inspection need to be dealt with through laws and regulations and not exclusively by collective agreements. The Committee therefore considers that the Government has still not fully addressed the issues raised in earlier observations. ***The Committee accordingly asks the Government to provide full particulars on the implementation of Articles 5(2), 6, 7, 9, 10 and 12 of the Convention. In addition, the Committee requests the Government to supply it with a copy of the following texts: Decree No. 1521 of 18 September 2008; Act No. 26354 of 28 February 2008; Health Regulations concerning Maritime and Inland Navigation of 1971; and all applicable collective agreements.***

In addition, the Committee takes this opportunity to recall that most of the provisions of Convention No. 68 have been incorporated in Regulation 3.2, Standard A3.2 and Guideline B3.2.1 of the Maritime Labour Convention, 2006 (MLC, 2006). Moreover, the MLC, 2006, introduces some new provisions regarding the obligation to take into account the differing cultural and religious backgrounds, to provide food free from charge and to carry a fully qualified cook. ***The Committee invites the Government to consider the possibility of ratifying the MLC, 2006, in the very near future and to keep the Office informed of any decision taken in this respect.***

### Barbados

#### **Seafarers' Identity Documents Convention, 1958 (No. 108)** (ratification: 1967)

*Article 2 of the Convention. Seafarers' identity documents.* Since 1999, the Committee has been commenting on the Government's failure to apply the Convention and has been requesting it to: (i) reinstate the identity document for seafarers who are Barbadian nationals; (ii) enact new regulations or amend existing ones so that foreign seafarers may enter Barbados with a valid identity document issued pursuant to this Convention; and (iii) provide copies of the relevant legislative and/or regulatory texts ensuring the application of the Convention. In its latest report, the Government indicates that there are no active seafarers employed, no seafarer or shipowner representative organizations and no formal employment agencies. The Government adds that it has not denounced the Convention and that identity documents would be issued in the future if there is demand for them. While noting the explanations regarding the current situation with respect to Barbadian seafarers, the Committee also notes that the Government has not given any indication as to whether foreign seafarers holding identity documents issued pursuant to the Convention are accorded the facilities provided for in that instrument. ***Under the circumstances, the Committee concludes that the basic requirements of the Convention are still not implemented in either law or practice. The Committee therefore urges the Government to take the necessary steps to ensure that its obligations under the Convention are fully respected and to inform the Office of all measures taken in this regard.***

### Chile

#### **Seamen's Articles of Agreement Convention, 1926 (No. 22)** (ratification: 1935)

*Article 3 of the Convention. Conditions and safeguards for the signature of the agreement.* The Committee recalls that the Convention requires that reasonable facilities be given to the seafarer to examine the articles of agreement before they are signed (*Article 3(1)*), the agreement be signed under conditions prescribed by national law (*Article 3(2)*), and that adequate provisions be made to ensure that the seafarer has understood the agreement (*Article 3(4)*). The

Committee understands that the national legislation does not contain any provisions giving effect to the above requirements. **Recalling that the same requirements have been incorporated in Standard A2.1(1)(b) of the Maritime Labour Convention, 2006 (MLC, 2006), the Committee requests the Government to take the necessary measures to fully implement this Article of the Convention.**

*Article 5(2). Record of employment.* While noting that under section 23 of Supreme Decree No. 90 of 15 June 1999 on standards of training, certification and watchkeeping, a seafarer's book (*libreta de embarco*) must contain information on the seafarer's duties on board, the Committee understands that national law does not expressly prohibit the inclusion of any statements concerning the quality of the seafarer's work or his/her wages. **Recalling that the same requirement has been incorporated in Standard A2.1(3) of the MLC, 2006, the Committee requests the Government to consider appropriate measures in order to give effect to this requirement of the Convention. It also requests the Government to transmit a specimen copy of the seafarer's book currently in use.**

*Article 6. Contract details.* The Committee notes sections 10, 98 and 103 of the Labour Code that set out the particulars that need to be included in the seafarer's contract (*contrato de embarco*) but observes that no mention is made of the annual leave or the conditions for termination among the mandatory contract details. **Recalling that the contract details listed in this Article of the Convention have been incorporated in Standard A2.1 of the MLC, 2006 (with the addition of the seafarer's entitlement to repatriation and health and social security benefits), the Committee requests the Government to take appropriate measures to ensure that all these particulars are properly reflected in the national legislation.**

*Article 9(1). Termination of the agreement.* The Committee recalls its previous comment in which it noted that section 120 of the Labour Code and section 77 of the Navigation Act of 1978, which provide that no crew member may give up his work without the agreement of the maritime or consular authority of the port in which the vessel is located, are inconsistent with *Article 9(1)* of the Convention which permits either party to terminate an agreement for an indefinite period in any port where the vessel loads or unloads, on condition that the period of notice is observed. **In the absence of the Government's reply on this point, the Committee is obliged to once more request the Government to take the necessary steps in order to bring the national legislation into line with this Article of the Convention.**

*Article 12. Immediate discharge.* The Committee recalls its previous comment, in which it noted that section 159(2) of the Labour Code, which requires the worker to give 30 days' notice to terminate his/her employment contract, is not in harmony with *Article 12* of the Convention which provides that national law will determine the circumstances in which the seafarer may demand his/her immediate discharge. **In the absence of any progress in this respect, the Committee is obliged to once again request the Government to take appropriate action in order to give effect to this Article of the Convention.**

*Article 14(2). Certificate.* **In the absence of the Government's reply on this point, the Committee again requests the Government to take all necessary measures in order to give effect to this provision of the Convention.**

Finally, the Committee recalls that the MLC, 2006, contains in Regulation 2.1, Standard A2.1 and Guideline B2.1 up-to-date and more detailed requirements on seafarers' employment agreements that revise existing standards set out in Convention No. 22. **The Committee invites the Government to consider the possibility of ratifying the MLC, 2006, in the very near future and to keep the Office informed of any decision taken in this respect.**

## China

### **Repatriation of Seamen Convention, 1926 (No. 23) (ratification: 1936)**

*Article 3 of the Convention. Seafarers' entitlement to repatriation.* The Committee has been commenting for several years on the need to adopt implementing legislation to give effect to the main requirements of the Convention. The Committee notes with *satisfaction* the adoption of the Regulations of the People's Republic of China on Seafarers of 14 April 2007, in particular sections 31–34 which specifically address the seafarers' right to repatriation.

The Committee is raising other points in a request addressed directly to the Government.

## Egypt

### **Placing of Seamen Convention, 1920 (No. 9) (ratification: 1982)**

*Article 2(1) of the Convention. Prohibition of fee charging.* The Committee has been drawing the Government's attention to the need to amend section 21 of the Labour Code of 2003 which permits recruitment agencies to obtain fees from a worker during the first year of employment in order to cover administrative expenses. In its latest report, the Government indicates that a preparatory technical committee has been established by the Order of the Minister of Manpower and Migration No. 69 of 22 March 2010 to review the Labour Code of 2003 and the Trade Unions Act of 1976 to ensure compliance with international labour standards. The Government also indicates that a working party for the maritime transport sector has been established in order to consider the possible ratification of the Maritime Labour Convention, 2006 (MLC, 2006), and to prepare its implementation. The Committee wishes to recall, in this respect, that the Convention provides for an absolute prohibition against charging fees, directly or indirectly, in relation to finding



employment for seafarers on any ship. The Committee also wishes to emphasize that under Standard A1.4(5)(b) of the MLC, 2006, private seafarer recruitment services are also prohibited from requiring fees or other charges for seafarer recruitment or placement. The Committee trusts that in preparing their recommendations for revision of the Labour Code of 2003, the preparatory technical committee and the working party for the maritime sector will take fully into account *Article 2* of this Convention and Regulation 1.4 and the corresponding Code of the MLC, 2006. **The Committee asks the Government to take all necessary measures for the amendment of section 21 of the Labour Code and to provide information on any further developments concerning the legislative review process and the process of ratification and effective implementation of the MLC, 2006.**

*Articles 4(1) and 5. Public employment offices and advisory committees.* The Committee has been commenting on section 17 of the Labour Code of 2003, which appears to authorize the operation of private recruitment agencies contrary to the requirements of the Convention. Moreover, the Committee has been requesting the Government to constitute advisory committees, as required by *Article 5* of the Convention, to advise on matters concerning the operation of public employment offices. In this connection, the Committee considers it necessary to refer to Standard A1.4(2) of the MLC, 2006, which, contrary to Convention No. 9, permits private recruitment and placement services for seafarers to operate in the context of a standardized system of licensing or certification or other form of regulation. It also wishes to point out that, even though the MLC, 2006, does not provide for the establishment of advisory committees, it requires the system of licensing or certification to be established, modified or changed only after consultation with the concerned shipowners' and seafarers' organizations. **The Committee therefore hopes that the Government will take appropriate action to bring its legislation into conformity with the Convention in a manner that would also facilitate the implementation of the respective provisions of the MLC, 2006.**

## Guinea

### **Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Prevention of occupational accidents.* For many years, the Committee has been asking the Government to indicate the specific instruments that govern the prevention of occupational accidents of seafarers. The Government has so far indicated that appropriate regulatory texts were in preparation and would be reviewed with the technical assistance of the ILO to ensure their compliance with the provisions of the Convention. In its last report, the Government refers only to the provisions of the Labour Code and Merchant Shipping Code, noting that they provide for the adoption of regulations on occupational safety and health. The Government further indicates that the authorities responsible for framing and supervising maritime regulations were also to draft a whole series of texts in this area. The Committee emphasizes that Guinea ratified this Convention more than 30 years ago. It also points out that the provisions of the national legislation are general in nature and do not always ensure that full effect is given to the requirements of the Convention. **Consequently, the Committee once again asks the Government to adopt legislative texts giving full effect to the Convention and requests it to provide copies of them as soon as these texts have been enacted.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Guinea-Bissau

### **Certification of Ships' Cooks Convention, 1946 (No. 69) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 4 of the Convention. Certificates of qualification.* The Committee notes that there is no naval school in the country, and that, therefore, the certificates of qualification are for internal use only. **The Committee hopes that the state services and national institutions will soon be operating normally again, and that the necessary legislation and practical measures to implement the Convention will be put in place. The Committee requests the Government to keep the Office informed about any progress made in this respect.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Ireland

### **Repatriation of Seamen Convention, 1926 (No. 23) (ratification: 1930)**

*Article 3 of the Convention. Seafarers' entitlement to repatriation.* For the last 50 years, the Committee has been commenting on the need to revise section 32 of the Merchant Shipping Act 1906 in order to extend the right to repatriation to those seafarers who are currently excluded from its coverage. To date, despite numerous reassurances that the necessary amendments would be carried out, no concrete progress has been made.

In its latest report, the Government states that in anticipation of the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), the Merchant Shipping Act 1906 would be amended accordingly. Recalling the fact that the Government has been indicating its intention to amend this Act since 1985, the Committee highlights the fact that

compliance with the Convention will facilitate future compliance with the MLC, 2006. *The Committee therefore urges the Government to take steps to ensure that the existing national legislation and practice is brought into full conformity with the requirements of the Convention and again encourages the Government to ratify the MLC, 2006, and to provide information to the Office on any decisions taken in this regard.*

## Italy

### **Accommodation of Crews Convention (Revised), 1949 (No. 92)** (ratification: 1981)

*Article 3(1) and Part III of the Convention. Crew accommodation requirements.* The Committee has been commenting since the ratification of the Convention in 1981 on the Government's failure to adopt laws or regulations giving effect to all of the detailed requirements of the Convention. In its reports submitted over the past 20 years, the Government has been announcing its intention to draft new legislation, while since 1997 it has been indicating that it is in the process of revising Act No. 1045 of 16 June 1939 on hygiene and living conditions of crews on board national merchant vessels. Moreover, following the adoption of Legislative Decree No. 271 of 27 July 1999 on adaptation of standards on the safety and health of seafarers on board national merchant and fishing vessels, the Government initiated a process of consultations for the preparation of implementing regulations which, according to section 34, were to be issued within 90 days of the entry into force of the Legislative Decree. In its latest report, the Government makes reference to Legislative Decree No. 81 of 2008 which has extended to 24 months the period for issuing the relevant regulations. The Government states that these regulations are currently under preparation.

Under the circumstances, the Committee notes with *regret* that despite numerous reassurances, no concrete progress has been made, and as a result, the Convention is still implemented through Act No. 1045/1939, which contains manifestly obsolete provisions and no longer corresponds to modern crew accommodation standards. By way of example, the Committee refers to section 36 of Act No. 1045/1939, presumably implementing *Article 16* of the Convention, which provides that where coloured persons form part of the crew, they must have special accommodation, washing and sanitary arrangements or facilities separate from those of other personnel, in order to enable them to observe their own habits and customs, and also that coloured personnel must be able to cook their own food according to their own habits and customs. The Committee considers that this provision clearly illustrates the need for bringing the national legislation up to date and that discriminatory provisions must be repealed. *Therefore, the Committee once again urges the Government to take all necessary measures without further delay in order to finalize and adopt the regulations implementing Legislative Decree No. 271/1999 which would also entail the abrogation of Act No. 1045/1939. The Committee requests the Government to transmit a copy of the new regulations as soon as they are adopted.*

Finally, the Committee recalls that most of the crew accommodation standards of Conventions Nos 92 and 133 have been incorporated in Regulation 3.1 and the corresponding Code of the Maritime Labour Convention, 2006 (MLC, 2006), and therefore ensuring compliance will facilitate compliance with the respective provisions of the MLC, 2006. *Noting that the Government has committed to examining the possibility of ratifying the MLC, 2006, especially in light of the 2007 EU Council Decision authorizing Member States to ratify the MLC, 2006, the Committee requests the Government to keep the Office informed of any decision taken with respect to the ratification of the MLC, 2006.*

### **Accommodation of Crews (Supplementary Provisions) Convention, 1970** (No. 133) (ratification: 1981)

*Article 3 and Part II of the Convention. Crew accommodation requirements.* *The Committee requests the Government to refer to the comments made under the Accommodation of Crews Convention (Revised), 1949 (No. 92).*

## Luxembourg

### **Food and Catering (Ships' Crews) Convention, 1946 (No. 68)** (ratification: 1991)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2(a) and (b) of the Convention. Inspection.* *The Committee once again requests the Government to adopt the legislative texts that will give effect to the provisions of the Convention or to indicate the collective agreements that address the following points: preparation and application of regulations concerning food and water supplies; catering; construction; location; ventilation; heating; lighting; water systems and equipment of galleys; storerooms and refrigerated chambers; or for the storage, handling and preparation of food.*

*Article 7. Inspection at sea.* *The Committee once again requests the Government to adopt and indicate the texts giving effect to the obligation to provide for inspection at sea.*

*Article 9(1). Powers of inspectors.* The Committee notes that the legislation in force makes no provision for inspectors to be given authority to make recommendations with a view to the improvement of the standard of catering. *The Committee once again requests the Government to indicate the measures taken to bring the legislation into conformity with the Convention in this regard.*

*Article 12. Information. The Government is once again requested to provide information on the measures taken to give effect to this Article.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Mauritius

### **Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1969)**

*Article 2 of the Convention. Seafarers' identity documents.* The Committee notes the adoption of the new Merchant Shipping Act, No. 26 of 2007. It notes, however, that contrary to the Government's earlier statements that the new Merchant Shipping Act would give full effect to the provisions of the Convention and that the Passport and Immigration Office would be the issuing authority of the seafarers' identity documents, the new legislation section 228(1)(c) merely provides for regulations that the Minister may make as he thinks fit "for giving effect to any international Convention to which Mauritius is a party". In addition, the Committee notes the Government's indication that the technical committee set up to look into putting into effect the use of the seafarers' identity document is still considering the issue in view of the complexity of certain security features required for the operationalization of such a document. The Government further states that the State Law Office is awaiting the completion of the work of the technical committee before finalizing the regulations to give full effect to the provisions of the Convention. Under the circumstances, the Government concludes that the basic requirements of the Convention are still not implemented in either law or practice. Recalling that the Committee has been expressing its concern since 2001 about the discontinuation of the issuance of seafarers' identity documents, the Committee hopes that the Government will take all appropriate measures to ensure compliance with the requirements of the Convention. ***The Committee requests the Government to keep the Office informed of any progress made by the technical committee established in 2005 for preparing the new regulations on seafarers' identity documents and to transmit a copy of these regulations as soon as they are finalized.***

Finally, the Committee takes this opportunity, particularly in view of the Government's concerns with respect to security features, to recall that Convention No. 108 has been revised by the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). To enhance port and border security, Convention No. 185 aims to develop a more secure and globally uniform seafarers' identity document. The Convention, which was adopted by the ILO to complement action being taken within the framework of the International Maritime Organization (IMO) through the adoption of the International Ship and Port-facility Security Code (ISPS), sets out basic parameters regarding the content and form of the documents, and provides technical guidance in the annexes in order to ensure that member States may easily adapt their systems while taking national circumstances into account. ***The Committee therefore invites the Government, while considering new legislation to give effect to Convention No. 108, to also examine the possibility of ratifying Convention No. 185 in the near future and to keep the Office informed of any decisions taken in this respect.***

## Mexico

### **Seamen's Articles of Agreement Convention, 1926 (No. 22) (ratification: 1934)**

*Article 3(1) and (4) of the Convention. Conditions and safeguards for the signature of the agreement.* The Committee understands that national law does not contain any provisions seeking to ensure that seafarers are given an opportunity to examine and seek advice on the agreement before signing and that they enter into an agreement with a sufficient understanding of their rights and responsibilities. ***The Committee accordingly asks the Government to take the necessary measures to ensure that national law gives full effect to the requirements of this Article of the Convention.***

*Article 6(10). Contract details.* The Committee notes that section 195 of the Federal Labour Act does not include the conditions for the termination of the agreement, whether made for a definite period, for a voyage or for an indefinite period, among the particulars that need to be included in the agreement. ***The Committee asks the Government to take appropriate action to ensure conformity with the Convention in this regard.***

*Article 7. Crew list.* The Committee understands that there are no provisions in national legislation that require seafarers' articles of agreement to be either recorded in or annexed to the crew list. ***The Committee asks the Government to take the necessary measures to give effect to this Article of the Convention.***

*Article 8. Information on conditions of employment available on board.* The Committee understands that national law does not provide for measures enabling clear information to be obtained on board as to the conditions of employment, for instance by posting the conditions of the agreement in a place easily accessible. ***The Committee accordingly asks the Government to take the necessary measures in order to implement the requirements of this Article of the Convention in law and practice.***

*Article 9(1). Termination of agreement.* For a considerable number of years, the Committee has been asking the Government to amend section 209 III of the Federal Labour Act, to ensure that the agreement may be terminated at any time by either party provided that due notice is given. ***In the absence of any progress in this respect, the Committee is***

**obliged once more to urge the Government to take all necessary measures in order to bring the national legislation into conformity with this Article of the Convention.**

*Article 13(1). Termination of agreement by the seafarer in the event of promotion.* The Committee understands that there are no provisions in national legislation permitting seafarers to claim their discharge, in the event of promotion or other circumstances that render it essential for their interests, on condition that they furnish a competent and reliable replacement. **The Committee requests the Government to take the necessary measures to give effect to this Article of the Convention.**

*Article 14(1). Discharge.* The Committee has been drawing the Government's attention to the fact that the seafarer's document issued in accordance with *Article 5* of the Convention, provided no space to enter the discharge of the seafarer and the duties they performed on board. In its latest report, the Government indicates that it is currently working on a new model maritime book (*libreta de mar*) that will include a space to enter the discharge of the seafarer and the duties performed on-board. **The Committee requests the Government to keep the Office informed of any developments in this regard and to transmit a sample copy of the new maritime book once it has been prepared.**

Finally, the Committee takes this opportunity to recall that the Maritime Labour Convention, 2006 (MLC, 2006), contains in Regulation 2.1, Standard A2.1 and Guideline B2.1 up-to-date and more detailed requirements on seafarer's employment agreements that revise existing standards set out in Convention No. 22. **The Committee invites the Government to consider the possibility of ratifying the MLC, 2006, in the very near future and to keep the Office informed of any decision taken in this respect.**

### **Repatriation of Seafarers Convention (Revised), 1987 (No. 166) (ratification: 1990)**

*Article 2(1)(c) of the Convention. Repatriation in the event of illness, injury or other medical condition.* The Committee notes that, under section 204(VII) of the Federal Labour Act, the employer has the obligation, in the event of a seafarer's illness, to provide for food, accommodation and medical treatment but this does not include repatriation within the meaning of this Article of the Convention. **The Committee requests the Government to indicate specific provisions of national laws, regulations or collective agreements establishing the shipowner's duty to repatriate a seafarer in the event of illness or injury or other medical condition which requires his/her repatriation when found medically fit to travel.**

*Article 2(1)(e). Repatriation in the event of inability for the shipowner to fulfil legal or contractual obligations.* **While noting that under section 209(VI) of the Federal Labour Act, in case of change of registration of the ship, the shipowner has to proceed to the repatriation of the seafarers, the Committee asks the Government to indicate the provisions ensuring the seafarer's right to repatriation in case of bankruptcy or sale of the ship.**

*Article 2(1)(f). Ship bound for war zone.* **The Committee requests the Government to specify any provisions in national laws, regulations or collective agreements guaranteeing the seafarer's right to repatriation in the event of a ship being bound for a war zone, to which the seafarer does not consent to go.**

*Article 2(1)(g). Termination or interruption of employment in accordance with an industrial award or collective agreement.* The Committee understands that the national legislation makes no specific provision for the seafarer's right to repatriation in the event of termination or interruption of employment in accordance with an industrial award or collective agreement. **The Committee requests the Government to supply information on the measures adopted or envisaged to bring national law and practice into conformity with this provision of the Convention.**

*Article 2(2). Maximum duration of service.* **Further to its previous comment, the Committee requests the Government to indicate the maximum duration of service periods on board, following which a seafarer is entitled to repatriation, as may be prescribed by national laws, regulations or collective agreements.**

*Article 3(2). Destinations of repatriation.* The Committee has been drawing the Government's attention to the fact that under the terms of the Convention the seafarers must be able to choose from among several destinations, namely the place at which they agreed to enter into the engagement, the place stipulated by an applicable collective agreement, their country of residence or such other place as may be mutually agreed at the time of the engagement. **In the absence of any legislative or regulatory provisions implementing this requirement of the Convention, the Committee again requests the Government to take all necessary measures to bring national law and practice into conformity with the Convention in this regard.**

*Articles 4 and 5. Responsibility of the shipowner to arrange for repatriation.* The Committee recalls its previous comments in which it noted: (i) that the shipowner's obligation to arrange for repatriation was limited to cases of termination of employment attributable to him/her; (ii) the absence of legal provisions requiring the competent authority to meet the cost of repatriation if the shipowner fails to discharge his/her responsibilities; (iii) that no provision is made for air transport as being the appropriate and expeditious means of repatriation of seafarers (the few provisions in collective agreements to which the Government refers in its report apply in very limited cases, e.g. repatriation following shipwreck); and (iv) that the expenses of repatriation to be borne by the shipowner are not detailed to include travel cost but also accommodation, food and pay. **The Committee therefore once again requests the Government to take prompt action to ensure that full effect is given to Articles 4 and 5 of the Convention.**

*Article 6. Passport and other identity documents. In the absence of any indication in the Government's reports on this point, the Committee requests the Government to specify how it is ensured that seafarers who are to be repatriated are able to obtain their passport and other identity documents for the purposes of repatriation.*

*Article 7. Paid leave. The Committee understands that national legislation and regulations do not contain any specific provisions guaranteeing that time spent awaiting repatriation and repatriation travel time are not deducted from paid leave accrued by the seafarer. Therefore, the Committee is obliged to reiterate its request for all necessary measures to be taken in order to give full effect to this Article of the Convention.*

*Article 12. Availability of Convention text in appropriate language. With a view to allowing seafarers to know their rights, the Convention requires that the text of the Convention be available in an appropriate language on board. The Committee requests the Government to indicate how it is given effect to this requirement of the Convention in law and practice.*

Finally, the Committee takes this opportunity to recall that the main provisions of Convention No. 166 have been incorporated in Regulation 2.5, Standard A2.5 and Guideline B2.5 of the Maritime Labour Convention, 2006 (MLC, 2006) and therefore ensuring compliance with Convention No. 166 would facilitate the implementation of the corresponding requirements of the MLC, 2006, once ratified and entered into force. **The Committee therefore invites the Government to consider the possibility of ratifying the MLC, 2006, in the very near future and to keep the Office informed of any decisions taken in this respect.**

## Netherlands

### **Seamen's Articles of Agreement Convention, 1926 (No. 22)** (ratification: 1937)

*Articles 2(b) and 3(1) of the Convention. Signature of articles of agreement both by shipowner and seafarer. The Committee notes the comments made by the Netherlands Trade Union Confederation (FNV), dated 30 August 2010, on the application of the Convention. The FNV contends that at the time of ratification, the Convention was fully implemented in Dutch legislation, but that currently the Convention was being seriously violated, because many seafarers do not have a labour contract with the shipowner. These seafarers are employed by an employment agency in the Netherlands or a crewing agency outside the country, work without an agreement signed by the shipowner or the shipowner's representative, and as a consequence do not enjoy the protection of the Convention. The FNV also indicates that the Government has not been supervising the implementation of the Convention and adds that the FNV's Seamen's Union (FWZ) has repeatedly addressed the Government which has remained passive. Finally, the FNV makes reference – as a solution to the problem – to the agreement between the social partners on *ander werkgeverschap*, i.e. other employment relations, according to which the shipowner will also be held accountable in case no direct employment relation exists between the shipowner and the seafarer. **Recalling that the requirement for an employment agreement signed both by the seafarer and the shipowner has been incorporated in Standard A2.1(1)(a) of the Maritime Labour Convention, 2006, the Committee asks the Government to transmit any comments it may wish to make in reply to the observations of the FNV and also provide explanations on the social partners' agreement on other employment relations referred to by the FNV.***

## New Zealand

### **Seamen's Articles of Agreement Convention, 1926 (No. 22)** (ratification: 1938)

*Articles 3–12 of the Convention. Articles of agreement. The Committee has been commenting on the absence of specific legislation to implement the Convention and the reliance on texts of a general scope, such as the Employment Relations Act or certain provisions of the Maritime Transport Act which apply exclusively on ships engaged on overseas voyages. The Committee has been highlighting that the Convention calls for legislation adapted to the specificity and complexity of maritime employment. The Government's position remains that general employment legislation covers all employees and provides adequate protection of seafarers' interests. The Committee therefore notes that the discrepancies between national legislation and the requirements of the Convention have not been addressed. These discrepancies relate among others to the application of the Convention to all seagoing vessels (*Article 1*); the conditions under which an agreement is concluded (*Article 3*); the obligation to issue an employment record (*Article 5*); the particulars to be contained in an agreement in the case of domestic voyages (*Article 6*); the period of notice for termination (*Article 9*); and the determination of circumstances for immediate discharge (*Articles 11 and 12*). **The Committee accordingly requests the Government to make every effort to bring the national legislation into full conformity with the specific requirements of the Convention.***

Moreover, while noting the persistent gaps in the implementation of the Convention, the Committee recalls that Convention No. 22, as well as 67 other international maritime labour instruments, are revised by the Maritime Labour Convention, 2006 (MLC, 2006). Most of the provisions of this Convention have been incorporated without significant

changes in Regulation 2.1, Standard A2.1 and Guideline B2.1 of the MLC, 2006. *The Committee, therefore, invites the Government to take measures to ensure compliance with the provisions of Convention No. 22, in a manner that would also facilitate the implementation of corresponding requirements of the MLC, 2006, once ratified and entered into force.*

## Nigeria

### **Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)** (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

*Article 2 of the Convention. Investigation into occupational accidents.* In its previous comments, the Committee requested the Government to supply copies of relevant extracts of reports of inquiry into occupational accidents, as well as samples of statistics compiled in conformity with the provisions of this Article, drawing the attention of the Government to the obligation of the competent authority to ensure that, in accordance with *Article 2(1) and (2)* of the Convention, all occupational accidents are adequately reported, that comprehensive statistics shall not be limited to fatalities or to accidents involving the ship, and that statistics of accidents are kept and analysed. Taking into account the Government's indication that accidents on board ships had been reported only when the ship sustained structural damage or when there had been loss of life or serious injury, the Committee earlier expressed the hope that records of minor accidents kept by private and government shipping companies would be integrated into reporting procedures and statistics. The Committee notes that no such information has been provided by the Government. *It asks the Government to indicate measures taken to give effect to this Article and to supply copies or relevant extracts of reports of inquiry into occupational accidents, as well as samples of statistics compiled in accordance with the provisions of the Convention.*

*Article 3. Research.* In its previous comments, the Committee, taking into consideration the Government's indication that the necessary measures would be undertaken for research to be conducted into the causes and prevention of accidents aboard Nigerian ships, expressed the hope that such research would be carried out and that the Government would provide detailed information on progress made in this respect. *Since no information has been supplied on this subject in the Government's latest report, the Committee, once again, asks the Government to supply such information on any research undertaken into general trends and hazards revealed by statistics, in order to provide a sound basis for the prevention of accidents which are due to particular hazards specific to maritime work.*

*Articles 4 and 5. Occupational accident prevention.* In its previous comments, the Committee requested the Government to supply information concerning provisions adopted or contemplated in order to prevent occupational accidents and covering the specific field of stage and mooring ropes (*Article 4(3)(h)*) as well as the various matters listed in *Article 4(3)(a), (b), (c), (d) and (i)*. The Committee notes the Government's indication in its latest report that the Merchant Shipping (Life-saving Appliances) Rules 1967 provide for occupational accident prevention standards and deal extensively with *Article 4* of the Convention. *The Committee requests the Government to supply details of provisions related to the prevention of occupational accidents of seafarers which are required by virtue of the abovementioned subparagraphs of Article 4 and to specific obligations of shipowners and seafarers in this respect under Article 5.*

*Article 7. Accident prevention committees.* The Committee asked the Government to supply a copy of a statutory instrument establishing the responsibility of national surveyors and engineers, who are crew members, to conduct inspections on board ships, and the duties of a safety or accident committee on board, chaired by the Master, with the Chief Engineer, the Chief Officer, the Second Engineer and the Radio Officer as members. *Since such an instrument has not been furnished with the Government's latest report, the Committee again requests the Government to supply a copy of any provisions which have been made to give effect to this Article.*

*Articles 8 and 9. Programmes and instructions in accident prevention.* In previous comments, the Committee asked the Government to provide details concerning the tripartite establishment and implementation of programmes for the prevention of occupational accidents (*Article 8*) and the inclusion of instruction in accident prevention and health protection in employment in the curricula of vocational training institutions for all categories and grades of seafarers (*Article 9(1)*). *Since such information has not been supplied with the Government's latest report, the Committee again requests the Government to provide information on: (i) programmes which have been undertaken for the prevention of occupational accidents, indicating the manner in which the cooperation and participation of shipowners, seafarers, and their organizations are assured; and (ii) measures ensuring the inclusion, as part of the instruction in professional duties of all categories and grades of seafarers, of instruction in the prevention of accidents and in the protection of health in employment.*

Moreover, the Committee understands that a new Merchant Shipping Act 2007 was adopted. *The Committee requests the Government to indicate whether this Merchant Shipping Act repeals any relevant provisions of the Merchant Shipping (Life-saving Appliances) Rules 1967, and to identify any new provisions which give effect to the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Norway

### **Seamen's Articles of Agreement Convention, 1926 (No. 22)** (ratification: 1940)

The Committee notes with *interest* that on 10 February 2009, Norway ratified the Maritime Labour Convention, 2006 (MLC, 2006). The entry into force for Norway of the MLC, 2006, will result in the denunciation of, inter alia, the present Convention. Pending the entry into force of the MLC, 2006, however, the Committee will continue to examine the

conformity of national legislation with the relevant requirements of the present Convention. Recalling that the provisions of the Convention have been incorporated in Regulation 2.1 and the corresponding Code of the MLC, 2006, and that therefore compliance with this Convention would facilitate the implementation of the respective provisions of the MLC, 2006, the Committee draws the Government's attention to the following points.

*Article 2(b) of the Convention. Scope of application, definition of "seaman".* The Committee has been commenting for more than 20 years on the exclusion of seafarers, who are neither residents in Norway nor Norwegian nationals, are hired from a foreign employer and serve passengers on cruise ships, from the protective coverage of the legislation applying the Convention. In its latest report, the Government states that section 3 of the Seamen's Act has been amended to ensure that, when the MLC, 2006, enters into force, all seafarers will be entitled to the rights embodied in that Convention. The Government further indicates that, in the meantime, the provision referred to by the Committee in its observation has no practical effect since there are no vessels on Norwegian registers to which it would have applied. However, the Committee notes that section 1(2) of the Seamen's Act, as last amended in 2008, still provides for the exemption of the seafarers in question from its provisions concerning articles of agreement. **Recalling the unequivocal requirement for any person who is employed or engaged or works in any capacity on board a ship to have a seafarer's employment agreement, as provided for in Standard A2.1(1)(a) of the MLC, 2006, read in conjunction with Article II(1)(f), the Committee hopes that the Government will take the necessary measures to bring the national legislation into conformity with the requirements of the Convention.**

## Panama

### **Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16) (ratification: 1970)**

*Article 3 of the Convention. Interval for renewal of medical examination.* Further to its previous comments, the Committee notes with **satisfaction** the adoption of Resolution ADM No. 054-2007 of 26 February 2007, under section 5 of which the period of validity of the medical certificate for seafarers under 18 years of age is now one year. This new provision not only brings the national legislation into line with the Convention, but also gives effect to Standard A1.2(7) of the Maritime Labour Convention, 2006 (MLC, 2006), ratified by Panama, which revises many Conventions applying to seafarers, including Convention No. 16, and contains provisions similar to those of Convention No. 16 as regards minimum age and compulsory medical certificates for seafarers.

## Poland

### **Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1993)**

*Articles 2(2), 3 and 5(2) of the Convention. Issuance of seafarers' identity documents, continuous possession and admission to territory.* For the last 13 years, the Committee has been raising a number of points concerning the conformity of certain provisions of Act No. 258 of 1991 on employment on seagoing merchant vessels with the requirements of the Convention. More concretely, the Committee has been requesting the amendment of certain provisions concerning the refusal to issue seafarers' identity documents and the adoption of supplementary provisions ensuring that seafarers' identity documents remain in seafarers' possession at all times and guaranteeing the right of foreign seafarers to return to Poland on expired Polish seafarers' identity documents.

To date, no concrete measures have been taken with a view to ensuring full compliance with the Convention on these points. The Government has been stating that Act No. 258 of 1991 would be revised taking into consideration both the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the comments of the Committee. In its latest report, the Government indicates that a draft law amending Act No. 258 is currently at the stage of inter-ministerial consultations. **Welcoming the Government's intention to align national legislation with the provisions of Convention No. 185, which aims to enhance port and border security by developing a more secure and globally uniform seafarers' identity document, the Committee asks the Government to keep the Office informed of any developments concerning the finalization of the new legislation on work on board seagoing merchant vessels and to transmit a copy as soon as it has been adopted. The Committee also invites the Government to consider the possibility of ratifying Convention No. 185 in the very near future and to keep the Office informed of any decisions taken in this respect.**

## Russian Federation

### **Recruitment and Placement of Seafarers Convention, 1996 (No. 179) (ratification: 2001)**

*Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the Constitution of the ILO).* The Committee notes the adoption by the Governing Body at its 308th Session in June 2010 (GB.308/6/1) of the report of the tripartite committee set up to consider the representation made by the Federation of Maritime Transport Trade Unions (FPRMT) under article 24 of the ILO Constitution alleging non-observance by the Russian Federation of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). The Committee recalls

that according to the conclusions of the tripartite committee, the Government should review the Regulations considering the licensing of activities in connection with the placement of Russian citizens in employment outside the Russian Federation (hereinafter referred to as Regulations), take the necessary measures to implement the Regulations, and hold bona fide consultations on the issue with the shipowners' and seafarers' organizations concerned. Following the recommendations of the tripartite committee, the Governing Body invited the Government to take, in consultation with the social partners, effective measures through regulations or otherwise, to ensure full compliance with specific provisions of the Convention and to submit a report to the present session of the Committee of Experts indicating any progress made in this respect.

In its report, the Government refers to the adoption of Government Decree No. 1009 of 24 December 2008, which designated the Ministry of Health and Social Development as the competent authority for recruitment and placement of seafarers on Russian-registered vessels, and Presidential Decree No. 933 of 11 August 2009 which designated the Federal Migration Service as the competent authority for the recruitment and placement of seafarers on foreign-flagged vessels. In addition, the Government indicates that by Decree No. 129, the Ministry of Health and Social Development set up a working group to prepare laws for the implementation of the Convention with the participation of representatives of the Federal Employment Service, the Ministry of Transport, the Federal Migration Service, and seafarers' and shipowners' organizations. To date, the working group has adopted two texts: Ordinance No. 939 of 2 December 2009 approving the model seafarer's employment contract, and Ordinance No. 962 of 8 December 2009 approving the procedure for the registration of employment contracts concluded through the intermediary of recruitment and placement services. Moreover, the Government reports that with a view to fully implementing the requirements of the Convention, Decree No. 322 of 11 May 2010 was adopted amending the Regulations. While noting the concrete steps taken for the review and improvement of the regulatory framework governing the operation of recruitment and placement services, the Committee wishes to draw the Government's attention to the following points.

*Article 4(1)(a) of the Convention. Prohibition of fee charging.* The Committee recalls that according to the conclusions of the tripartite committee set up to examine the representation made by the FPRMT, the Government had not fulfilled its obligations under *Article 4(1)(a)* of the Convention. The Committee notes with *interest* that following the adoption of Decree No. 322 of 11 May 2010 amending the Regulations, express reference is now made to the free of charge nature of services provided in the case of placement of seafarers abroad. In this respect, the Committee wishes to recall that the same requirement has been incorporated in Standard A1.4(5)(b) of the Maritime Labour Convention, 2006 (MLC, 2006).

*Article 4(2)(a), (b). Close supervision of private recruitment agencies – system of licensing.* The Committee recalls that according to the conclusions of the tripartite committee set up to examine the representation made by the FPRMT, the Government had not fulfilled its obligations under *Article 4(2)(a), (b)* of the Convention as supervision of recruitment and placement services by the competent authority was found to be lacking. In this respect, the Government refers to sections 7 and 8 of the Regulations, as amended, which set out the documents that need to be submitted when applying for a licence and the verification by the licensing authority of the exactitude of the submitted information. The Government also refers to Ordinance No. 168 of 11 June 2010 on the establishment and maintenance of a Unified Registry of employment contracts concluded through the intermediary of recruitment and placement services. In addition, the Government reports that following the adoption of Decree No. 322 of 11 May 2010 amending the Regulations, keeping a registry book of all seafarers placed abroad has been inserted as a precondition for obtaining a licence. Finally, the Government indicates that at present 507 recruitment agencies hold licenses to place Russian citizens abroad, of which 255 are active at placing seafarers to foreign-flagged vessels. These agencies have placed 56,320 persons in 2008, 52,711 in 2009 and 26,719 in 2010.

*Article 4(2)(c). Qualification of management and staff of recruitment and placement services.* The Committee notes with *interest* that following the adoption of Decree No. 322 of 11 May 2010 amending the Regulations, managers and staff of recruitment and placement services are required to have professional experience from one to three years in the field of seafarers' placement abroad while the managers should also have work experience of at least five years on a ship as part of command staff.

*Article 4(2)(d). Prohibition of blacklisting or similar practices.* The Committee recalls that according to the conclusions of the tripartite committee set up to examine the representation made by the FPRMT, the Government had not fulfilled its obligations under *Article 4(2)(d)* of the Convention as the Regulations did not contain any provision prohibiting blacklisting. The Committee notes that the Government's report is silent on this point and therefore the Committee understands that no specific legislative action has been taken with a view to prohibiting recruitment and placement services from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment. ***Recalling that the same requirement has been incorporated in Standard A1.4(5)(a) of the MLC, 2006, the Committee asks the Government to take appropriate action in order to give full effect to this provision of the Convention.***

*Article 4(2)(f). System of protection.* The Committee recalls that according to the conclusions of the tripartite committee set up to examine the representation made by the FPRMT, the Government had not fulfilled its obligations under *Article 4(2)(f)* of the Convention as no arrangements were put in place to compensate seafarers for any possible failure of the recruitment agency to meet its obligations. The Committee notes the Government's general reference to the



possibility of seeking redress through ordinary judicial means, but recalls that the Convention calls for a system of protection, such as a compulsory insurance scheme, offering greater certainty of payment. **Recalling that the same requirement has been incorporated in Standard A1.4(5)(c)(vi) of the MLC, 2006, the Committee asks the Government to take appropriate action in order to give full effect to this provision of the Convention.**

*Article 5(2)(a), (b). Verification of contracts and seafarers' qualifications.* The Committee notes with **interest** that following the adoption of Decree No. 322 of 11 May 2010 amending the Regulations, two new preconditions for obtaining a licence have been introduced: first, the recruitment and placement agency must ensure the conformity of the employment contract with the legislation and applicable collective agreements of the country whose flag the ship flies, and secondly, it must also ensure that recruited seafarers hold the necessary documents confirming their professional qualifications, thus giving effect to the requirements of *Article 5(2)(a), (b)* of the Convention. In this respect, the Committee wishes to highlight that the same requirements have been incorporated in Standard A1.4(5)(c)(iii) of the MLC, 2006.

*Article 6(1). Investigation of complaints.* The Committee recalls that according to the conclusions of the tripartite committee set up to examine the representation made by the FPRMT, the Government had not fulfilled its obligations under *Article 6* of the Convention as no special machinery or procedures seemed to exist for the investigation of complaints. The Government refers, in this respect, to civil court procedures as being available for the investigation of complaints and resolution of possible disputes. The Committee notes, however, that according to its sections 8 and 17, the Civil Code is only applicable to Russian citizens. **The Committee therefore asks the Government to indicate how it is ensured that all complaints concerning the activities of recruitment and placement services are investigated, involving, as appropriate, representatives of shipowners and seafarers. It further asks the Government to indicate how it is ensured that where complaints concerning working and living conditions on board ships are brought to the attention of recruitment and placement services, these complaints are forwarded by the services in question to the appropriate authority.** In this respect, the Committee wishes to point out that the same provisions have been incorporated in Standard A1.4(5)(c)(v), (7) of the MLC, 2006.

## Saint Vincent and the Grenadines

### **Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16) (ratification: 1998)**

The Committee notes with **interest** that, on 9 November 2010, Saint Vincent and the Grenadines ratified the Maritime Labour Convention, 2006 (MLC, 2006). The entry into force for Saint Vincent and the Grenadines of the MLC, 2006, will result in the denunciation of, inter alia, the present Convention. Pending the entry into force of the MLC, 2006, however, the Committee will continue to examine the conformity of national legislation with the relevant requirements of the present Convention. Recalling that the provisions of the Convention have been incorporated in Regulation 1.2 and Standard A1.2 of the MLC, 2006, and that therefore compliance with Convention No. 16 will facilitate the implementation of the respective provisions of the MLC, 2006, the Committee draws the Government's attention to the following points.

*Articles 2 and 3 of the Convention. Pre-employment and periodic medical examinations.* The Committee recalls its previous comments in which it drew the Government's attention to the fact that the Convention makes the employment at sea of any young person under 18 years of age conditional on the production of a medical certificate attesting fitness for work. The Committee notes, in this respect, that although section 10(1) of the Merchant Shipping (Standards of Training, Certification and Watchkeeping for Seafarers) (No. 2) Regulations, 2001 provides for a medical certificate, section 10(7) of the same Regulations fixes the validity of such certificate, irrespective of the seafarer's age, to two years, which is inconsistent with the requirement of *Article 3* of the Convention. **The Committee therefore asks the Government to bring national law and practice in full conformity with Article 3 of the Convention, and to keep the Office informed of any progress made in this regard.**

In addition, the Committee notes that the Government is still not in a position to provide full information on the number of young persons employed on vessels registered in Saint Vincent and the Grenadines or on any periodic medical examinations carried out. **While noting that the Maritime Administration Office is taking concrete steps to build its organizational capacity, and that the investigative mechanisms of the Maritime Administration Office are still not in place, the Committee hopes that the Government will take the necessary steps to permit the Maritime Administration Office to effectively carry out its functions in the very near future.**

## Spain

### **Accommodation of Crews Convention (Revised), 1949 (No. 92) (ratification: 1971)**

The Committee notes with **interest** that on 4 February 2010 Spain ratified the Maritime Labour Convention, 2006 (MLC, 2006). The entry into force for Spain of the MLC, 2006, will result in the automatic denunciation of, inter alia, the

present Convention. Pending the entry into force of the MLC, 2006, however, the Committee will continue to examine the conformity of national legislation with the relevant requirements of the present Convention.

*Article 3 of the Convention. Implementing legislation.* Further to its previous observation, the Committee recalls that the Convention calls for the adoption of laws or regulations which ensure the application of the provisions of *Parts II (Planning and Control of Crew Accommodation), III (Crew Accommodation Requirements) and IV (Application of Convention to Existing Ships)* and also for the establishment of a system of inspection adequate to effectively enforce these laws and regulations. The Committee also recalls that the obligation to adopt laws and regulations requiring that flag State ships meet minimum standards and are inspected to ensure initial and ongoing compliance with those standards has been incorporated in Standard A3.1 of the MLC, 2006.

The Committee notes the information included in the Government's report concerning new legislation adopted since June 2005 but observes that reference is made to enactments that are only applicable to fishing vessels. In addition, the Committee notes that the Government refers to Royal Decree 1837/2000 of 10 November 2000 on ship inspection that is no longer in force, following the adoption of Royal Decree 91/2003 of 24 January 2003 on inspection of foreign vessels in Spanish ports. Moreover, the Committee notes that the national legislation that previously gave effect to the Convention is either no longer in force or no longer contains provisions relevant to the application of the Convention, including the Labour Ordinance for the Merchant Marine of 20 May 1969, which was replaced by the arbitral award of 15 December 2004; the Regulation on Inspection of Ships and Merchant Vessels which was amended by Resolution of the Ministry of Transport of 7 May 1979 and by Royal Decree 1887/2000 of 10 November 2000; Royal Decree 91/2003 of 24 January 2003 which was amended by Royal Decree 1249/2003 of 3 October 2003; and Royal Decree 2122/1971 of 23 July 1971 which was amended by Royal Decree 138/2000 of 4 February 2000.

In view of the succinct character of Government's reports over the past years, and frequent legislative changes in the area of maritime legislation, the Committee notes that no indication has been given with respect to laws or regulations that give effect to the following requirements of the Convention: *Article 5* (inspection of crew accommodation upon registration, alteration or complaint); *Article 6* (construction, design and materials of crew accommodation spaces); *Articles 7, 8 and 9* (ventilation, heating and lighting of crew spaces); *Article 10* (floor area, occupancy and fittings of crew sleeping rooms); *Article 11* (mess rooms); *Article 12* (recreation facilities); and *Article 13* (sanitary accommodation).

*The Committee once again asks the Government to send a full and detailed report on the application of the Convention, in accordance with the report form approved by the ILO Governing Body, indicating for each provision of the Convention the corresponding provision in the national legislation in force. The Committee also asks the Government to forward copies of all applicable collective agreements, as well as a copy of the Order in application of Royal Decree 543/2007, to which reference was made in the Government's report, once it has been issued.*

Finally, the Committee wishes to draw the Government's attention to the fact that the MLC, 2006, essentially reproduces and further expands on the provisions of Conventions Nos 92 and 133 concerning crew accommodation, and therefore ensuring compliance with the requirements of these Conventions would facilitate the implementation of the respective provisions of the MLC, 2006.

## Sri Lanka

### **Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1995)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 2 and 4 of the Convention. Seafarers' identity documents.* The Committee notes that the continuous discharge certificate issued to seafarers by Sri Lankan authorities fails to give effect to substantial provisions of the Convention. The Committee recalls that all obligations concerning identity documents pursuant to the Convention are applicable, irrespective of the denomination of the document or its other uses. It notes that, 15 years after ratification, the Government has not yet taken the required steps to ensure compliance with this instrument. *The Committee therefore asks the Government to make the necessary efforts to bring national law and practice governing seafarers' identity documents into conformity with the requirements of the Convention.*

*The Committee is raising other points in a request addressed directly to the Government.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Sweden

### **Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) (ratification: 2000)**

*Articles 4 and 5 in conjunction with Article 11 of the Convention. Normal working hours' standard, minimum hours of rest and safe manning of ships.* The Committee notes with **regret** that the Government has not replied to most of the points raised in the previous observation. It is therefore obliged to once again draw the Government's attention to a number of important issues that impact on seafarers' health and well-being and call for specific action on the part of the competent authority. First, the Committee has taken the view that the Convention may not be construed to allow all hours

beyond the minimum hours of rest fixed in *Article 5(1)(b)* of the Convention, to be considered as permissible hours of work. **The Committee accordingly asks the Government to indicate how it is ensured that the minimum hours of rest prescribed by Act No. 958/1998 are applied in a manner that is consistent with the letter and the spirit of the Convention which seeks to protect above all the health and safety of seafarers.**

Secondly, the Committee has expressed its concern about the possible existence of uniform pay agreements under which seafarers would get overtime compensation on the basis of a standard 10- or 11-hour working day irrespective of the number of hours actually worked per day (in some cases, as many as 14 hours in a 24-hour period). **It again asks the Government to explain how it discharges its responsibility under the Convention to ensure that limits on hours of work or rest are scrupulously respected and that seafarers are effectively remunerated for all overtime hours performed, as required by section 7 of Act No. 958/1998.**

Thirdly, the Committee has observed that a two-watch system (six hours on, six hours off) represented a higher risk of fatigue than the three-watch system. In its latest report, the Government states that there are a number of ships with two nautical officers, which might be devastating from a fatigue point of view but no statistics exist to show that these ships are more accident prone. The Government adds that the Swedish Transport Agency has been active in the process of revision of IMO Res.A.890(21)(1999) in order to provide for at least three nautical officers and thus preventing fatigue. **The Committee once more asks the Government to consider measures which would allow the watchkeeping system of a vessel to be fully taken into account when supervising compliance with applicable hours of rest standards.**

*Article 5(3)–(5). Rest in case of drills and in the event of call-outs to work.* The Committee recalls that, in principle, the question of granting compensatory rest in case of call-outs to work or minimizing disturbance of rest periods during drills is left to be regulated through collective agreements. It is only in the absence of such agreements, or if the competent authority determines that any collectively agreed provisions are inadequate, that the Government is expected to regulate these matters. The Committee recalls that the same provisions are now incorporated in Standard A2.3(7)–(9) of the Maritime Labour Convention, 2006 (MLC, 2006). **The Committee therefore again requests the Government to clarify whether there are any collective agreements containing provisions on the matters dealt with in Article 5(3)–(4) of the Convention, and if not, to take all necessary measures to establish such provisions, as required by Article 5(5) of the Convention.**

*Article 7. Suspension of schedule of hours of work or rest.* The Committee notes that the Government's report does not reply to a previous comment regarding the master's right to suspend the hours of rest under section 6 of Act No. 958/1998 in cases that go beyond those provided for in the Convention. **Recalling that suspension of the schedule of the hours of rest are only allowed under the Convention if necessary for the immediate safety of the ship, persons onboard or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea – a provision now incorporated in Standard A2.3(14) of the MLC, 2006 – the Committee once more asks the Government to take appropriate measures to ensure compliance with the Convention in this regard.**

*Article 9. Examination of records at appropriate intervals.* **In the absence of a reply concerning the periodicity of controls of records of seafarers' daily hours of rest, the Committee once again refers to section 5(4), (5) of Chapter 5 of Act No. 364/2003, which do not provide for specific intervals for the examination of records, and asks the Government to specify how effect is given to the requirements of this Article of the Convention.**

In addition, as regards the control of annual hours of work in practice, the Committee notes the Government's indication that it has no system to control the observance of the requirements of hours of rest in the case of a seafarer changing ship or employer. **Recalling that in earlier observations seafarers' unions and the shipowners' association had both questioned the relevance and enforceability of the provision prescribing a maximum of yearly working hours, the Committee is obliged to once more ask the Government: (i) to explain the purpose of this provision as compared to the daily and weekly minimum hours of rest; (ii) to furnish details on methods to effectively verify maximum yearly working hours; and (iii) to provide a general appreciation of the practical application of this provision.**

*Article 12. Minimum age.* The Committee notes the Government's indication that employing any person under 16 years of age for shipboard work is a punishable offence. It also notes that, to date, section 45 of Act No. 282/1973 which authorizes persons under the age of 16 to be employed in ship work, if it is part of training, has not been amended. **Recalling that the Convention establishes an absolute prohibition for persons under 16 years of age to work on board a vessel, and also recalling that the same provision is now incorporated in Standard A1.1(1) of the MLC, 2006, the Committee once again asks the Government to take the necessary measures to bring its legislation on this matter into conformity with the Convention.**

Finally, the Committee takes this opportunity to recall that most of the provisions of Convention No. 180 have been incorporated in Regulations 1.1, 2.3 and 2.7, and Standards A1.1(1) and (2), A2.3 and A2.7 of the MLC, 2006, and therefore ensuring compliance with Convention No. 180 would greatly facilitate compliance with the corresponding requirements of the MLC, 2006. **Noting that the Government has committed to examining the possibility of ratifying the MLC, 2006, especially in light of the 2007 EU Council decision authorizing Member States to ratify it, the Committee requests the Government to keep the Office informed of any developments regarding the process of ratification and effective implementation of the MLC, 2006.**

## United Republic of Tanzania

### Tanganyika

#### **Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1962)**

*Articles 2–6 of the Convention. Seafarers' identity documents.* The Committee recalls that the Government has not so far communicated the text of any laws, regulations or administrative instructions or circulars relating to the issuance of seafarers' identity documents. The Committee also recalls that, in the absence of any relevant legal provisions, it is unclear whether and how the rights of entry (*Article 6*), and readmission (*Article 5*), or the requirement that a seafarer's identity document should remain at all times in the seafarer's possession (*Article 3*), are implemented. In addition, the Committee notes that, since 1994, the Government reports that no consultations have taken place concerning the form and content of the seafarer's identity document and that the issuance of special identity for seafarers might be considered in the course of preparation of the national identity document, while the last specimen copy of a seaman's identity book which has been transmitted to the Office was issued in 1972. Moreover, the Committee notes that the recently adopted Merchant Shipping Act of 2003 and the Merchant Shipping Regulations of 2005 contain provisions on discharge or record books but make no reference to a seafarer's identity document as that required under this Convention. ***The Committee therefore asks the Government to explain in detail the state of law and practice in relation to the issuance of seafarers' identity documents and to provide copies of any relevant legislative or regulatory text implementing the requirements of Articles 3–6 of the Convention, as well as a specimen copy of the seaman's identity book currently in use.***

Finally, the Committee takes the opportunity to recall that the Convention has been revised by the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), which was adopted by the ILO to enhance port and border security, while at the same time protecting the seafarer's right to shore leave, by developing a more secure and globally uniform seafarers' identity document. In fact, Convention No. 185 complements actions taken within the framework of the International Maritime Organization (IMO) through the adoption of the International Ship and Port-facility Security Code (ISPS), sets out basic parameters regarding the content and form of the documents, and provides technical guidance in the annexes in order to ensure that members may easily adapt their systems while taking national circumstances into account. ***While noting the Government's indication that it is taking measures to initiate the process of ratifying Convention No. 185, the Committee requests the Government to keep the Office informed of any further progress made in this regard.***

## United Kingdom

### Bermuda

#### **Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. Scope of application.* With reference to the Committee's previous query regarding the applicability of the new Employment Act 2000 to seafarers, the Government indicates that the Ministry of Labour, Home Affairs and Public Safety has posed the question to the Attorney General's Chambers and is awaiting their legal advice. ***Noting that the Employment Amendment Act of 2006 contains an amendment of the term "employee", the Committee hopes that the Government will soon be able to clarify whether the Employment Act covers seafarers and, if so, how it interacts with the provisions contained in the Merchant Shipping Act 2002 and the regulations issued thereunder.***

*Article 2(a)(i). Safety standards – Medical examination.* In its previous comments, the Committee has requested the Government to ensure substantial equivalence of national legislation with *Article 5(1)* of the Medical Examination (Seafarers) Convention, 1946 (No. 73). The Committee notes with *interest* that legislation is being enacted, which requires that seafarers aged from 18 to 40 years undergo medical examinations every two years, and that the new Merchant Shipping (Medical Examination) Regulations are currently at drafting stage. ***The Committee hopes that the new legislation will enter into force shortly and asks the Government to supply a copy.***

The Committee is also addressing a request concerning certain points directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Bolivarian Republic of Venezuela

#### **Seamen's Articles of Agreement Convention, 1926 (No. 22) (ratification: 1944)**

*Articles 3–14 of the Convention. Articles of agreement.* The Committee recalls that it has been formulating observations for many years on the need to adopt legislative or other provisions giving effect to the various Articles of the Convention. It also recalls that this situation gave rise to a discussion within the Committee on the Application of Standards at the session of the Conference held in 1977 and that the Government has announced on several occasions that

new legislation would be drafted to ensure the full application of the Convention. The Committee notes with *regret* that, to date, despite the adoption of the Navigation Act in 1998 and the Maritime Activities Act in 2002, the Government has still not taken the necessary measures to transpose several basic rules and principles of the Convention into the national legislation.

As explained in detail by the Committee in its previous comments, the Government should take measures as soon as possible to: (i) ensure the conclusion of written articles of agreement signed by both the shipowner and the seafarer (*Article 3(1)* of the Convention); (ii) ensure conditions allowing the seafarer to examine and understand the provisions of the articles of agreement (*Article 3(1) and (4)*); (iii) require that the articles of agreement list the rights and obligations of the two parties and contain essential information such as the seafarer's wages, annual leave and the right to terminate the agreement (*Article 6(2) and (3)*); (iv) allow either party to terminate an agreement for an indefinite period in any port where the vessel loads or unloads, provided that the notice period laid down is given (*Article 9(1)*); (v) determine the circumstances in which seafarers may demand their immediate discharge (*Article 12*); and (vi) ensure that seafarers have the right to obtain from the master a certificate as to the quality of their work or, failing that, a certificate indicating whether they have fully discharged their obligations under the agreement (*Article 14(2)*).

The Committee draws the Government's attention to the fact that most of the provisions of Convention No. 22 have now been incorporated into Regulation 2.1 and the corresponding Code of the Maritime Labour Convention, 2006 (MLC, 2006). Ensuring the implementation of Convention No. 22 will therefore facilitate the application of the provisions of the MLC, 2006, once that Convention has been ratified and has entered into force. ***The Committee therefore urges the Government to take all necessary measures to give full effect to all provisions of the Convention.***

Furthermore, the Committee hopes that the Government will soon be in a position to ratify the MLC, 2006, which revises Convention No. 22 as well as numerous other Conventions applicable to seafarers, establishes an up-to-date and comprehensive framework of standards regulating the living and working conditions of seafarers, particularly concerning the seafarers' employment agreement, and encourages the establishment of conditions of fair competition for shipowners. ***The Committee requests the Government to keep the Office informed of any decisions taken in that regard.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 9** (Argentina, Chile, Djibouti, France: New Caledonia, Latvia, Mexico, Netherlands, Netherlands: Netherlands Antilles, New Zealand, Nicaragua, Panama, Peru, Poland, Romania, Serbia, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Uruguay); **Convention No. 16** (Albania, Azerbaijan, Bangladesh, Brazil, Chile, China, Denmark: Greenland, Djibouti, Dominica, Guinea, Italy, Latvia, Mexico, Montenegro, Nicaragua, Pakistan, Poland, Romania, Serbia, Solomon Islands, Sri Lanka, Tajikistan, United Republic of Tanzania, Ukraine, Yemen); **Convention No. 22** (Bahamas, Barbados, Brazil, Bulgaria, China, China: Macau Special Administrative Region, Colombia, Croatia, Ghana, Ireland, Liberia, Malta, Morocco, Netherlands: Netherlands Antilles, Nicaragua, Pakistan, Panama, Papua New Guinea, Peru, Poland, Portugal, Romania, Serbia, Seychelles, Singapore, Slovenia, Spain, The former Yugoslav Republic of Macedonia, United Kingdom: Isle of Man, United Kingdom: Jersey, Uruguay); **Convention No. 23** (China, China: Macau Special Administrative Region, Croatia, Djibouti, France, Ghana, Netherlands: Netherlands Antilles, Nicaragua, Panama, Peru, Philippines, Poland, Portugal, Serbia, Slovenia, Tajikistan, The former Yugoslav Republic of Macedonia, Tunisia, Ukraine, United Kingdom, United Kingdom: Bermuda, United Kingdom: Isle of Man); **Convention No. 58** (France: New Caledonia, Netherlands: Netherlands Antilles, Peru, Sri Lanka, United Republic of Tanzania: Zanzibar, United States, United States: American Samoa, United States: Guam, United States: Puerto Rico, United States: United States Virgin Islands); **Convention No. 68** (Bulgaria, Egypt, Ireland, Italy, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Spain, Turkey, United Kingdom: Isle of Man); **Convention No. 69** (Azerbaijan, Bulgaria, China: Macau Special Administrative Region, Croatia, France, Ireland, Luxembourg, Montenegro, Netherlands, Netherlands: Netherlands Antilles, New Zealand, Norway, Panama, Peru, Poland, Portugal, Russian Federation, Serbia, Slovenia, Spain, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom: Isle of Man, United Kingdom: Jersey); **Convention No. 73** (Bulgaria, China: Macau Special Administrative Region, Croatia, Djibouti, Guinea-Bissau, Ireland, Republic of Korea, Lithuania, Luxembourg, Montenegro, Netherlands, Norway, Peru, Poland, Portugal, Serbia, Slovenia, Tajikistan, Ukraine, Uruguay); **Convention No. 91** (Angola, Montenegro, Poland, Slovenia); **Convention No. 92** (Brazil, China: Macau Special Administrative Region, Croatia, Ghana, Guinea-Bissau, Liberia, Luxembourg, Republic of Moldova, Montenegro, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Romania, Serbia, Slovenia, Tajikistan, Turkey, United Kingdom, United Kingdom: Isle of Man); **Convention No. 108** (Brazil, Bulgaria, China: Macau Special Administrative Region, Cuba, Czech Republic, Ghana, Guinea-Bissau, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Mexico, Norway, Panama, Portugal, Romania, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Slovenia, Spain, Sri Lanka, Sweden, Tajikistan, Turkey, Ukraine, United Kingdom, United Kingdom: Guernsey, United Kingdom: Isle of Man, United Kingdom: Jersey, United Kingdom: St Helena, Uruguay); **Convention No. 133** (Brazil, Côte d'Ivoire, Guinea, Latvia, Liberia, Luxembourg, Republic of Moldova, Netherlands, New Zealand, Nigeria, Norway, Poland, Romania, Tajikistan, Turkey, United Kingdom, United Kingdom: Gibraltar, United Kingdom: Isle of Man); **Convention No. 134** (Brazil, New Zealand, Poland, Romania, Sweden, Turkey); **Convention No. 146** (Brazil, Bulgaria, Italy, Kenya, Luxembourg, Morocco, Spain, Turkey); **Convention No. 147**

(Albania, Bahamas, Barbados, Belgium, Brazil, Bulgaria, Costa Rica, Cyprus, Denmark, Egypt, France: New Caledonia, Germany, Ghana, Iceland, Ireland, Jordan, Latvia, Liberia, Lithuania, Malta, Netherlands, Norway, Peru, Poland, Portugal, Romania, Slovenia, Spain, Tajikistan, Ukraine, United Kingdom, United Kingdom: Bermuda, United Kingdom: Isle of Man, United States, United States: American Samoa, United States: Guam, United States: Puerto Rico, United States: United States Virgin Islands); **Convention No. 163** (Brazil, Bulgaria, France, Norway, Romania, Slovakia, Spain); **Convention No. 164** (Brazil, Bulgaria, France, Italy, Norway, Slovakia, Turkey); **Convention No. 166** (Brazil, Bulgaria, Egypt, France, Germany, Guyana, Luxembourg, Romania, Spain, Turkey); **Convention No. 178** (Albania, Brazil, Bulgaria, Finland, France, Ireland, Luxembourg, Morocco, Nigeria, Norway, Peru, Poland, Sweden, United Kingdom); **Convention No. 179** (Bulgaria, France, Ireland, Morocco, Nigeria, Norway, Philippines); **Convention No. 180** (Belgium, Bulgaria, Denmark, France, Germany, Ireland, Latvia, Luxembourg, Malta, Morocco, Netherlands, Norway, Romania, Saint Vincent and the Grenadines, Slovenia, United Kingdom, United Kingdom: Isle of Man); **Convention No. 185** (Albania, Azerbaijan, Indonesia, Jordan, Republic of Korea, Republic of Moldova).

## Fishers

### Liberia

#### **Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. Scope of application.* The Committee notes with *regret* that, 49 years after its ratification, the Convention has still not been given effect in its entirety. It recalls that, under the terms of *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters. Only fishing in ports or in river estuaries, and individuals fishing for sport or recreation, are excluded from the scope of the Convention. However, the Committee observes that section 326 of the Maritime Act of Liberia, which establishes the minimum age for work on board vessels (including fishing vessels) at 15 years, only applies to vessels registered under the Act. Section 51 of the Maritime Act limits the registration procedure to certain types of vessels. This procedure is open to any vessel under 20 tonnes, the owner of which is a national of Liberia and which only makes voyages between Liberian ports or between Liberia and other West African countries, as well as any vessel of over 1,600 tonnes engaged in international trade, the constructor or owner of which is a national of Liberia. Furthermore, by virtue of section 290 of the Maritime Act, Chapter 10 of the Act, which covers seafarers and includes, among its provisions, the rules respecting minimum age, only applies to persons engaged on board vessels of at least 75 tonnes. The Committee wishes once again to draw the Government's attention to the fact that the scope of the provisions of the national legislation respecting the minimum age required for work on board fishing vessels is much narrower than that of the Convention. ***The Committee urges the Government to adopt the necessary measures without further ado to bring its legislation into conformity with the Convention on this point. The Committee also requests the Government to provide information on the manner in which the Convention is applied in practice including, for instance, extracts from reports of the inspection services and, if such statistics are currently available, information on the number and nature of the contraventions reported and the measures taken as a consequence. It further requests the Government to indicate the number of fishing vessels and fishers who are currently excluded from the scope of application of the Convention.***

Finally, the Committee understands that the tripartite representatives of Liberia participated in a subregional workshop organized in Accra (Ghana) in October 2009 which was intended to promote the ratification of the Work in Fishing Convention, 2007 (No. 188). ***It requests the Government to keep the Office informed of any measures taken, in the context of the follow-up to this workshop, with a view to the ratification of Convention No. 188.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

#### **Medical Examination (Fishermen) Convention, 1959 (No. 113) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Nature of medical examination and particulars to be included in medical certificate.* For many years the Committee has asked the Government to indicate whether certain provisions applicable to merchant vessels, i.e. the Requirements for Merchant Marine Personnel (RLM-118) and Maritime Regulation No. 10.325(2), also apply to fishing vessels. ***The Committee once again expresses the hope that the Government will provide full explanations regarding the applicability of the Liberian maritime laws and regulations to the medical examination of fishermen. The Government is requested to indicate whether consultations with the fishing-boat owners' and fishermen's organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by Article 3(1) of the Convention and to provide particulars on how the age of the person to be examined and the nature of the duties to be performed are taken into account in prescribing the nature of the examination as required by Article 3(2).***

The Committee also draws the Government's attention to the new Work in Fishing Convention, adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing, including Convention No. 113. ***While noting the Subregional Seminar on the promotion of the Work in Fishing Convention, 2007 (No. 188), which was held in Accra from 27 to 30 October 2009, the Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

#### **Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 3–9 of the Convention. Articles of agreement.* The Committee notes the Government's earlier indication that the Committee's comments have been submitted to the Commissioner of the Bureau of Maritime Affairs for immediate action. ***Referring to its previous comments, the Committee requests the Government to provide information on any possible reaction by the Commissioner. It also urges the Government to provide full information on each of the provisions of the Convention and each question in the report form approved by the Governing Body.***

The Committee also draws the Government's attention to the new Work in Fishing Convention, 2007 (No. 188), adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing, including Convention No. 114. ***The Committee requests the Government to give all due attention to this new***

*comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Russian Federation

### Accommodation of Crews (Fishermen) Convention, 1966 (No. 126) (ratification: 1969)

*Article 3 of the Convention. Laws and regulations which ensure the application of the provisions of Parts II, III and IV of the Convention.* The Committee notes with **regret** that the information provided in the Government's report reproduces essentially the same information provided in the previous report concerning the matters that it has been raising since 2005. However, it notes the indication that a draft text is being prepared to update the provisions of Regulation No. 1814-77 of 22 December 1977 issuing sanitary rules for Soviet vessels and boats, which will be in conformity with the provisions of the Work in Fishing Convention, 2007 (No. 188). In this respect, the Committee recalls that Annex III of Convention No. 188 essentially reproduces the provisions of Convention No. 126. It therefore hopes that, when preparing the draft text referred to above, the Government will take into consideration the comments that it has been making for several years concerning the application of the following provisions of the Convention: penalties for violations of the relevant legislation (*Article 3(2)(d) and (e)*); periodical inspection of fishing vessels (*Article 5*); bulkheads being watertight and gastight (*Article 6(3)*); prohibition of heating on board by open fires (*Article 8(3)*); indication of maximum sleeping room capacity (*Article 10(9)*); one wash basin for every six persons or less (*Article 12(2)(c)*); quality of soil and waste pipes and facilities for drying clothes (*Article 12(7) and (11)*); sick bay required for vessels of 45.7 meters in length or over (*Article 13(1)*); and alterations to existing vessels to ensure conformity with the Convention (*Article 17(2) to (4)*). **The Committee requests the Government to keep the Office informed of any developments in the process of the adoption of the draft text and to provide a copy when it has been finalized. In this context, the Committee also invites the Government to consider favourably the ratification of Convention No. 188, which updates in an integrated manner most of the existing ILO instruments on fishing, and to keep the Office informed of any decision in this respect.**

**Furthermore, as it has not received any further indications on these points, the Committee once again requests the Government to provide precise information on the application in practice of the following provisions of the Convention: Article 6(2), (4), (7) and (9) to (11), (13) and (14); Article 8(2); Article 9(5); Article 10(1), (5) and (13) to (26); Article 11(7) and (8); and Article 16(6).**

**Finally, in view of the significance of the fishing fleet in the country and the economic difficulties experienced by the sector, the Committee requests the Government to provide detailed information on the application of the Convention in practice, including up-to-date statistics on the size of the fishing fleet disaggregated by vessel category and age, the number of jobs created, the number of enterprises active in the sector, the importance of fisheries in the national economy and current trends in the sector, as well as copies of official reports or studies of the State Committee for Fishing or other competent bodies.**

## Sierra Leone

### Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1967)

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 3-15 of the Convention. Certificates of competency.* The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. The Government stated in its report communicated in 2004 that progress was being made in this respect and that a national workshop on the formulation of fishing policies was organized. The Government also indicated that copies of the new legislation and the texts defining the new policies would be communicated to the ILO as soon as they were adopted.

**The Committee asks the Government to provide detailed information on the outcome of the national workshop on the formulation of fishing policies and on any concrete progress made in respect of the adoption of national laws implementing the Convention.** The Committee understands that the Office remains ready to offer expert advice and to respond favourably to any specific request for technical assistance in this regard. **Finally, the Committee would appreciate receiving up to date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet, the approximate number of fishers gainfully employed in the sector, etc.**

The Committee also draws the Government's attention to the new Work in Fishing Convention (No. 188), adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing. **The Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.**

**The Committee hopes that the Government will make every effort to take the necessary action in the very near future.**



## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 113** (*Guinea, Panama, Tajikistan*); **Convention No. 114** (*Panama*); **Convention No. 125** (*Panama*); **Convention No. 126** (*Panama, Sierra Leone*).

## Dockworkers

### Algeria

#### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1962)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 12, 13 and 15 of the Convention. Application of the Convention.* The Committee notes with *regret* that the Government's report of 2008 is almost identical to the one which was sent in 2007, that it contains no reply to the Committee's comments despite its repeated requests over a number of years and that the Government still does not appear to have taken the necessary steps to adopt the legislative text concerning ports and dockers pursuant to Act No. 88-07 as planned. However, the Committee notes the Government's efforts to improve the situation relating to occupational safety and health by ratifying the Occupational Safety and Health Convention, 1981 (No. 155). It notes that this Convention applies to all branches of economic activity, including dock enterprises and dockworkers, and that it therefore constitutes a general context for the application of Convention No. 32. However, the Government continues to be bound by its obligation to adopt specific legislative provisions giving full effect to the provisions of Convention No. 32. **The Committee requests the Government once again to take the necessary steps in the very near future to give full effect, in law and in practice, to the provisions of the present Convention, particularly Articles 12, 13 and 15, and to send copies of all relevant legislative texts once they have been adopted.**

*Part V of the report form. Application in practice. Article 17(2). Labour inspection.* The Committee notes the lack of information concerning the application in practice of the Convention. **With specific reference to the provisions of Article 17(2) of the Convention, the Committee requests the Government to send its general observations on the manner in which the Convention is applied, including, for example, extracts of the reports of the inspection services, up-to-date statistical information on the number of inspection visits carried out, the number of infringements reported and also the number, nature and causes of accidents recorded, etc.**

The Committee takes this opportunity to remind the Government that the ILO Governing Body invited the States parties to Convention No. 32 to envisage ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which revises Convention No. 32 (GB.268/LILS/5(Rev.1), paragraphs 99–101). Ratification of Convention No. 152 would entail *ipso jure* the immediate denunciation of Convention No. 32. The Committee would also like to draw the Government's attention to the code of practice recently adopted by the ILO entitled *Safety and health in ports* (Geneva, 2005), which is available, inter alia, on the ILO website: [www.ilo.org/public/english/protection/safework/cops/english/index.htm](http://www.ilo.org/public/english/protection/safework/cops/english/index.htm). **The Government is requested to keep the Office informed of all progress made in this field.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### Congo

#### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information provided by the Government according to which a national advisory technical committee on occupational safety and health has been set up pursuant to Decree No. 2000-29 of 17 March 2000 which gives effect to *Article 7 of the Convention*. It also notes, however, that the information requested concerning *Articles 2, 4, 5, 6 and 11–36* are to be provided by the Government subsequently. As regards the further information the Committee has requested the Government to provide, the Committee notes that the Government has either not replied to questions raised by the Committee in its previous comments or it has provided information that is applicable to enterprises in general. The Government appears to imply that dockworkers should be treated in the same manner as other workers and ports be treated like any other enterprise. **With reference to Articles 4–7, the Committee wishes to recall that the Government is required to take measures to give effect to the specific provisions in the Convention. The Committee must therefore once again repeat its previous observation which read as follows.**

The Committee draws the Government's attention to the absence of specific health and safety provisions for dock work. The Committee noted previously that a draft Order on safety and health in dock work had been prepared by the technical departments of the Ministry of Labour and Social Security. In its report for the period ending 30 June 1993, the Government repeated this information and added that the draft had been submitted for adoption. The Committee hopes that the provisions of this text will ensure the application of the following provisions of the Convention: *Article 4* (objectives and areas to be covered by measures to be established by national laws and regulations, in accordance with *Part III* of the Convention); *Article 5* (responsibility of employers, owners, masters or other persons as appropriate, for compliance with safety and health measures; duty of employers to collaborate whenever two or more of them undertake activities simultaneously at one workplace); *Article 7* (consultation of and collaboration between employers and workers). **It asks the Government to provide a copy of the above Order as soon as it has been adopted.**

In its previous reports, the Government referred to Orders No. 9033/MTERFPPS/DGT/DSSHT on the organization and functioning of the socio-medical centres of enterprises in the People's Republic of the Congo and No. 9034/MTERFPPS/DGT/DSSHT laying down the procedures for the establishment of socio-medical centres which are common to several enterprises in the People's Republic of the Congo. **Since these texts have not been received, the Committee would be grateful if the Government would provide a copy of them.**

*Article 6.* The Committee notes from the Government's report for the period ending 30 June 1993 that briefings are to be organized to inform workers about safety provisions in the place of work at which heads of establishment can alert them about the

dangers arising from the use of machinery and the precautions to be taken. *The Committee asks the Government to provide a copy of the provisions concerning the organization of these briefings and the measures taken to give effect to paragraph 1(c) of this Article.*

*Article 8.* The Committee notes the Government's statement in its report for the period ending 30 June 1993 that all safety measures are provided for in Chapter II of Order No. 9036 of 10 December 1986. The Committee notes that the above part of the Order provides for general protective measures whereas the Convention requires the adoption of measures specific to dock work. *It asks the Government to indicate which provisions require the adoption of effective measures (fencing, flagging or other suitable means including, when necessary, cessation of work) to ensure that when the workplace has become unsafe, workers are protected until it has been made safe again.*

*Article 14.* The Committee notes from the Government's report for the period ending 30 June 1993 that the application of this Article is ensured by labour inspectors by means of inspections in enterprises. *The Committee asks the Government to indicate which provisions ensure that electrical equipment and installations are so constructed, installed, operated and maintained as to prevent danger, and which standards for electrical equipment and installations have been recognized by the competent authorities.*

*Article 17.* The Committee notes that section 41 of Order No. 9036, cited by the Government in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention, includes specific measures only for the use of lifting gear in particular weather conditions (wind). *The Committee asks the Government to indicate the measures taken to ensure that the means of access to a ship's hold or cargo deck are in conformity with the provisions of this Article.*

*Article 21.* The Committee notes the provisions of sections 47–49 of Order No. 9036 which the Government cites in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention. It notes that the above sections provide for protective measures for some machinery or parts of machines which can be dangerous. *It asks the Government to indicate the measures taken or envisaged to ensure that all lifting appliances, every item of loose gear and every sling or lifting device forming an integral part of a load comply with the provisions of the Convention.*

*Articles 22, 23, 24 and 25.* Further to its previous comments, the Committee notes that, in its report for the period ending 30 June 1993, the Government refers to the certification of machinery, including lifting appliances, which is conducted by technical inspectors and advisory bodies, as a general measure to ensure that lifting appliances are sound and in proper working order. However, these Articles of the Convention provide for a set of measures to ensure that appliances and loose gear can be used by workers without any danger or risk: testing of all lifting appliances and loose gear (every five years in ships); thorough examination (at least once every 12 months); regular inspection before use. *The Committee asks the Government to indicate the provisions requiring the above measures to be taken in respect of all lifting appliances – on shore and on board – and of all loose gear.*

*Article 30.* The Committee notes that section 43 of Order No. 9036 referred to by the Government, does not relate to the attaching of loads to lifting appliances. *It asks the Government to indicate which provisions relate to this matter.*

*Article 34.* *The Committee asks the Government to provide a copy of the instructions concerning the wearing of personal protective equipment referred to by the Government in its report for the period ending 30 June 1993.*

*Article 35.* Further to its previous comments, the Committee notes that section 147 of the Labour Code regulates the evacuation of injured persons who are able to be moved and who are not able to be treated by the facilities made available by the employer. It notes that the Government also refers in its reports to Orders Nos 9033 and 9034 mentioned in paragraph 2 above. *The Committee asks the Government to indicate the measures taken either under the above texts, or otherwise, to ensure that adequate facilities, including trained personnel, are available for the provision of first aid.*

*Article 37(1).* The Committee recalls that, under this provision of the Convention, committees which include employers' and workers' representatives must be formed at every port where there is a significant number of workers. *Recalling the Government's statement that the health and safety committees provided for by the law have not been formed, the Committee asks the Government to indicate the measures taken to ensure the establishment of such committees in ports with a significant number of workers.*

*Article 38(1).* The Government indicates in its report that, in the absence of health and safety committees, instruction and training are entrusted to a specialist in the matter within the enterprise. *The Committee asks the Government to provide information on the activities of these specialists.*

*Article 39.* The Committee notes that section 61 of Act No. 004/86 of 25 February 1986 establishing the Social Security Code gives effect in part to this Article of the Convention. *It asks the Government to indicate the provisions which ensure that this Article is applied to occupational diseases.*

*Article 41(1)(a).* Further to its previous comments, the Committee notes that the Government refers to Order No. 9036 of 10 December 1986 as being the text which lays down general obligations for the persons and bodies concerned with dock work (ports being treated as any industrial enterprise) and that no specific measures have been taken in respect of dock work. *The Committee asks the Government to indicate the measures taken or envisaged to set out the specific obligations taken for the persons and bodies concerned with dock work.*

*In the absence of any information on the application of the above provisions, the Committee asks the Government to indicate the specific measures which give effect to the following provisions of the Convention:*

- *Article 9(1) and (2).* Safety measures with regard to lighting and marking of dangerous obstacles.
- *Article 10(1) and (2).* Maintenance of surfaces for traffic or stacking of goods and safe manner of stacking goods.
- *Article 11(1) and (2).* Width of passageways and separate passageways for pedestrians.
- *Article 16(1) and (2).* Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land.
- *Article 18(1)–(5).* Regulations concerning hatch covers.
- *Article 19(1) and (2).* Protection around openings and decks, closing of hatchways when not in use.
- *Article 20(1)–(4).* Safety measures when power vehicles operate in the hold; hatch covers secured against displacement; ventilation regulations; safe means of escape from bins or hoppers when dry bulk is being loaded or unloaded.

- Article 26(1)–(3). *Members’ mutual recognition of arrangements for testing and examination.*
- Article 27(1)–(3). *Marking lifting appliances with safe working loads.*
- Article 28. *Rigging plans.*
- Article 29. *Strength and construction of pallets for supporting loads.*
- Article 31(1) and (2). *Operation and layout of freight container terminals and organization of work in such terminals.*
- Article 38(2). *Minimum age limit for workers operating lifting appliances.*

*Hoping that the Government will make every effort to take the necessary measures in the very near future, the Committee invites the Government to solicit technical assistance of the ILO to resolve any problems related to the application of this Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Ecuador

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)** (ratification: 1988)

In its observation of 2005 the Committee noted the Government’s repeated statement that it planned to update existing standards on safety and health in dock work; that the *Handbook of Standards on Safety and Risk Prevention for Dockworkers* was being revised; and that the Committee’s more specific comments had been forwarded to the Directorate-General of the Merchant Navy and that the Government was awaiting information. Moreover, further to the many comments made since 1993, the Committee urged the Government to take all the necessary steps to bring its national law and practice into line with the Convention. The Committee also requested information on the application of the Convention in practice. In its latest report the Government repeats that the National Council for the Merchant Navy and Docks will deal with the relevant subjects in order to bring the national legislation into line with the Convention. The Committee notes with *regret* that the Government’s report does not provide any information on the steps taken to bring its law and practice into line with the Convention; on the process of revision of the abovementioned handbook; on the various matters raised by the Committee for many years; or on the practical application of the Convention as requested by the Committee. The Committee also recalls that in its last observation it indicated to the Government that it had the possibility of availing itself of technical assistance from the Office in order to bring its legislation into line with the Convention and notes the Government’s statement in this regard that such a possibility was communicated to the competent authorities and that it would forward any available information in this respect to the Committee. *The Committee again urges the Government to take all the necessary steps to bring its law and practice into line with the Convention, including the revision of the abovementioned Handbook, and to provide detailed information in this respect. The Committee also urges the Government to supply detailed information on the manner in which it currently ensures the application of the provisions of the Convention to which it has been referring since 1993, which are set out in detail in its direct request of 2005 and which cover matters referred to in the following articles of the Convention: Article 1; Article 4(1)(f) and (2)(d) in conjunction with Article 16(2) and Article 4(2)(g); Article 5(1); Article 7(1); Article 8; Article 9(2); Article 10; Article 11; Article 13(2) and (4); Article 17(2); Article 18(1), (4) and (5); Article 19(2); Article 20(1), (2) and (4); Article 22(2) and (3); Article 25(1), (2) and (3); Article 26; Article 27(2) and (3)(b) and (c); Articles 28, 29 and 31; Article 32(2) and (4); Article 34(3); Article 36(1) and (3); and Article 38(1) and (2).*

## France

### **Dock Work Convention, 1973 (No. 137) (ratification: 1977)**

*National policy aimed at providing permanent or regular employment for dockworkers.* Further to the comments that it has been making for many years, the Committee notes the Government’s detailed report received in February 2010. The Government indicates that work aimed at optimizing the national collective agreement on dock work is going ahead in close collaboration with the social partners by means of amendments relating to vocational training, wages, the complementary retirement scheme and the reduction in hours of work. As at 31 August 2008, the total of 1,684 professional dockworkers comprised 1,319 monthly workers and 365 casual workers. The Government indicates that approximately 2,106 dockworkers who were not part of the former system have been employed on a monthly basis, including young persons who previously held “qualification” contracts and “employment initiative” contracts now hired on contracts of unlimited duration. In the extension to the interoccupational agreements of July 2005 and December 2006, vocational qualification certificates have been created and an individual entitlement to 20 hours of training has been established. The Government states that these certificates are intended to create objective qualification standards in the profession whose validity can be upheld in relation to third parties, demonstrating that dock work is an individual occupation in its own right. *The Committee notes this approach with interest and requests the Government to continue to supply up-to-date information on changes in the number of dockworkers and also on the impact of the implementation of collective agreements on improving the efficiency of dock work.*

## Guinea

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)** (ratification: 1982)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 6(1)(a) and (b) of the Convention. Measures to ensure the safety of portworkers.* The Committee notes that the Government indicates that sections 170 and 172 of the Labour Code, establishing that workers have a general obligation to use health and safety equipment correctly and that those responsible for workplaces have an obligation to organize appropriate practical training with regard to safety and hygiene issues for the benefit of workers, ensure the application of *Article 6, (1)(a) and (b)*, of the Convention. **The Committee requests the Government to provide detailed information on the measures taken to ensure that these general provisions are applied to portworkers.**

*Article 7. Consultation with employers and workers.* The Committee notes the information provided by the Government with regard to sections 288 and 290 of the Labour Code, which provide for the establishment of a consultative committee which is to be responsible, amongst other things, for issuing opinions and formulating proposals and resolutions on labour legislation and regulations and social laws. **The Committee requests the Government to provide information on the application, in practice, of the measures taken to ensure the collaboration between workers and employers provided for in Article 7 of the Convention.**

*Article 12. Fighting fire.* The Committee notes that sections 71, 72 and 76 of the Merchant Marine Code briefly touch upon the question of fire protection systems and equipment, but only in the context of inspections of vessels engaged in international voyages. **The Committee requests the Government to take the measures necessary to ensure that appropriate and sufficient firefighting measures are made available for use wherever dock work is carried out.**

*Article 32(1). Dangerous cargoes.* The Committee notes that section 174 of the Labour Code states, in general, that vendors or distributors of dangerous substances, as well as those responsible for workplaces where such substances are used, are required to mark and label them. **The Committee requests the Government to indicate the measures taken to ensure the application, in practice, of this provision, which is general in scope, in the dock sector.**

The Committee notes that the information provided by the Government in its report of May 2005 on the application of *Articles 16, 18, 19(1), 29, 30, 35 and 37*, are general in nature and do not permit the Committee to ascertain whether they are being applied in the dock sector. **The Committee requests the Government to provide further information on the measures taken to ensure the application of Articles 16, 18, 19(1), 29, 30, 35 and 37, of the Convention and to attach copies of the relevant national laws and regulations.**

The Committee notes that the Government's report does not contain replies to its request for further information contained in the previous direct request regarding the application of *Articles 19(2) and 33*, of the Convention. **The Committee requests the Government to provide the information requested, as well as information on the measures taken with regard to the application of these Articles.**

The Committee notes that, in its report, the Government does not provide any clarification with regard to the measures taken to give effect to *Article 6(1)(c)*, and *Articles 2, 8, 9, 10, 11, 14, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32(2-5), and 34* of the Convention. **The Committee requests the Government to take measures to ensure the application of these Articles and to keep the Committee informed of any action taken in this regard.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Guyana

### **Dock Work Convention, 1973 (No. 137) (ratification: 1983)**

The Committee notes with *regret* 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 matters raised in its previous direct request, which read as follows:

The Committee noted the Government's report for the period ending September 2002, according to which there has been no change in the application of the Convention. **It requests the Government to give a general appreciation on the manner in which the Convention is applied in practice, including for instance extracts from the reports of the authorities entrusted with the application of the laws and regulations, and the available information on the numbers of dockworkers on the registers of workers in docks maintained in accordance with Article 3 of the Convention and of any variations in their numbers (Part V of the report form).**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Panama

### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)** (ratification: 1971)

The Committee notes the Government's indication that the General Docks Act (Act No. 56) was adopted on 6 August 2008. It notes that section 106 of the Act states that the Maritime Authority of Panama shall establish standards and procedures for the prevention of occupational accidents and diseases, occupational safety and health, fire prevention and the proper handling of cargo, in order to ensure the safety and efficiency of dock work. The Committee notes with *interest* that section 107 states that, for the purposes of the previous section, dock safety inspectors must comply with the standards and procedures laid down in the Dock Safety and Health Regulations and in the international Conventions

ratified by Panama, and also in the industry codes of practice. It also notes that the Docks and Auxiliary Maritime Industries Directorate of the Maritime Authority of Panama, which is responsible for the application of the Convention, has drawn up a first draft of Regulations on Safety and Health in Dock Work, the approval of which is pending. *The Committee expresses the strong hope that the draft Regulations on Safety and Health in Dock Work will be approved in the near future and that account will be taken of all the points indicated in its observation of 2007, which contains comments that the Committee has been making since 1996. Should the draft Regulations on Safety and Health in Dock Work be approved during the next reporting period, the Committee requests the Government to report on them in detail. Should the Regulations still be at the draft stage, the Committee requests the Government to indicate the manner in which effect is given in practice to the matters raised in its observation of 2007.*

As regards the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), the Government states that for the time being its ratification has not been contemplated but considerable account has been taken of it in the adoption of legal instruments and in the practical application of measures relating to dock work. *The Committee requests the Government to continue to supply information in this regard.*

### Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 27** (Denmark, Pakistan); **Convention No. 32** (Bosnia and Herzegovina, Nigeria, Tajikistan); **Convention No. 137** (Kenya); **Convention No. 152** (Republic of Moldova, Netherlands, Russian Federation, Seychelles).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 27** (France); **Convention No. 32** (Malta).

## Indigenous and tribal peoples

### General observation

#### *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*

The Committee has been examining detailed reports on Convention No. 169 since the Convention came into force in 1991. The Committee notes that to date 22 countries have ratified the Convention. It also notes that one of the issues that it has most often examined since the Convention has been adopted relates to the “obligation to consult”.

The Committee has taken note of the comments made in June 2010 during the 99th Session of the International Labour Conference (ILC) in the Committee on the Application of Standards concerning the comments made in respect of the application of Convention No. 169 by a number of member States and the Employer members and, in particular, the comments made on the meaning and scope of “consultation” as provided for by the Convention. The Committee considers that it is important, in view of the significance of this concept under the Convention for the indigenous and tribal peoples, for governments and the social partners to further clarify its understanding of the concept.

The Committee of Experts has, on a number of occasions, stated that, although its mandate does not require it to give definitive interpretation of ILO Conventions, in order to carry out its function of determining whether the requirements of Conventions are being respected, it has to consider and express its views on the legal scope and meaning of the provisions of Conventions, where appropriate.<sup>1</sup> In doing so, the Committee has always paid due regard to the textual meaning of the words in light of the Convention’s purpose and object as provided for by Article 31 of the Vienna Convention on the Law of Treaties, giving equal consideration to the two authoritative texts of ILO Conventions, namely the English and French versions (Article 33 of the Vienna Convention). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization’s practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role the tripartite constituents play in standard setting.

In examining this question, the Committee has taken special note of the comments made by the Employer members of the Conference Committee on the Application of Standards that it had interpreted the right to consultation in such a way as to impose a more exacting requirement upon the government beyond that envisaged by the Convention.<sup>2</sup> This comment was made in the context of the request made by the Committee of Experts in a case concerning the application by the Government of Peru of Convention No. 169 and which was discussed by the Conference Committee in June 2010.<sup>3</sup>

In light of the above, the Committee makes this general observation in order to clarify its understanding of the concept of “consultation” in the hope that this will result in an improved application of the Convention particularly as it concerns this right. This would be a follow-up to the general observation made by this Committee in 2008. It notes the statement made by the Employer spokesperson during the general discussion of the Conference Committee in June 2009 that “the general observations on social security and indigenous and tribal peoples did not raise any particular issues and were an illustration of the correct approach to making general observations that were useful and contributed to the implementation of the Conventions concerned”.<sup>4</sup>

As a general matter the Committee notes that, in view of the tripartite nature of the ILO, most of its Conventions make specific provision for consultation between governments and representatives of employers and workers or their organizations and of those concerned by the issues involved on the matters covered by the Conventions. Convention No. 169 is no exception. However, the provisions relating to “consultation” in Convention No. 169 specifically address consultation with indigenous and tribal peoples. The relevant provisions of the Convention are *Articles 6, 7, 15 and 17*.<sup>5</sup> *Articles 27 and 28* also refer to consultation specifically regarding education.

<sup>1</sup> See ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 32; ILC, 73rd Session, 1987, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 21; ILC, 77th Session, 1990, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7; ILC, 78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 11 and 12.

<sup>2</sup> See ILC, 99th Session, 2010, *Provisional Record* No. 16, Part One, para. 54; Part Two, pp. 103–107.

<sup>3</sup> *ibid.*, Part Two, p. 106.

<sup>4</sup> See ILC, 98th Session, 2009, *Provisional Record* No. 16, Part One, para. 50.

<sup>5</sup> *Article 6*

1. In applying the provisions of this Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

The presence of consultation in the abovementioned provisions signifies a comprehensive approach. These provisions on consultation were among the fundamental principles included in the revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), as a necessary requirement to eliminate the integrationist approach of that Convention. In order to properly understand the scope of this new principle inserted in Convention No. 169, the Committee undertook an exhaustive review of the preparatory work leading up to the inclusion of this principle and right in Convention No. 169.

The Committee notes that *Articles 6 and 15* were the subject of extensive debate and amendments during the two years of preparatory discussions leading to the adoption of Convention No. 169.

Concerning *Article 6*, the extensive preparatory work on this provision suggests that the tripartite constituents sought to recognize:

- (a) that indigenous and tribal peoples have a right to participate in the decision-making process in the countries in which they live for all issues covered by the revised Convention and which affect them directly;
- (b) that this right of participation should be an effective one, offering them an opportunity to be heard and to have an impact on the decisions taken;
- (c) that in order for this right to be effective it must be backed up by appropriate procedural mechanisms to be established at the national level in accordance with national conditions; and
- (d) that the implementation of this right should be adapted to the situation of the indigenous and tribal peoples concerned in order to grant them as much control as is possible in each case over their own economic, social and cultural development.<sup>6</sup>

The Committee notes the evolution of the text of *Article 6* during the course of the two discussions by the Conference and the wording in *Article 6(a)*. The text proposed by the Office prior to the first discussion stated that governments should “seek the consent of the peoples concerned ...”. This wording was amended by the Conference

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(c) establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### *Article 7*

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

#### *Article 15*

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

#### *Article 17*

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

<sup>6</sup> See ILC, 75th Session, 1988, Report VI(1), p. 30.



during the first discussion to read that governments should “consult fully the (peoples/population) concerned”. Based on comments received from constituents between the first and second discussions by the Conference, the Office deleted the word “fully”. In its place, the Office proposed an additional paragraph 2 to *Article 6* as follows:

1. In applying the provisions of this Convention, governments shall:
  - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
  - (b) ...
  - (c) ...
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.<sup>7</sup>

The Office explained that paragraph 2 sought to clarify the meaning and scope of paragraph 1(a). This was the final version of the text as adopted by the Conference during the second discussion. A number of amendments proposed during that discussion were not retained. Reference was made to the consensus reached that the term “consult” meant to consult in good faith.<sup>8</sup> The Committee also noted the statement by a representative of the Office during the second discussion that in drafting the text of paragraph 2 it “had not intended to suggest that the consultations referred to would have to result in the obtaining of agreement or consent of those being consulted, but rather to express an objective for the consultations”.<sup>9</sup>

*Article 15(2)* states that “... governments shall establish and maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands”.

During the second stage of the preparatory work, the Office explained that, while the original proposal that had been contained in the proposed Conclusions concerning this provision had included the phrase “seek the consent”, which would have required that consent be obtained, it was clear from the first discussion that this phrase was not acceptable to a sufficiently large proportion of the membership and it could therefore not include it in the proposed text being submitted to the Conference for a second discussion. The Office had instead proposed alternative wording intended to convey that an attempt should be made in good faith to obtain the consent of the peoples concerned before undertaking exploration and exploitation activities in their territories, without indicating that they should have a veto over government decisions.<sup>10</sup> The text of the Office had referred to *Article 6* of the proposed Convention, which used the words “seek to obtain the agreement of these peoples”. The final text adopted by the Conference was the result of a negotiated solution concerning a number of provisions.<sup>11</sup> As a result, the text of *Article 15(2)* was modified to read “they shall consult these peoples”.

It is only in *Article 16*, concerning removal, relocation and the right of return to their traditional lands, that a very precise formulation of consent exists.<sup>12</sup> *Article 16(2)* expressly provides for the “free and informed consent” of indigenous and tribal peoples where their relocation from lands they occupy is considered necessary as an exceptional measure.

Concerning *Article 17(2)* dealing with the transmission of land rights, the Office had modified its original proposal which would have required the consent of the peoples concerned. In the text prepared by it for the second discussion, it proposed instead the wording “[t]he peoples concerned shall be consulted ...”, which was adopted by the Conference unchanged.

<sup>7</sup> See ILC, 76th Session, 1989, Report IV(2B), p. 10.

<sup>8</sup> *ibid.*, para. 68.

<sup>9</sup> *ibid.*, para. 74.

<sup>10</sup> See ILC, 76th Session, 1989, Report IV(2A), pp. 40–41.

<sup>11</sup> Most of these provisions were referred to a working group and the proposals were submitted to the Committee for adoption as a package. They were adopted by consensus.

<sup>12</sup>

#### *Article 16*

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Finally, the Committee notes that the Conference adopted a resolution, at the same time as the Convention, in which it specifically called upon governments to establish appropriate consultative machinery enabling indigenous and tribal peoples to express their views on all aspects of the Convention.<sup>13</sup>

The Committee of Experts in reviewing countries' compliance with the Convention has remained true to the above understanding of the Convention. It has consistently indicated that "consultation and participation" constitute the cornerstone of Convention No. 169 on which all its provisions are based. Its general observation of 2008, published in 2009, reflected the above understanding of the relevant provisions of the Convention concerning the concept of consultation. The Committee stated:

With regard to consultation, the Committee notes two main challenges: (i) ensuring that appropriate consultations are held prior to the adoption of all legislative and administrative measures which are likely to affect indigenous and tribal peoples directly; and (ii) including provisions in legislation requiring prior consultation as part of the process of determining if concessions for the exploitation and exploration of natural resources are to be granted. The form and content of consultation procedures and mechanisms need to allow the full expression of the viewpoints of the peoples concerned, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus could be achieved, and be undertaken in a manner that is acceptable to all parties. If these requirements are met, consultation can be an instrument of genuine dialogue, social cohesion and be instrumental in the prevention and resolution of conflict. The Committee, therefore, considers it important that governments, with the participation of indigenous and tribal peoples, as a matter of priority, establish appropriate consultation mechanisms with the representative institutions of those peoples. Periodic evaluation of the operation of the consultation mechanisms, with the participation of the peoples concerned, should be undertaken to continue to improve their effectiveness.

The Committee encourages governments to continue their efforts, with the participation of indigenous and tribal peoples, in the following areas, and to provide information in future reports on the measures taken in this regard:

- developing the measures and mechanisms envisaged in *Articles 2 and 33* of the Convention;
- establishing mechanisms for participation in the formulation of development plans;
- including the requirement of prior consultation in legislation regarding the exploration and exploitation of natural resources;
- engaging in systematic consultation on the legislative and administrative measures referred to in *Article 6* of the Convention; and
- establishing effective consultation mechanisms that take into account the vision of governments and indigenous and tribal peoples concerning the procedures to be followed.<sup>14</sup>

The Committee notes the positive statement made by the Employer members concerning its general observation of 2008 on the Convention and referred to above. It also notes that the above understanding of the relevant provisions of Convention No. 169 has also been endorsed by a number of tripartite committees examining representations against governments for failure to comply with the provisions of the Convention.<sup>15</sup>

In the case of Ecuador, the tripartite committee, in its report approved by the Governing Body in 2001, referred to the preparatory work of the Convention and stated that it considered that the "concept of consulting the indigenous communities ... includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord".<sup>16</sup> It indicated that a simple information meeting cannot be considered as complying with the provisions of the Convention and that the consultation should occur beforehand, which implies that the communities affected should participate as early as possible in the process, including in the preparation of environmental impact studies. Taking into account the preparatory work, the tripartite committee in that case concluded that, while *Article 6* did not require consensus to have been reached in the process of prior consultation, it does stipulate that the peoples involved should have the opportunity to participate freely at all levels in the formulation, implementation and evaluation of measures and programmes that affect them directly, as from the date on which the Convention comes into force in the country.<sup>17</sup>

In the representation filed against Colombia under the Convention, the tripartite committee, in its report approved by the Governing Body in 2001, considered that the concept of consultation under the Convention must encompass genuine dialogue between the parties, involving communication and understanding, mutual respect and good faith and the sincere desire to reach consensus. The tripartite committee concluded that a meeting conducted merely for information purposes or meetings or consultations conducted after the granting of an environmental licence did not meet the requirements of *Articles 6 and 15(2)* of the Convention.<sup>18</sup>

<sup>13</sup> See resolution on ILO action concerning indigenous and tribal peoples, ILC, 76th Session, 1989, *Provisional Record No. 25*, pp. 32–33.

<sup>14</sup> See ILC, 98th Session, 2009, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), pp. 672–673.

<sup>15</sup> Four tripartite committees established by the Governing Body under article 24 of the ILO Constitution to examine representations have examined this obligation in the context of Convention No. 169: the cases of Colombia and Ecuador in 2001, Argentina in 2008 and Brazil in 2009.

<sup>16</sup> See GB.282/14/2, paras 36–39.

<sup>17</sup> *ibid.*, para. 36.

<sup>18</sup> See GB.282/14/3, para. 90.

In the case of the representation filed against Argentina, the tripartite committee, in its report approved by the Governing Body in 2008, pointed out that *Article 6* of the Convention does not stipulate that consent must be obtained in order for the consultation to be valid, but that it does require pursuit of the objective of achieving consent, which means setting in motion a process of dialogue and genuine exchange between the parties to be carried out in good faith.<sup>19</sup>

Finally, in the representation filed against Brazil, the tripartite committee, in its report approved by the Governing Body in 2009, gave an extensive explanation of the consultation process provided for under *Article 6* of the Convention.<sup>20</sup> The tripartite committee in that case recalled that consultation and participation are the cornerstone of the Convention and that such mechanisms are not merely a formal requirement, but are intended to enable indigenous peoples to participate effectively in their own development.<sup>21</sup> It stated that consultation must take place in accordance with procedures that are appropriate to the circumstances, through indigenous peoples' representative institutions, in good faith and with the objective of achieving agreement or consent to the proposed measures. Concerning "appropriate procedures", the tripartite committee stated that there is no single model, which should take into account national circumstances, the circumstances of the indigenous peoples concerned and the nature of the measures which are the object of the consultation process.<sup>22</sup> The tripartite committee also made it clear that *Article 6* must be understood within the broader context of consultation and participation, particularly within the framework of *Article 2(1)* and *Article 33*, which require the development, with the participation of the peoples concerned, of coordinated and systematic action to protect their rights and guarantee their integrity,<sup>23</sup> and to ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned.<sup>24</sup> The tripartite committee noted that "consultation, as envisaged in the Convention, extends beyond consultation on specific cases: it means that application of the provisions of the Convention must be systematic and coordinated, and undertaken with indigenous peoples ...".<sup>25</sup>

Taking into account all the elements indicated above, the Committee wishes thus to restate its understanding of the concept of consultation as concerns: the subject matter of consultation or participation; who should be responsible for such consultation; and the characteristics of consultation.

Concerning the subject matter, the Committee considers that consultation of indigenous and tribal peoples is specifically required in respect of the following: legislative or administrative matters which may affect them directly (*Article 6(1)(a)*); undertaking or permitting any programmes for the exploration or exploitation of mineral or sub-surface resources pertaining to their lands (*Article 15(2)*); whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community (*Article 17(2)*); and specific matters related to education (*Articles 27(3) and 28(1)*).

Free and informed consent of indigenous and tribal peoples is required where relocation of these peoples from lands which they occupy is considered necessary as an exceptional measure (*Article 16(2)*).

The participation of indigenous and tribal peoples is required in respect of the following: the development of coordinated and systematic action to protect the rights of indigenous and tribal peoples and to guarantee respect for their integrity (*Article 2(1)*); the adoption of policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work (*Article 5(c)*); decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them (*Article 6(1)(b)*); the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly (*Article 7(1)*); the improvement of the conditions of life and work and levels of health and education (*Article 7(2)*); the use, management and conservation of the natural resources pertaining to their lands (*Article 15(1)*); and ensuring that traditional activities are strengthened and promoted (*Article 23(1)*).

With respect to the authority responsible for consultation, *Articles 2 and 6* put that responsibility on governments. Governments are required under *Article 6* to "consult the peoples concerned, through appropriate procedures ..." and to "establish means by which these peoples can freely participate ...".

Concerning the nature of consultation, from the review of the preparatory work concerning Convention No. 169 and from the review of the wording of the two authoritative texts of the Convention, the Committee concludes that it was the intention of the drafters of the Convention that the obligation to consult under the Convention was intended to mean that:

- (1) consultations must be formal, full and exercised in good faith;<sup>26</sup> there must be a genuine dialogue between governments and indigenous and tribal peoples characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord;

<sup>19</sup> See GB.303/19/7, para. 81.

<sup>20</sup> See GB.304/14/7, paras 42–44.

<sup>21</sup> *ibid.*, para. 44.

<sup>22</sup> *ibid.*, para. 42.

<sup>23</sup> *Article 2(1)*.

<sup>24</sup> *Article 33(1)*.

<sup>25</sup> See GB.304/14/7, para. 43.

<sup>26</sup> See ILC, 76th Session, 1989, Report IV(2A), pp. 19–21.

- (2) appropriate procedural mechanisms have to be put in place at the national level and they have to be in a form appropriate to the circumstances;
- (3) consultations have to be undertaken through indigenous and tribal peoples' representative institutions as regards legislative and administrative measures;
- (4) consultations have to be undertaken with the *objective* of reaching agreement or consent to the proposed measures.

It is clear from the above that pro forma consultations or mere information would not meet the requirements of the Convention. At the same time, such consultations do not imply a right to veto,<sup>27</sup> nor is the *result* of such consultations necessarily the reaching of agreement or consent.<sup>28</sup>

The Committee hopes that the above clarifications will assist governments to effectively implement the Convention and the indigenous and tribal peoples to be able to enjoy the protection and benefits of the Convention. It also hopes that it will strengthen the dialogue between governments, employers' and workers' organizations concerning the objectives and content of the Convention, with the active participation of organizations and institutions of indigenous and tribal peoples as called for by the resolution adopted by the Conference in 1989.

The Committee considers that its understanding of the meaning of consultation has remained faithful to both the letter and the spirit of the relevant provisions of Convention No. 169, the preparatory work leading to its adoption and the findings of the tripartite committees that the Governing Body has established to examine representations filed against certain member States concerning non-compliance with Convention No. 169.

In its functions, the Committee makes recommendations to promote the effective implementation of the Convention. Concerning the issue as to whether the Committee can make recommendations regarding the suspension of activities pending consultation, the Committee wishes to state that it is clearly not a court of law and as a result cannot issue injunctions or provisional measures. It notes that, in the cases in which it made a recommendation that has been interpreted as such, it had been communicating with the countries concerned for a number of years requesting them to take the necessary measures to consult the indigenous and tribal peoples concerned in accordance with the provisions of the Convention.

The Committee therefore concludes that the Convention requires that there should first be real in-depth consultations with the representative institutions of indigenous and tribal peoples and that sufficient efforts should be made, in so far as possible, to reach joint solutions, since this is the cornerstone of dialogue. It is also an important tool in achieving the goals of sustainable development.

## Argentina

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169)*** (ratification: 2000)

The Committee notes the Government's reply to the communication of 12 June 2009 by the Association of Health Professionals of Salta (APSADES) and the communication of 31 August 2009 by the Confederation of Workers of Argentina (CTA). It also notes the communication of 27 August 2010 by the Association of Staff of Supervisory Bodies (APOC). The Committee also notes the comments of 31 August 2010 by the CTA. It also notes the comments of 29 October 2010 by the General Confederation of Labour (CGT). ***The Committee requests the Government to send its comments thereon and on the communication of 28 July 2008 by the Education Workers' Union of Rio Negro (UNTER) alleging non-observance of Articles 6, 7, 15(2) and 17(2) of the Convention.***

## Brazil

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169)*** (ratification: 2002)

The Committee notes the communication from the International Trade Union Confederation (ITUC), dated 1 September 2010, which was sent to the Government on 8 September 2010 for their comments thereon.

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the communication from the Union of Rural Workers of Alcántara (STTR) and the Union of Family Agriculture Workers of Alcántara (SINTRAF), of 20 October 2009, forwarded to the Government on 6 November 2009. The Committee will examine this communication at its next session together with the observations of the Government in this regard. ***The Committee requests the Government to respond to the communication of the STTR and SINTRAF.***

The Committee recalls that on 27 August 2008 it received a communication from the STTR and SINTRAF on the application of the Convention in the country, which was sent to the Government on 5 September 2008. It also recalls that, on 1 September 2008, it received a communication from the Single Confederation of Workers (CUT) sent to the Government on

<sup>27</sup> *ibid.*, para. 74.

<sup>28</sup> *ibid.*

18 September 2008. This communication also attached comments made by the following indigenous organizations: the Coordinating Committee of the Indigenous Peoples of the North-East, Minas Gerais and Espírito Santo (APOINME), the Indigenous Council of Roraima (CIR), the Coordinating Committee of the Indigenous Organizations of Brazilian Amazonia (COIAB) and the Warã Brazilian Indian Institute. Furthermore, the Committee recalls that it received a communication, dated 19 September 2008, from the Workers' Union of the Federal University of Santa Catarina (SINTUFSC), forwarded to the Government on 4 November 2008.

*Quilombola communities of Alcântara.* The Committee notes that by means of a communication of 26 December 2008, the Government provided information with regard to the observations formulated by the STTR and SINTRAF. The Committee notes that the information submitted by the Government only refers to one of the issues raised by the STTR and SINTRAF, namely the situation of Quilombola communities in the face of the establishment and expansion of the Alcântara Launch Centre (CLA) and the Alcântara Space Centre (CEA) on territory traditionally occupied by Quilombola communities, without their being consulted and without their participation.

The Committee notes that, according to what emerges from the information submitted by the Government, the Technical Study on Identification and Demarcation was published. Following an administrative conciliation procedure between the governmental institutions concerned (Ministry of Science and Technology, Ministry of Agricultural Development, National Institute for Settlement and Agrarian Reform (INCRA), the Brazilian Spatial Agency and the Alcântara Space Centre), the Study established that 78,105,3466 hectares will be considered as territory of the Quilombola communities of Alcântara. The Committee understands that this entailed the reduction of the territory occupied by Quilombola communities and notes that the indications regarding the extent of such reduction differ. The Committee also notes that, according to article 11 of Decree No. 4887/2003, when the lands occupied by descendants of Quilombola communities overlap with, among others, national security areas, appropriate measures shall be taken to ensure the sustainability of these communities, conciliating, at the same time, States' interests. In this regard, the Committee notes that according to the Advisory Opinion/AGU/MC/N.1/2006 of the Attorney General, in the event of overlapping interests, conflicts shall be settled in the light of the principle of "reasonableness".

The Committee recalls that, as indicated in its previous observation, the communities in question appear to meet the requirements for being covered by the Convention and they identify themselves as tribal peoples within the meaning of *Article 1(1)(a) of the Convention*. Inasmuch as these communities meet the requirements set out in *Article 1* of the Convention, the Articles of the Convention shall be applied when addressing the issue which is the object of the communication. The Committee recalls the special importance for the cultures and spiritual values of the peoples covered by the Convention of their relationship with the lands or territories which they occupy or otherwise use and the obligation of governments to respect that relationship. The Committee considers that the recognition and effective protection of the rights of these peoples to the lands that they traditionally occupy in accordance with *Article 14* of the Convention is of vital importance for safeguarding the integrity of these peoples and, consequently, for respecting the other rights established in the Convention.

Likewise, the Committee emphasizes that governments have the obligation, under *Article 6(1)(a)* and *(2)* of the Convention, to consult the peoples covered by the Convention, through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly, with the objective of achieving agreement or consent to the proposed measures. The Committee also draws the Government's attention to the fact that, pursuant to *Article 7(3)* of the Convention, governments shall ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The Committee cannot overemphasize that the results of these studies shall be considered as fundamental criteria for the implementation of these activities. The Committee notes that the information provided by the Government does not contain any reference to the participation of the affected communities in the procedure mentioned above. Neither does it contain references to their consultation. ***In light of the above, the Committee asks the Government to provide detailed information on:***

- (i) ***the way in which the participation and consultation of the Quilombola communities affected were ensured, through their representative institutions, with the objective of achieving agreement or consent about the solution of the case, including information on the participation of these communities in the elaboration of the Technical Study on Identification and Demarcation;***
- (ii) ***the way in which due account was taken of the obligation to ensure the cultural, social and economic integrity of the Quilombola communities affected when reconciling the conflicting interest of the parties involved in the issue at hand;***
- (iii) ***the measures adopted to carry out studies in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of the establishment and expansion of the CLA and the CEA, including with a view to ensuring the viability of the traditional activities of these communities;***
- (iv) ***the progress made in identifying and demarcating the lands traditionally occupied by the Quilombola communities following the adoption of the Technical Study on Identification and Demarcation and the measures adopted to guarantee the rights of ownership and possession of these communities over their traditional lands and to safeguard their right to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities; and***
- (v) ***the special measures adopted, in accordance with Article 4 of the Convention, to safeguard the persons, institutions, property, labour, cultures and environment of the communities concerned for as long as the recognition and demarcation of their lands is pending.***

*Communication from the Workers' Union of the Federal University of Santa Catarina (SINTUFSC), dated 19 September 2008. The Committee asks the Government to reply to the communication from SINTUFSC so as to allow the Committee to examine it in detail at its next session.*

*Article 1(2). Undermining of the application of the criterion of self-identification.* The CUT also states that the criterion of self-identification established in *Article 1(2)* of the Convention was incorporated in national law by means of Decree No. 4887/2003, which regulates the procedure for granting titles regarding lands occupied by the remaining Quilombola communities. Nevertheless, the Government is allegedly undermining self-identification by means of subsequent legislation (Decree No. 98/2007), thereby preventing issues regarding land titles from being settled since doing so depends on registration of communities. It is, according to the trade union, more and more difficult to obtain registration and thus secure the application of other rights, in particular with regard to land. The violation of the criterion of self-identification is also visible in the dispute between the Quilombola community of Isla de Marambai and the Navy. The communities identify themselves as indigenous and claim the protection afforded by the Convention. Although occurring less frequently, the indigenous identity of the Indians of the North-East is sometimes not recognized either, and this makes the recognition of their rights to the lands they have traditionally

occupied more difficult. In the light of the information received, the Committee considers that the Quilombola communities appear to meet the requirements laid down by *Article 1(1)(a)* of the Convention, according to which the Convention applies to “tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations”. *Article 1(2)* states that “self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups for which the provisions of this Convention apply”. ***The Committee requests the Government to provide information on the application of the Convention to the Quilombola communities, and should the Government consider that these communities do not constitute tribal peoples within the meaning of the Convention, the Committee requests the Government to state the reasons for its viewpoint.***

*Communication from the CUT. Articles 2, 6, 7 and 33. Consultation and participation.* The communication indicates that although there has been an increase in social dialogue, the effectiveness of such forums is questioned by the indigenous peoples because of their defining features (places which are difficult to access, convocations issued with little notice or superficial discussions) and the impression exists that the sole purpose of such consultations with the peoples, when they are actually held, is to rubber-stamp public policies. The Committee reminds the Government, as it has done repeatedly, that consultation and participation must not just be formal and devoid of content but must constitute a genuine dialogue, by means of appropriate mechanisms, so that they can result in projects including those in which the peoples covered by the Convention may participate in their own development. ***The Committee requests the Government to examine the existing mechanisms for consultation and participation, in cooperation with the indigenous organizations, so as to ensure that they are in conformity with the Convention, and to supply information in this respect.***

*Article 6. Consultation and legislation.* The communication indicates that no consultation takes place with regard to the legislative and administrative measures referred to in *Article 6* of the Convention. Examples of this are Decree No. 98/2007 concerning the Palmares Cultural Foundation referred to above, the draft Act concerning mining on indigenous lands (PL No. 1610/1996) and draft Decree No. 44/2007, which suspends the application of Decree No. 4887/2003 regulating the procedure for granting titles regarding Quilombola lands. ***The Committee notes that governments have the obligation to consult the peoples covered by the Convention whenever consideration is given to legislative or administrative measures which may affect them directly, and requests the Government to supply information in this respect.***

*Article 14. Lands.* The CUT points out that the Constitution guarantees for Indians and Quilombola communities the right to the lands which they occupy but, although there are 343 indigenous territories and 87 Quilombola territories which are registered, land titles have still not been regularized for most of the lands; 283 indigenous lands and 590 Quilombola lands are the subject of administrative proceedings and 224 indigenous lands have not even reached this stage. The number of indigenous persons who have been killed has increased, particularly in Mato Grosso do Sul, as a result of unresolved land disputes. ***The Committee requests the Government to supply information on the application of Article 14 of the Convention with regard to the Quilombola communities.***

*Articles 6, 7 and 15. Participation, consultation and natural resources.* Detailed reference is made to five projects in which the CUT alleges there has been no participation or consultation: (1) the Belo Monte hydroelectric project; (2) diversion of the River San Francisco; (3) draft Act No. 2540/2006, which proposes authorization for a hydroelectric project at the Tamanduá Falls on the River Cotingo in the Raposa Serra do Sol indigenous territory; (4) the Guaraní-K'itwoá indigenous territory, where 12,000 indigenous persons live confined to reserves such as Dourados, living in abject poverty, with projects and policies implemented without any consultation or participation; (5) mining in the Cinta Larga indigenous territory, which will be severely affected by the draft law on mining, regarding which there has been no consultation with the peoples concerned. ***The Committee expresses its concern regarding the allegations and reminds the Government that, under the terms of Article 7, it must ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities. The Committee requests the Government to supply detailed information regarding the cases referred to above.***

***The Committee hopes that the Government will supply detailed information in this regard. The Committee requests the Government to send its comments on these communications, together with its reply to the present comments. Noting that the Government's report does not provide a reply to the questions posed by the Committee in its 2005 direct request, it requests the Government to also include a reply to the 2005 comments.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Chile

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2008)***

The Committee notes the detailed first report and the comprehensive appendices supplied by the Government, which show the special attention the Government pays to the application of the Convention. It also notes the comments of the National Confederation of Artisanal Fishers of Chile (CONAPACH), and the Single Central Organization (CUT) on behalf of the Coordination of Mapuche Organizations and Communities, Araucanía Region and the Mapuche Pelón Xaru Peoples' Cultural Centre, both dated 30 August 2010, and the CUT's comments of 1 October 2010. The Committee also notes the comments submitted by the National Confederation of Unions of Bakery Workers (CONAPAN) on 3 November 2010. The Committee will examine these communications at its next session, together with any observations the Government may wish to make thereon. ***The Committee requests the Government to respond to the comments of CONAPACH, the CUT and CONAPAN.***

The Committee is raising other points in a request addressed directly to the Government.

## Colombia

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1991)

The Committee notes the Government's reply to the comments sent by the International Trade Union Confederation (ITUC) on 31 August 2009 and those of the Union of Workers of the National Mining Enterprise "Minercol Ltda." (SINTRAMINERCOL) received on 28 August 2010. The Committee also notes the comments of the General Confederation of Workers (CGT) of 3 June 2010 and the comments of the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC) of 30 August 2010, which refer to pending issues. It also notes the communication by the National Employers Association of Colombia (ANDI), received on 2 September 2010. *The Committee requests the Government to provide its comments in this regard.*

## Peru

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1994)

The Committee notes the discussion which took place in the Conference Committee in June 2010 and its conclusions. The Committee also notes the comments dated 27 July 2010 from the General Confederation of Workers of Peru (CGTP) prepared with the cooperation of the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSESEP), the National Confederation of Communities of Peru affected by Mining (CONACAMI), the National Agrarian Confederation (CNA), the Farmers' Confederation of Peru (CCP), the Peace and Hope Association, the Amazonian Centre of Anthropology and Practical Application (CAAP), CARE Peru, Law, Environment and Natural Resources (DAR), the Institute of Public Welfare (IBC) and the Indigenous Information Service (SERVINDI), which refer to outstanding issues, particularly the failure to promulgate the Act concerning the right of indigenous and original peoples to prior consultation and the existence of a bill which allows the displacement of people in large-scale projects, and the existence of numerous decrees aimed at dividing up and reducing communal territories. The Committee also notes the comments from the Single Confederation of Workers of Peru (CUT) of 25 August 2010 concerning the lack of recognition of indigenous peoples in the country, disregard for the right of consultation of indigenous peoples, problems regarding the definition of lands traditionally occupied by indigenous peoples, and the lack of adequate institutions in the country to deal with the issues of indigenous peoples since the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) is not fulfilling its mandate and there is no indigenous participation in its executive council. According to the CUT, as a result the Government has been obliged to set up round tables for dialogue to settle disputes with the Amazonian indigenous peoples. The Committee notes that the Government sent its observations on the comments from the CGTP in a communication dated 7 October 2010. The Committee points out that some of the issues raised by the trade union organizations are the subject of a representation under article 24 of the Constitution and will therefore be examined in that context.

*Follow-up to the conclusions of the Conference Committee.* The Conference Committee in 2009 raised a range of issues, including the incidents in Bagua, resulting in numerous deaths and injuries among indigenous peoples and the police. The Conference Committee in 2010 urged the Government to provide information on the promulgation and application of the Act concerning the right of indigenous or original peoples to prior consultation adopted on 19 May 2010 by the Congress and the related transitional measures in order to evaluate compliance with the provisions of the Convention. The Conference Committee also considered it necessary to reform INDEPA with the full participation of the representative organizations of the indigenous peoples in order to ensure its legitimacy and authentic capacity for action and to guarantee the application of the Act concerning consultation. The Conference Committee also requested information on the application of the development plan for the Amazonian region. It also considered that progress needed to be made in relation to the formulation and application of plans of action to deal systematically with pending issues relating to the protection of the rights of peoples covered by the Convention, and it emphasized the need to ensure that these plans of action are formulated and implemented with the participation of the representative organizations of the indigenous peoples, in accordance with *Articles 2 and 6 of the Convention*. Finally, the Conference Committee asked the Government to send information on the impact on the training of bilingual teachers of Ministerial Decision No. 0017-2007-ED establishing admission criteria for candidates as teachers. It encouraged the Government to avail itself of ILO technical assistance to ensure that adequate progress is made in the application of the Convention.

*Investigation of incidents in Bagua.* In its previous comments, the Committee urged the Government to take the necessary steps without delay to conduct an effective and impartial investigation into the incidents of June 2009 in Bagua, in which 23 police officers and ten civilians died, and provide detailed information in this regard. The Committee notes the Government's statement that, in the context of the National Coordinating Group for the Development of the Amazonian Peoples (Dialogue Group), Round Table No. 1 was established composed of three representatives of the Executive Authority, three representatives of the indigenous peoples and one representative of the regional governments. The round table drew up one report by the majority and one report by the minority of its members, and these, according to the Government, were approved by the Presidency of the Council of Ministers and referred to the corresponding

departments of the Executive Authority, Office of the Public Prosecutor and Judicial Authority. The Committee also notes that the Congress set up the “Multi-Party Commission of Inquiry into the events in the city of Bagua and surrounding area”, which also drew up reports which were submitted to the plenary of Congress, and that the Office of the Provincial Prosecutor of Utcubamba instituted various judicial proceedings for the criminal offences of murder, violence, resistance towards the authorities and the carrying of firearms. The Committee notes the indication of the CGTP that the majority report drawn up by Round Table No. 1 does not shed light on the events that took place or assign responsibilities for what happened and was not accepted by the indigenous peoples. The CGTP also emphasizes that the report of Congress concluded that the events were caused by violations of the fundamental rights of the indigenous peoples. ***The Committee requests the Government to provide information on the measures taken as a consequence of the various reports drawn up in the context of Round Table No. 1 of the National Coordinating Group for the Development of the Amazonian Peoples, the conclusions reached by the plenary of the Congress in relation to the reports drawn up by the Multi-Party Commission of Inquiry, and also on the outcome of the judicial proceedings in progress regarding the events that took place in Bagua.***

*Article 6. Consultation.* The Committee recalls that the Conference Committee welcomed the adoption by the Congress of the Republic of the Act concerning prior consultation and indicated that it trusted that the Act would be promulgated in the very near future by the President of the Republic. The Committee also recalls that the Act had been the result of negotiations between the Executive Authority and the Amazonian organizations in the context of Round Table No. 3, whose objective was to reach a consensus on legislation concerning consultations. In this respect, the Committee notes with ***regret*** the statement from the Government to the effect that since the adoption by Parliament of the Act concerning the right of indigenous or original peoples to prior consultation, the Act was not promulgated by the Executive Authority, which made certain observations relating to it (Official Letter No. 142-2010-DP/SCM). The Government adds that the Act was referred back to Parliament for revision, that the Commission for the Constitution and Regulations and the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Ecology and the Environment have already issued opinions in this respect, which will be examined by the plenary of Congress in the near future. The Committee notes that, in its observations on the Act approved by Congress, the Executive Authority: (1) remarked that it should be made clear in the Act that indigenous peoples do not have any right of veto in the consultation process concerning projects for the exploration and exploitation of natural resources which have been duly notified and analysed together with the indigenous peoples in the areas covered by the said projects (observation No. 1); (2) considered that the possibility established in section 9 of the Act that indigenous peoples may challenge the decisions of the Executive Authority with respect to the participation of certain indigenous peoples vis-à-vis the Judicial Authority was “reiterative inasmuch as any person or institution may now file appeals to assert guarantees, applications for decisions to be set aside or for compensation with the Judicial Authority” (observation No. 5); (3) considered that “the Act must clearly state the difference between territories under public ownership in Amazonia and areas assigned to the ownership of native communities . . . . It is in the context of the latter that the right to consultation must be exercised” (observation No. 6).

In this context the Committee refers to its general observation of this year, on the “obligation to consult” under the Convention which is intended to mean that: (1) consultations must be formal, full and exercised in good faith; there must be a genuine dialogue between governments and indigenous and tribal peoples characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord; (2) appropriate procedural mechanisms have to be put in place at the national level and it has to be in a form appropriate to the circumstances; (3) consultations have to be undertaken through indigenous and tribal peoples’ representative institutions as regards legislative and administrative measures; (4) consultations have to be undertaken with the *objective* of reaching agreement or consent to the proposed measures. The Committee therefore emphasizes that the right of indigenous peoples to consultation cannot be limited exclusively to measures affecting indigenous lands in respect of which ownership title has already been granted, as observation No. 6 of the Executive Authority appears to suggest, but must also encompass administrative or legislative measures which may affect them directly, including those concerning indigenous lands or territories traditionally occupied or used regardless of whether or not ownership title has been granted with respect to them. They must also be able, pursuant to *Article 12* of the Convention, to take legal proceedings, either individually or collectively, for the effective protection of their rights, including their right to consultation. ***The Committee expresses the firm hope that the Act on the right of indigenous or original peoples to prior consultation will be approved in the near future by Congress, that the Act will be the result of an ongoing process of consultation with the representative institutions of the indigenous peoples, including regarding the observations of the Executive Authority and that the Act will be in full conformity with the provisions of the Convention. In addition, the Committee requests the Government to ensure full observance of the right of indigenous and tribal peoples to participate and be consulted prior to the adoption of legislative or administrative measures which may affect them directly. The Committee also requests the Government to guarantee that there are specific provisions in the Act so that indigenous peoples can take legal proceedings, either individually or through their representative bodies, in the event that they consider that their right to be consulted on measures affecting them directly has not been observed. The Committee requests the Government to provide information on any progress made in this respect.***

The Committee also notes the explanatory decision of the Constitutional Court dated 24 August 2010 (in relation to file No. 06316-2008-PA/TC), which provides that it is necessary to establish that the mandatory nature of the right to consultation shall be considered binding as from the publication of Constitutional Court Ruling No. 022-2009-PI/TC, in



light of the considerations set out therein. The Committee emphasizes that Ruling No. 022-2009-PI/TC is dated 9 June 2010, and therefore that the right to consultation was not considered binding before that date. In this respect, the Committee recalls that, in conformity with *Article 38* of the Convention, the Convention shall come into force for any Member of the ILO 12 months after the date on which its ratification has been registered. Taking account of the fact that Peru ratified the Convention on 2 February 1994, the Committee reminds the Government that all the provisions of the Convention, including those relating to the obligation of consultation, have been binding on it since 2 February 1995. ***Pursuant to Article 38 of the Convention and in the light of Article 12 of the Convention concerning the legal protection of the rights recognized in the Convention, the Committee requests the Government to indicate how it ensures that indigenous peoples have been able to enjoy effective judicial protection of the right to consultation from the date of entry into force of the Convention.***

*Articles 2 and 33. Coordinated and systematic plan of action.* In its previous comments, the Committee urged the Government to ensure full and effective participation and consultation of the indigenous peoples through their representative institutions in preparation of the plan of action drawn up to address, in a coordinated and systematic manner, outstanding problems relating to the protection of the rights of the peoples covered by the provisions of the Convention and to align national law and practice with the Convention. The Committee also asked the Government to supply information on this matter and on the work of the various bodies concerned, indicating how the participation of the peoples concerned and the coordination of the activities of these bodies are ensured, as well as coordination between the work of these bodies and the preparation of the plan of action. The Committee notes the indication from the CGTP that there is still no agreed plan of action or any dialogue or consultation on its implementation and that the various state bodies are continuing their sectoral policies without any real participation from the indigenous peoples. In this respect, the Committee notes the Government's indication that, in the context of the National Coordinating Group for the Development of the Amazonian Peoples, Round Table No. 4 (National Development Plan for Amazonia) was established, in which 82 working meetings were held and a National Development Plan for the Amazonian Peoples was drawn up, based on consensus between representatives of the national Government, regional governments and the two most representative indigenous organizations (the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSEP) and the Confederation of Indigenous Nationalities of Peru (CONAP)). This Plan provides for measures (some of which were requested by the Committee) in the following areas: right of ownership and legal certainty, bilingual intercultural education, inter-cultural health system, participation of indigenous peoples in the use of natural resources, development policies and production projects. The Committee reiterates its **concern** that the proliferation of bodies with mandates that sometimes overlap may hamper the development of a coordinated and systematic response to the problems of protecting and ensuring the rights of indigenous peoples and recalls that *Articles 2 and 33* of the Convention provide for coordinated and systematic action with the participation of the indigenous peoples from the planning through to the evaluation of the measures provided for in the Convention. ***The Committee requests the Government to:***

- (i) ***state whether the National Development Plan for the Amazonian Peoples is being implemented and the results achieved;***
- (ii) ***clarify whether any other plan has been drawn up in consultation with the indigenous peoples at national or regional level intended for indigenous peoples in general or specifically covering the Andean communities;***
- (iii) ***send additional information on the functions performed by the various entities mentioned by the Government and whether they are still active and on the manner in which coordination is ensured between them.***

*National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA).* The Committee emphasizes that the Conference Committee noted the Government's indication that the Act concerning the right of indigenous and original peoples prior consultation assigns a central role to INDEPA and considered that INDEPA needed to be reformed with the full participation of the representative organizations of the indigenous peoples in order to ensure its legitimacy and its genuine capacity for action. The Committee notes that the CGTP indicates once again that there have been no consultations with indigenous peoples regarding the institutional reform of INDEPA. The Committee notes the Government's indication that, in compliance with the conclusions of the round tables established in the context of the National Coordinating Group, in which the representatives of the organizations of the indigenous peoples participated, INDEPA was transferred to the Presidency of the Council of Ministers and was declared a specialized technical public entity (Supreme Decree No. 022-2010-PCM and Supreme Decree No. 048-2010-PCM). The Government also indicates that the establishment is envisaged of an executive council composed of representatives of the Andean, Amazonian and Afro-Peruvian peoples. The Government indicates that INDEPA has four national coordination centres, with indigenous representatives, which have been set up recently. This enables coordination between the Andean, Amazonian and Afro-Peruvian peoples and the regional and local governments, and makes it possible to prevent disputes, promote participation and create an ongoing participation machinery. The Committee observes that the Council of Ministers is currently revising the regulations governing the operating structures of INDEPA and that, since the adoption of Act No. 29565 of 22 July 2010, is now no longer attached to the Presidency of the Council of Ministers but to the Under-Ministry of Inter-Cultural Affairs, which is under the responsibility of the Ministry of Culture. The Committee observes that for years the INDEPA has been affected by considerable institutional instability, that it has changed hierarchical structure on various occasions, and that it has been under the responsibility of different ministries and authorities at different times. ***The Committee requests the Government to take the necessary steps to ensure the effective participation of the representative***

*institutions of the indigenous peoples in the institutional reform of INDEPA, in the constitution of its executive council and in the revision of the regulations governing its functions, in order to ensure its legitimacy and its genuine capacity for action. The Committee requests the Government to provide information on this matter and also on the impact of the recent establishment of the four INDEPA centres on the dialogue between the regional and local governments and the indigenous peoples concerned, on the participation of the latter in INDEPA's activities and on the prevention of disputes.*

*Follow-up to the Committee's comments. Article 1. Peoples covered by the Convention.* The Committee recalls that in its previous comments it noted a framework Bill concerning the indigenous or original peoples of Peru, which lays down a definition of indigenous or original peoples with a view to removing ambiguities from the national legislation regarding identification of the peoples covered. The Committee asked the Government to align, in consultation with the indigenous peoples, the definition in the framework Bill with the Convention. The Committee also asked the Government to supply information on the manner in which effective consultation and participation was ensured with indigenous peoples in the preparation of the Bill and also on the measures taken to ensure that all the peoples covered by *Article 1* of the Convention are covered by all the provisions of the Convention and enjoy the rights set forth therein on an equal footing. The Committee notes the comments from the CUT that there is no political will to consult the indigenous peoples with a view to establishing unified criteria for their identification. The Committee also notes that the CGTP refers to the exclusion of the communities of the Andean and coastal zone from the protection of the Act concerning the right to prior consultation.

In this respect, the Committee notes the Government's indication that a participatory consultation process was conducted in the context of the National Coordinating Group with representatives of the indigenous peoples with a view to aligning national legislation in relation to the definition of indigenous peoples (Round Table No. 3). The opinions presented were analysed in the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Ecology and the Environment, which prepared a preliminary opinion on the Bill concerning the right to prior consultation. The Committee notes that sections 5–7 of the Bill refer to the persons covered by the Bill and that section 7 in particular refers to the criteria for identification, namely: direct descent from original peoples; lifestyles and spiritual and historic links with the territory that they occupy; own social institutions and customs; different cultural patterns and ways of life from those of other sections of the population. The Committee notes that the Government in its comments on the Bill concerning the right to prior consultation, set out in Official Letter No. 142-2010-DP/SCM opposes the inclusion of the Andean and coastal-rural communities in the definition of indigenous peoples (observation No. 6). The Committee recalls that in previous comments it noted the Government's indication that section 2 of Act No. 28945 concerning the National Institute of Andean, Amazonian and Afro-Peruvian Peoples refers to the Andean, Amazonian and Afro-Peruvian peoples and that rural communities and native communities are included in the recognition of their ethnic and cultural rights as communities similar to indigenous peoples, with emphasis on the social, political and cultural aspects, which coincides with the provisions of articles 89 and 149 of the Constitution of the Republic. The Committee recalls that it emphasized the need for indigenous communities to be covered by the Convention regardless of their designation. The Committee also notes that *Article 1* of the Convention refers to "descent" and is concerned that the reference to "direct descent" in the draft Act may be too restrictive. ***Recalling the need to ensure that the criteria for identification of the indigenous peoples are unified, in consultation with the indigenous peoples themselves, the Committee requests the Government to ensure that the Bill on the right of indigenous and original peoples to prior consultation ensures that these peoples fully enjoy the protection established in the Convention, regardless of their designation, and to provide information on any developments in this respect. The Committee also requests the Government to indicate the progress made in Parliament in the adoption of the draft framework Bill concerning the indigenous or original peoples of Peru.***

*Article 7. Participation.* In its previous observation, the Committee urged the Government to take the necessary steps to bring national law and practice into conformity with *Articles 2, 6, 7 and 15* of the Convention, taking into account the right of peoples covered by the Convention to decide on their own priorities and participate in national and regional development plans and programmes. The Committee notes the statement by the CGTP that no standards or institutions have been established to enable implementation of the right of indigenous peoples to decide on their own priorities for development, nor have any forums for dialogue in this area been opened. The Committee notes the Government's indication that the most significant measure is the dialogue conducted in the context of the National Coordinating Group, which had the full participation of the Amazonian communities. ***The Committee requests the Government to continue to supply information on the measures taken as a result of the dialogue conducted in the context of the National Coordinating Group for the Development of the Amazonian Peoples, and on their implementation and impact, and also on any other plan or programme adopted for the benefit of other indigenous communities or peoples. The Committee also requests the Government to indicate the measures adopted with a view to aligning national law and practice with the Convention in order to guarantee the right of indigenous peoples to decide on their own priorities and participate in national and regional development plans and programmes.***

*National development plans, programmes and projects.* The Committee notes that the Executive Authority, in its observations on the Bill concerning the right to prior consultation (Official Letter No. 142-2010-DP/SCM), objects to the fact that section 2 provides that consultations should also be held with respect to national and regional development plans, programmes and projects which directly affect the collective rights of the indigenous peoples and maintains that the

Convention does not establish the obligation of consultation with respect to national and regional development plans, programmes and projects, which would extend the scope of the Convention in an unnecessary and inappropriate way, and this could paralyse the execution of important infrastructure works for the country. **Observing that Article 7 establishes that the peoples concerned shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly, the Committee requests the Government to indicate the manner in which the participation provided for in the Convention is ensured.**

*Impact studies and environmental protection.* In its previous comments, the Committee asked the Government to provide information on the measures taken, in cooperation with the indigenous peoples, to protect and preserve the environment of the territories which they inhabit, in accordance with *Article 7(4)* of the Convention, including information on coordination between the Energy and Mining Investment Supervisory Body (OSINERGMIN) of the Ministry of Energy and Mines and the Environmental Evaluation and Control Agency (OEFA) of the Ministry of the Environment. The Government indicates that the Ministry of Energy and Mines takes care of the promotion of investments while the supervision of mining and energy projects comes under the responsibility of the Ministry of the Environment, for which reason this function was then transferred to the OEFA.

The Committee also notes the Government's indication that: (1) the Regulations concerning public consultation and participation regarding activities related to oil, gas and electricity (Supreme Decree No. 012-2008-EM and Ministerial Decision No. 223-2010-MEM/DM) provide for public consultation and participation with regard to the preparation of environmental studies and also provide for citizen's monitoring and supervision mechanisms subsequent to the approval of such studies in order to involve the indigenous peoples and the population in environmental protection; (2) the special regime for the administration of communal reserves approved by Administrative Decision No. 019-2005-INRENA-IANP provides for a mechanism of coordination with the indigenous peoples for the safeguarding of protected natural areas; (3) tripartite dialogue has been conducted in relation to oil and gas activities in the Peruvian rainforest aimed at protecting the environment of the Department of Madre de Dios; (4) the development of a national forest conservation programme has been approved, in the context of which 67 consultation sessions have been held with the Ashaninka native communities in the central rainforest; and (5) the project on mitigation and adaptation to climate change for the protection of areas of the central rainforest has been approved, with funding provided for a programme of sustainable economic activities with the indigenous peoples of the area. The Committee also notes that Supreme Decree No. 002-2009-MINAM approves the Regulations on transparency, access to public information on the environment and public participation and consultation in environmental matters, which provide for a mechanism for the participation of citizens in the determination and application of policies relating to the environment, in the process of public decision-making on environmental matters, and on their execution and supervision, and that dialogue with civil society shall be sought in decisions and actions relating to environmental management (section 21). The consultation mechanisms may also assume various forms: participatory workshops, public hearings, opinion surveys, suggestion boxes, environmental, regional and local commissions, technical groups and management committees, and these must be held in Spanish and in the predominant language of the place concerned (section 29). The draft environmental study must also be drawn up in Spanish or in the language of the location concerned, be easy to understand and mention the types of impact which have been identified and the impact mitigation or compensation measures which have been established (section 34). The Committee welcomes this information in view of the fact that the Convention requires the establishment of genuine dialogue between the parties concerned to enable concerted solutions to be sought and, if these requirements are fulfilled, consultations may play a decisive role in the prevention and settlement of disputes. **The Committee requests the Government to continue to supply information on all the measures taken, in cooperation with the indigenous peoples, to protect and preserve the environment of the territories which they inhabit. The Committee also requests the Government to provide information on the specific application in practice with regard to the indigenous peoples of Supreme Decree No. 002-2009-MINAM concerning citizen's participation and consultation in environmental matters and of the sectoral legislation concerning citizen's participation, and to indicate whether environmental impact studies also evaluate the social, spiritual and cultural impact of development activities on the indigenous peoples, as provided for in Article 7(3) of the Convention.**

*Article 14.* The Committee recalls that, in its previous comments, it referred to Legislative Decree No. 994 of 2008 which establishes a special regime for promoting private investment in irrigation projects on unclaimed land (*tierras eriazas*) with agricultural potential belonging to the State, section 3 of which establishes as state property all unclaimed land with agricultural potential other than such lands for which a title for private or communal ownership is entered in the public records. It also noted that Decree No. 994 of 2008 does not protect the rights of indigenous peoples over traditional lands where there is no official title of ownership. The Committee asked the Government to provide information on the measures taken to determine the lands that the peoples concerned traditionally occupy and to guarantee effective protection of their rights of ownership and possession, including through effective access to appropriate procedures for settling their land claims. The Committee notes that the CGTP and CUT refer to this matter, making reference to Legislative Decree No. 1089 respecting rural occupancy and ownership. The Committee further notes the Government's indication that the various projects concerning the ownership and registration of lands implemented between 2002 and 2006 benefited 550 farming communities and 55 native communities in the Amazon rainforest, with ownership title having been granted to 84 per cent of all farming communities and 87.42 per cent of native communities by the end of 2009. The Government adds that between 1975 and 2009 a total of 1,447 native communities were recognized, of which

1,265 were granted ownership title to their lands, and that the procedures for demarcating and granting ownership in respect of territory are governed by the Act on native communities and agrarian development of the rainforest regions (Legislative Decree No. 22175) and its implementing regulations (Supreme Decree No. 003-79-AA). In addition, Act No. 24657 on demarcating and granting ownership of the lands of farming communities provides for the formalization of the right of ownership of native communities with respect to the territories that they occupy. The Government also indicates that Legislative Decree No. 1089 and its regulations (Supreme Decree No. 032-2008-VIVIENDA) establishes an extraordinary temporary regime to formalize and grant ownership title with respect to rural properties. It also explicitly provides that the mechanism is not applicable in areas located within the territory of farming and native communities. The Committee further notes that the Constitutional Court confirmed that Legislative Decree No. 1089 and its implementing regulations are not applicable to the territories of indigenous peoples, regardless of whether or not they have been officially recognized, as laid down by sections 3(1) and 15 of the regulations (case No. 0022-2009-PI/TC, ruling of 9 June 2010). ***The Committee requests the Government to take the necessary steps to guarantee the protection of the rights of indigenous peoples to the lands that they traditionally occupy. Noting that Legislative Decree No. 1089 is not applicable to the territories that indigenous peoples traditionally occupy, the Committee requests the Government to supply information on the manner in which the full application of Article 14 of the Convention is ensured, in particular the processes for granting ownership with respect to, and for registration of, lands which are in progress, the areas in respect of which ownership title has been granted, the communities which have benefited, and also to indicate the legislation applicable to these processes. The Committee asks the Government to ensure that section 12 of Legislative Decree No. 994 of 2008, which provides for the possibility of eviction from unclaimed lands in case of invasion or usurpation, does not apply to indigenous peoples who traditionally occupy lands even if they do not have any formal title of ownership.***

*Article 15. Consultations in relation to natural resources.* The Committee notes the existence of preliminary draft regulations for the consultation of indigenous peoples with respect to energy and mining activities drawn up by the Ministry of Energy and Mines, pursuant to the ruling of the Constitutional Court of 30 June 2010 ordering the Ministry to issue, in areas within its competence, special regulations establishing the right of indigenous peoples to consultation, in conformity with the principles and rules established by the Convention (TC No. 05427-2009-PC/TC). The Committee also notes a Bill amending the legislative framework relating to the electricity sector and authorizing the drawing up of a single consolidated text of the regulations governing activities in the electricity sector was transmitted by the Executive Authority to Congress (No. 4335/2010-PE) and the draft Act on forestry which is pending before Congress, in respect of which the Office of the People's Ombudsman requested consultations to be held. ***The Committee requests the Government to supply additional information on these Bills and draft regulations and on the progress of their adoption by Parliament, and to indicate the measures taken with a view to submitting them to a process of consultation with the representative organizations of the indigenous peoples.***

With regard to the Committee's previous comments concerning the exploration and exploitation of natural resources affecting the peoples covered by the Convention and the need to ensure the participation and consultation of the peoples affected through their representative institutions in a climate of full respect and trust, the Committee notes that the Government emphasizes the importance of mining for the development of the local economies and the improvement of the living conditions of the inhabitants of the districts in which mining is present. The Government also indicates that it promotes corporate social responsibility, and adds that no mining concessions are granted in the natural areas protected from indirect use and in declared indigenous reserves. The Government points out that mining concessions only grant the right of exploration or exploitation in a preferential manner and the start of activities is subject to environmental authorization and negotiation with the surface owner concerned. The Government adds that once the holder of the concession decides to undertake exploration or exploitation activities, the citizen's consultation and participation procedure provided for in the regulations on citizen's participation (Supreme Decree No. 028-2008-EM) must be launched. While noting this information, the Committee observes that the Government does not supply any information on the cases of exploration and exploitation of natural resources affecting indigenous peoples (the Cacataibo people, who live in voluntary isolation, the Awajun and Wampis peoples, and the communities of Chumbivilcas province), to which it referred in its previous comments and which were also cited by the CGTP. The Committee notes that the CGTP refers in its latest comments to the mining exploitation activities taking place in the *caserio* of San Antonio de Juprog (Quechua-speaking community), in the district of San Marcos in Huaria province, and which, according to various studies which have been conducted, are causing contamination and damaging the health of the inhabitants (contamination through lead, cadmium, zinc and arsenic). According to the CGTP's comments, there are also plans to displace this community, but none of the measures adopted so far has been the subject of consultations with the indigenous peoples concerned. The CGTP also refers to the concessions granted for oil and gas exploitation in the territory of the Matses people without any prior consultation. ***The Committee underlines the importance of the duty of the State to undertake prior consultations on any measures that may directly affect the indigenous peoples. The Committee requests the Government to take the necessary steps to conduct consultations with the indigenous peoples referred to above concerning the exploration and exploitation of natural resources in the territories that they occupy or otherwise use (Article 13 of the Convention), before undertaking or authorizing any activity, and to determine whether the interests of those peoples have been harmed and to what extent, with a view to adopting the appropriate impact reduction and compensation measures. The Committee also requests the Government to take the necessary steps to have complaints investigated relating to the***

**contamination of territories occupied by the indigenous peoples and, should the existence of such contamination be proven, to take all the necessary steps to protect the life and safety of the members of these communities.**

*Participation in benefits.* As regards the measures taken to ensure that the peoples concerned participate in the benefits accruing from the exploitation of natural resources on their lands and that they receive fair compensation for any damage suffered as a result of these activities, the Committee notes the Government's indication that Emergency Decree No. 028-2006 provides that regional and local governments must invest 5 per cent of funds assigned by way of levies to the funding of public investment and social expenditure projects in the communities located within the areas of exploitation. The Committee also notes that Emergency Decree No. 026-2010 increased the planned allocation of funds (10 per cent for regional governments and 5 per cent for local governments). The Committee notes that the Decree provides for the participation of representatives of farming and native communities in the control of decisions for the allocation of these funds. The Government also refers to private initiatives ensuring the participation of indigenous peoples in the benefits and compensation provided for in sectoral legislation. The Government indicates that in the 2007–09 period transfers to the regions under the mining levy amounted to PEN13,300 million (*nuevos soles*) and the transfers under the standard and extra levies relating to oil and gas amounted to PEN3.9 million. **Recalling that Article 15 of the Convention states that the indigenous peoples shall wherever possible participate in the benefits of activities which exploit the resources existing on their lands, the Committee requests the Government to ensure that the planned levies enable such participation in practice and to provide information on the measures taken in this respect and on their real impact on the lives of the indigenous peoples, their development and the areas which they inhabit.**

*Articles 26 to 29. Education.* With regard to the Conference Committee's request to supply information on the impact on the training of bilingual teachers of Ministerial Decision No. 0017-2007-ED, which establishes the requirement of achieving a minimum mark of 14 out of 20 points to be able to take up training as a bilingual teacher, which might result in indigenous candidates being excluded from the education process, the Committee notes the information supplied by the Government on the legal provisions which regulate education and indicates that the Directorate of Higher Education for Teaching (DESP) governs institutes and schools of higher education for teacher training so that they can make provision for professional teaching careers in bilingual education. The Directorate approves plans for teacher training proposed by the institutions themselves so that they can meet the training needs of their own communities. It also regulates training and approval of proposed curriculum context for higher education geared to teacher training. Five institutes in the Andean region offer training for teachers in primary education. As regards the conditions for entry to teacher training courses, the Government states that, according to the statistics, there was an increase in participation and that students who did not achieve the minimum mark of 14 but scored between 11 and 13.99 points can enrol in the academic foundation course. **The Committee requests the Government to continue to supply information on the measures taken and their impact on the numbers of indigenous bilingual teachers who have been trained.**

**Finally, noting the suggestion of the Conference Committee on the Application of Standards, the Committee of Experts reminds the Government that it may avail itself of technical assistance from the ILO.**

The Committee is raising other points in a request addressed directly to the Government.

**[The Government is asked to reply in detail to the present comments in 2011.]**

## Tunisia

### **Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1962)**

The Committee notes with *regret* that the Government's report has not been received, despite the fact that the Committee had requested the Government to reply in detail to its comments. It must therefore repeat its previous observation which read as follows:

The Committee notes the Government's brief report which indicates that issues related to indigenous and tribal populations do not arise in Tunisia. In addition, the Government indicates that under article 6 of the Constitution all Tunisians have equal rights and duties and are equal before the law.

While noting these indications, the Committee also notes that the 2003 Report of the Working Group of Experts on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights has addressed the situation of the Berbers (Amazigh) of North Africa which identify themselves as indigenous peoples. The Working Group refers to estimates according to which 5 per cent of the population of Tunisia are believed to be Amazigh.

The Committee recalls that the Convention has been revised by the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which is oriented towards respect for and protection of indigenous and tribal peoples' cultures, ways of life and traditional institutions. **As indicated in its 1992 general observation, the Committee therefore encourages the Government to consider ratifying Convention No. 169.**

The Committee notes that pending such consideration, the Government remains under the obligation to give effect to the provisions of Convention No. 107 which remain relevant, including *Articles 5, 7 and 11*, or any other provisions which may be applied while respecting generally accepted human rights principles pertaining to indigenous and tribal peoples. **The Committee requests the Government to provide information on the application of the relevant provisions of the Convention, including information on the measures taken to seek the collaboration of any populations which fall under the scope of the Convention as envisaged in Article 5(a).**

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 169** (*Chile, Denmark, Fiji, Nepal, Peru, Spain*).

## Specific categories of workers

### France

#### **Nursing Personnel Convention, 1977 (No. 149) (ratification: 1984)**

*Article 5(1) of the Convention. Participation of nursing personnel in the planning of nursing services.* The Committee notes the adoption of Decree No. 2005-1656 of 26 December 2005 concerning the councils covering areas of activity and the committee for nursing, rehabilitation and medico-technical care in public health establishments. Further to its previous comments, it notes with **satisfaction** that the members of this committee, which has replaced the nursing care committee, are elected and no longer appointed by drawing lots. The Committee notes, however, that the members of this body are designated by three groups of voters, one of which regroups three occupational groups: nursing, rehabilitation and medico-technical personnel. The Committee understands that some representatives of nursing personnel fear that grouping nursing staff with the other two occupational groups referred to above does not allow to express their views on behalf of their profession within the framework of the committee for nursing, rehabilitation and medico-technical care. Furthermore, the Committee notes the adoption of Decree No. 2010-449 of 30 April 2010 concerning the committee for nursing, rehabilitation and medico-technical care in public health establishments. **The Committee requests the Government to provide further information on the manner in which it is ensured that the concerns of the nursing staff are taken into account in the context of the new regulations.**

The Committee raises other points in a request addressed directly to the Government.

### Guinea

#### **Nursing Personnel Convention, 1977 (No. 149) (ratification: 1982)**

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 2–7 of the Convention. Employment and conditions of work and life of nursing personnel.* The Committee notes that the information provided by the Government in its last report remains fragmentary, and estimates that, in the interest of maintaining a meaningful dialogue on the application of the Convention in law and practice, the Government should make a genuine effort to collect and transmit all relevant information, including legislative texts or other official documents, dealing with health care policy and nursing services. For instance, despite repeated requests in the last ten years, the Committee has still not received a copy of Decree No. 93/043/PRG/SGG of 26 March 1993, establishing general regimes for hospitals; nor has it received copies of the statutory texts and collective agreements applicable to nursing staff, particularly as regards remuneration and hours of work. Moreover, the Government has been referring since 1992 to ongoing negotiations on two sets of general regulations, one for medical and paramedical staff and another for nurses, without any indication as to the time frame for the possible conclusion of those negotiations. In addition, the Committee notes with **concern** the Government's last statement to the effect that there is no specific policy concerning nursing services and that accordingly there are no particular texts or provisions addressing the special nature of nursing work.

**Under the circumstances, the Committee asks the Government to prepare a detailed and fully documented report on the effect given to the main requirements of the Convention, particularly as regards: (i) the formulation of a national policy on nursing services designed to improve the quality standards of public health care but also to create a stimulating environment for the exercise of the nursing profession (Article 2(1)); (ii) measures relating to nursing education and training as may be taken in consultation with the National Nurses Association (ANIGUI) (Article 2(2)(a) and Article 3); (iii) the institutional framework and practical modalities of the process of consultation with employers' and workers' organizations in matters of nursing policy (Article 2(3) and Article 5(1)); (iv) sufficient protection for nursing personnel, in light of the constraints and hazards inherent in the profession, especially in terms of hours of work and rest periods, paid absence and social security benefits (Article 6); and (v) measures to improve the occupational safety and health conditions of health workers, including any specific initiative aimed at protecting nursing personnel from HIV/AIDS infection (Article 7).**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### Jamaica

#### **Nursing Personnel Convention, 1977 (No. 149) (ratification: 1984)**

*Article 5(3) of the Convention. Settlement of disputes.* The Committee notes the comments of the Nurses Association of Jamaica (NAJ), dated 25 February 2010 and transmitted to the Government on 6 April 2010, concerning the application of the Convention. The NAJ refers to the decision of the Industrial Disputes Tribunal of 15 January 2010, which has called upon the Government to immediately fix a date for the implementation of the reclassification exercise for the health sector, and alleges that the Government has failed to comply with that ruling and remains unresponsive to industrial action undertaken by its members.

The Committee understands that the dispute concerning the Government's alleged failure to implement the reclassification exercise relates to the retroactive payment of pay increase which had been agreed upon in December 2009. It also understands that the protest of NAJ members has so far taken different forms of civil disobedience, such as wearing

black armbands or engaging in sickout action, and the Supreme Court has issued an injunction to prevent further industrial action that might result in severe disruptions in public hospitals.

In view of the apparent escalation of the dispute, the Committee wishes to recall that the Convention requires that the settlement of disputes arising in connection with the determination of terms and conditions of employment of nursing personnel be sought through negotiations between the parties or, in such a manner as to ensure the confidence of the parties involved, through independent and impartial machinery such as mediation, conciliation and voluntary arbitration. This provision reflects the special nature of health care services and seeks to make it unnecessary for the organizations representing nursing personnel to have recourse to such other steps as are normally open to other workers' organizations in defence of their interests. Moreover, the Committee recalls its previous comment in which it had noted the Government's indication that despite the Memorandum of Understanding 2006–08 concluded between the NAJ and the Ministry of Health, there had been insufficient negotiations with respect to working conditions, and as a result, hospitals were faced with serious inconvenience, including critical staff shortage in some cases. ***The Committee requests the Government to transmit any comments it may wish to make in response to the observations of the NAJ. It also asks the Government to provide information on the measures taken or envisaged in order to reach a negotiated solution to the ongoing dispute in a manner consistent with the requirements of the Convention, and to keep the Office informed of any progress made in this respect.***

## Kyrgyzstan

### ***Nursing Personnel Convention, 1977 (No. 149) (ratification: 1992)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Policy concerning nursing services and personnel.* The Committee notes with ***regret*** that the Government has not communicated a report on the application of the Convention for more than ten years. ***It once again requests the Government to provide detailed information concerning the application of all the provisions of the Convention, especially in the light of the new Labour Code (Act No. 106 of 4 August 2004) and of Act No. 6 of 9 January 2005 on the protection of citizens' health.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 149** (Congo, France, France: French Polynesia, France: New Caledonia, Guyana, Russian Federation, Tajikistan); **Convention No. 172** (Fiji, Guyana, Ireland); **Convention No. 177** (Ireland).



## **II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)**

### **Angola**

The Committee notes the communication provided by the Government in June 2010 in which the Ministry of Public Administration, Employment and Social Security indicates that it has encountered difficulties in forwarding the submission files to the competent authorities. The Government reiterates its request for ILO technical assistance to organize an activity on international labour standards with the objective of making those responsible for the various areas of government and the social partners aware of the need to comply with the provisions of the ILO Constitution. The Committee hopes that the Government and other interested parties will receive the requested assistance on international labour standards. *The Committee hopes that the Government will soon be in a position to provide the required information on the submission to the National Assembly of the instruments adopted at the 91st, 92nd, 94th, 95th, 96th and 99th Sessions of the Conference (2003–10).* The Committee also recalls that the Government is requested to provide information on the submission to the National Assembly of the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) (79th Session, 1992), the 1995 Protocol to the Labour Inspection Convention, 1947 (82nd Session, 1995), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) (86th Session, 1998).

### **Antigua and Barbuda**

*Serious failure to submit.* The Committee notes with *regret* that the Government has not replied to its previous observations. *It asks the Government to supply the relevant information concerning the submission to the Parliament of Antigua and Barbuda of the instruments adopted by the Conference during 13 sessions held between 1996 and 2010 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions).*

### **Azerbaijan**

*The Committee notes that the Milli Mejlis (National Assembly) adopted Law No. 1004-IIIQ of 11 May 2010, thereby ratifying the Maternity Protection Convention, 2000 (No. 183). It refers to its previous observations and requests the Government to provide information with regard to the submission to the Milli Mejlis (National Assembly) of Recommendation No. 180 (79th Session), and the instruments adopted at the 83rd, 84th, 89th, 90th, 94th, 95th, 96th and 99th Sessions of the Conference. Please also indicate the date of submission of Recommendation No. 195 to the National Assembly.*

## Bahamas

*The Committee asks the Government to supply information on the submission to Parliament of the remaining 17 instruments adopted by nine sessions of the Conference held between 1997 and 2010 (85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th and 99th Sessions).*

## Bahrain

*Serious failure to submit.* The Committee notes the statement made by the Government representative at the Conference Committee in June 2010. The Committee refers to its previous comments and recalls that under article 19 of the ILO Constitution, the competent national authority shall normally be the legislature, in the case of Bahrain, the National Assembly. *The Committee therefore reiterates its hope that the Government will be soon in a position to provide the relevant information indicating that the 16 instruments adopted by the Conference at nine sessions held between 2000 and 2010, were submitted to the National Assembly.*

## Bangladesh

*Serious failure to submit.* *The Committee asks the Government to provide information on the submission to Parliament of the remaining instruments adopted at the 77th Session (Convention No. 170 and Recommendation No. 177), the 79th Session (Convention No. 173 and Recommendation No. 180), the 84th Session (Convention No. 179 and Recommendations Nos 185, 186 and 187), and the 85th Session (Recommendation No. 188), as well as all the instruments adopted at the 81st, 82nd, 83rd, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 34 pending instruments to Parliament.*

## Belize

*Serious failure to submit.* The Committee recalls the Government's communication received in September 2009, indicating that the Labour Advisory Board will review all unratified Conventions and make recommendations to the Ministry of Labour for onward submission to the National Assembly. *The Committee refers to its previous observations and asks the Government to provide information on the submission to the National Assembly of the 41 instruments adopted by the Conference at its 84th (Maritime) Session (October 1996), and during the other 18 sessions held between 1990 and 2010. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit that 41 pending instruments to the National Assembly.*

## Plurinational State of Bolivia

The Committee recalls that the international labour Conventions adopted by the Conference from 1990 to 2003 were submitted to the National Congress on 26 April 2005. *The Committee asks the Government to report on the decision taken by the National Congress with regard to the Conventions submitted. It also requests the Government to indicate the representative organizations of employers and workers to which the information forwarded to the Director-General concerning the submission of the abovementioned Conventions was communicated. The Committee asks the Government to provide all the information required on the submission to the National Congress of the remaining Conventions, Recommendations and Protocols adopted by the Conference between 1990 and 2010.*

## Bosnia and Herzegovina

*Submission to the competent authorities and ratification of Conventions.* The Committee notes with *interest* that the ratification of Conventions Nos 174, 175, 176, 177, 181, 184, 186, as well as of the Maritime Labour Convention, 2006, and of Convention No. 188 were registered in February 2010. In addition, the ratification of Convention No. 187 was registered in March 2010. The corresponding international labour Recommendations adopted between 1993 and 2007 were also submitted to the relevant authorities at the entity level. *The Committee welcomes this progress and hopes that the Government will continue to provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the relevant competent authorities in Bosnia and Herzegovina.*

## Brazil

The Committee notes that the ratification of Convention No. 185 was registered in January 2010. It recalls that Conventions Nos 128 to 130, 149 to 151, 156 and 157 and the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd (1995 Protocol), 83rd, 84th (Conventions Nos 179 and 180; 1996 Protocol, Recommendations Nos 186 and 187), 85th, 86th, 88th, 90th, 92nd, 94th, 95th, 96th and 99th Sessions of the Conference are still waiting to be submitted to the National Congress. *The Committee hopes that the Government will soon report on other measures that have been taken to submit the 38 pending instruments to the National Congress.* In this regard, the Committee recalls that the Tripartite

Committee on International Relations (CTRI) requested the Ministry of External Relations in March 2006 to take the necessary steps to submit to the National Congress the Tenants and Share-croppers Recommendation, 1968 (No. 132), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), the Promotion of Cooperatives Recommendation, 2002 (No. 193), the List of Occupational Diseases Recommendation, 2002 (No. 194), and the Human Resources Development Recommendation, 2004 (No. 195).

## Cambodia

*Serious failure to submit.* The Committee notes the statement by the Government representative of Cambodia at the Conference Committee in June 2010, indicating that all the instruments to be submitted to the competent authorities had been translated into Khmer with ILO technical assistance. The Government representative also indicated that technical assistance remained crucial to ensure rapid transmission to the legislative body. ***The Committee, in the same way as the Conference Committee, welcomes the progress achieved in translating the instruments adopted by the Conference and urges the Government to take steps without delay to submit the instruments to the National Assembly.***

## Cape Verde

*Serious failure to submit.* ***The Committee asks the Government to provide the information required on the submission to the National Assembly of the instruments adopted by the Conference during 14 sessions held between 1995 and 2010 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). It urges the Government to take steps without delay to submit the pending instruments to the National Assembly.***

## Central African Republic

*Serious failure to submit. ILO assistance.* The Committee notes the statement made by the Government representative of the Central African Republic to the Conference Committee in June 2010 expressing appreciation for the explanations provided by the Office concerning the concept “competent authorities”. The Government also stated that measures will be taken to ensure that instruments are submitted to the National Assembly within two years of their adoption and that steps had already been taken in October 2008 to ensure that the instruments adopted over the past 20 years are submitted to the National Assembly, but that the Office had not been so informed. The Committee notes that the ratification of the Indigenous and Tribal Peoples Convention, (1989) No. 169 was registered in August 2010. ***Consequently, the Committee urges the Government, as did the Conference Committee, to transmit the required information indicating that the 48 remaining instruments adopted by the Conference between 1988 and 2010 have been submitted to the National Assembly.***

## Chile

*Serious failure to submit.* The Committee notes the statement by the Government representative to the Conference Committee in June 2010 and the communication received in September 2010. The Government undertook to examine the situation arising out of the failure to submit and to inform the Office of the measures which would be taken to resolve the situation. ***The Committee once again requests the Government to provide the information required on the submission to the National Congress of the instruments adopted at 13 sessions of the Conference held between 1996 and 2010 (the 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, and 99th Sessions). The Committee urges the Government to take measures immediately to submit the pending instruments to the National Congress.***

## Colombia

*Serious failure to submit.* ***The Committee asks the Government to provide all relevant information on the submission to the Congress of the Republic of the 32 instruments adopted at the 75th (Convention No. 168), 79th (Convention No. 173), 81st (Recommendation No. 182), 82nd, 83rd, 84th, 85th, 86th, 88th (Recommendation No. 191), 89th (Recommendation No. 192), 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions of the Conference.***

## Comoros

*Serious failure to submit.* In its previous comments the Committee noted that the Government was awaiting the renewal of the National Assembly for the purpose of gradually submitting to it the instruments adopted by the Conference. ***Given that the Assembly was invested in January 2010, the Committee, in the same way as the Conference Committee, hopes that that the Government will soon be in a position to announce that the 37 instruments adopted at the 17 sessions held between 1992 and 2010 have been submitted to the Assembly of the Union of Comoros.***

## Congo

*Serious failure to submit. ILO assistance.* The Committee notes that an ILO mission went to Brazzaville in May 2010 to gain a clear understanding of the reasons for the substantial delay in the submission to the National Assembly of the instruments adopted by the Conference. It notes that, in order to deal with the backlog which has accumulated between 1970 and 2007 in relation to 86 Conventions, Recommendations and protocols, the departments of the Ministry of Labour and the Secretariat-General of the Government have established a new methodology whereby each instrument should be examined separately and then be followed by a draft text for ratification. At the end of this process, only five Conventions would possibly be submitted to a forthcoming session of the National Assembly with a view to ratification. The Committee notes the efforts made by the administrations concerned. ***The Committee, in the same way as the Conference Committee, invites the Government to complete the procedure for the submission of 87 Conventions, Recommendations and protocols not yet submitted to the National Assembly.*** It recalls that this concerns the instruments adopted at the 54th (Recommendations Nos 135 and 136), 55th (Recommendations Nos 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Conventions Nos 141 and 143, Recommendations Nos 149 and 151), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos 163, 164 and 165), 68th (Convention No 157 and Recommendation Nos 167 and 168), 69th, 70th, 71st (Recommendations Nos 170 and 171), 72nd, 74th and 75th (Recommendations Nos 175 and 176) Sessions of the Conference and the instruments adopted at the 19 sessions of the Conference held between 1990 and 2010.

## Côte d'Ivoire

*Serious failure to submit.* ***The Committee asks the Government to provide the respective information on the submission to the National Assembly of the 28 instruments adopted at 13 sessions of the Conference held between 1996 and 2010 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions).***

## Croatia

The Committee notes with *interest* that the ratification of the Maritime Labour Convention, 2006 was registered on 12 February 2010. It further notes the information provided by the Government in December 2009, indicating that the translation of the instruments adopted at the 86th, 88th, 89th, 90th, 91st and 92nd Sessions of the Conference has already been done. The Government further indicated that the submission of the above instruments has not yet been completed because of the many obligations the Croatian Parliament has to fulfil regarding the alignment of the national legislation and implementation of the *acquis communautaire*. ***The Committee invites the Government to take appropriate measures in order to ensure that the 16 remaining instruments adopted by the Conference between 1998 and 2010 are submitted soon to the Croatian Parliament.***

## Democratic Republic of the Congo

*Serious failure to submit.* The Government indicates in a report on the application of Convention No. 144 received in June 2010 that the Ministry of Labour has prepared submission reports for the instruments adopted by the Conference from its 83rd to its 98th Sessions with a view to forwarding them to the competent authorities for examination and adoption. ***The Committee hopes that the Government will provide other relevant information on the effective submission to Parliament of the 28 instruments adopted at the 13 sessions of the Conference held between 1996 and 2010.***

## Djibouti

*Serious failure to submit.* The Committee notes with *serious concern* that the failure of submission by Djibouti concerns the instruments adopted at the 27 sessions of the Conference held between 1980 and 2010. ***The Committee expresses serious concern and requests the Government to make every effort in a tripartite framework to ensure that it is in a position in the near future to provide the required information on the submission to the National Assembly of the 62 instruments adopted at the 27 sessions of the Conference held between 1980 and 2010 (66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions).***

## Dominica

*Serious failure to submit.* The Committee *regrets* that the Government has not replied to its previous observations. ***It reiterates its hope that the Government will soon announce that the 35 instruments adopted by the Conference during 16 sessions held between 1993 and 2010 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions) have been submitted to the House of Assembly.***

## El Salvador

In its previous comments, the Committee observed the failure to submit to the Congress of the Republic the instruments adopted at the 62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference, as well as the remaining instruments from the 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163) and 69th (Recommendation No. 167) Sessions. *The Committee requests the Government to provide information on the submission to the Congress of the Republic of all the remaining instruments, including Recommendations Nos 193 and 194 (90th Session, 2002) and the instruments adopted at the 91st, 92nd, 94th, 95th, 96th and 99th Sessions (2003–10).*

## Equatorial Guinea

*Serious failure to submit.* The Committee recalls the communication dated 9 May 2008 in which the Ministry of Labour and Social Security requested the Head of Government to proceed with the submission to the House of People's Representatives of the instruments adopted by the Conference at 13 sessions held between 1993 and 2006. *The Committee asks the Government to provide the other relevant information on compliance with the obligation of submission, and particularly the date on which the instruments adopted between 1993 and 2006 were in fact submitted to the House of People's Representatives. The Committee requests the Government to report on the submission to the House of People's Representatives of the HIV and AIDS Recommendation, 2010, adopted by the Conference at its 99th Session.*

## Ethiopia

*The Committee asks the Government to provide the relevant information on the submission to the House of People's Representatives of the instruments adopted by the Conference at its 88th (Recommendation No. 191), 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions.*

## Fiji

The Committee notes the information provided by the Government in May 2010 indicating that Fiji has not had a Parliament since 2006. The Government further stated that it is committed to adopt a progressive and democratic Constitution by 2013 and to hold for the first time a non-race based election in 2014 after which a Parliament will be constituted. The Committee thus notes that the Government will be able to submit all instruments adopted by the Conference at its 84th Session (Maritime, October 1996) and at its 83rd, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions to Parliament only after its establishment. *The Committee would therefore appreciate being informed about any developments in regard to the submission to Parliament of 24 instruments adopted by the Conference at 12 sessions held between June 1996 and June 2010, as required by article 19 of the ILO Constitution.*

## Gabon

The Committee recalls its previous comments, inviting the Government to report on Parliament's decision regarding Conventions Nos 142, 155, 176, 177, 179, 181, 184 and 185. In February 2008 the Government indicated that it intends to submit to Parliament the Maritime Labour Convention, 2006, for its ratification. The ratification of Conventions Nos 122 and 153 was registered in October 2009. *The Committee invites the Government to provide information concerning the submission to Parliament of the other Conventions, Recommendations and Protocols not yet submitted to Parliament that were adopted at the 74th, 82nd, 83rd, 84th, 86th, 88th, 89th, 90th, 92nd, 94th, 95th, 96th and 99th Sessions of the Conference.*

## Gambia

*Submission to the National Assembly.* The Committee notes with *interest* the communication forwarded in May 2010, indicating that the instruments adopted by the Conference between 1994 and 2007 have been submitted to the National Assembly, on 22 March 2010, for its consideration. *The Committee welcomes this progress and hopes that the Government will continue to provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the National Assembly.*

## Georgia

*Serious failure to submit.* The Committee refers to its previous observations and asks the Government to report on the submission to Parliament of the instruments adopted by the Conference at the 14 sessions held between 1993 and 2010 (80th, 81st, 82nd, 83rd, 84th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). *The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the instruments to Parliament.*

## Ghana

*Serious failure to submit.* The Committee notes the statement by the Government representative of Ghana at the Conference Committee in June 2010 indicating that the submission procedure will be completed very soon. *In the same way as the Conference Committee, the Committee urges the Government to report on the submission to Parliament of all the instruments adopted by the Conference at nine sessions held between 2000 and 2010. In addition, the Committee recalls its previous comments and once again asks the Government to supply the indications required with regard to the submission to Parliament of the instruments adopted by the Conference at its 80th Session (Convention No. 174 and Recommendation No. 181), 81st Session (Convention No. 175 and Recommendation No. 182), 82nd Session (Convention No. 176 and Recommendation No. 183, and the Protocol of 1995) and 84th Session (Recommendations Nos 185 and 186).*

## Guinea

*Serious failure to submit.* *The Committee refers to its previous comments and asks the Government to provide the information requested regarding the submission to the National Assembly of the 26 instruments adopted at the 12 sessions held by the Conference between October 1996 and June 2010 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions).*

## Guinea-Bissau

*The Committee requests the Government to supply up-to-date information on the submission to the National People's Assembly of the instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th, 96th and 99th Sessions.*

## Haiti

*Serious failure to submit.* *The Committee hopes that the Government will make every effort in the near future to be in a position to announce soon the submission to the National Assembly of the following instruments:*

- (a) the remaining instruments from the 67th Session (Conventions Nos 154 and 155, and Recommendations Nos 163 and 164);*
- (b) the instruments adopted at the 68th Session;*
- (c) the remaining instruments adopted at the 75th Session (Convention No. 168, and Recommendations Nos 175 and 176); and*
- (d) the instruments adopted at 20 sessions of the Conference held between 1989 and 2010.*

## Iraq

The Committee notes the brief communication forwarded in September 2010 indicating that no Convention has been submitted. *The Committee hopes that the Government will soon be in a position to provide information on the submission to the Council of Representatives established under the 2005 Iraqi Constitution of the Conventions, Recommendations and Protocols adopted by the Conference from 2000 to 2010.*

## Ireland

*Serious failure to submit.* *The Committee hopes that the Government will be able to announce soon that the instruments adopted by the Conference at the nine sessions held between 2000 and 2010 (88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions) were submitted to the Oireachtas (Parliament).*

## Kazakhstan

*Serious failure to submit.* *The Committee refers to its previous observations and asks the Government to supply the requested information on the submission to Parliament of the 33 instruments still pending submission which were adopted by the Conference between 1993 and 2010. It urges the Government to take steps without delay to submit the pending instruments to Parliament.*

## Kenya

*Submission to the National Assembly.* The Committee notes *with interest* that the protocols adopted at the 82nd and 84th Sessions and all other instruments adopted by the Conference between 2000–07 have been submitted to the National Assembly on 13 September 2010. *The Committee welcomes this progress and hopes that the Government will*

*continue to regularly provide information concerning the submission of the instruments adopted by the Conference to the National Assembly.*

## Kiribati

*Serious failure to submit.* The Committee notes the detailed replies provided by the Government in April 2010. The Government indicates that submission to Cabinet is the first step before submission to Parliament. Submission to Cabinet requires comprehensive explanations of the Conventions, article by article, and in particular, identification of all potential costs and benefits of ratifying Conventions or using Recommendations. The Committee further notes that, in order to meet the constitutional obligation to submit to Parliament through Cabinet, the Ministry of Labour and Human Resources Development is required to cooperate with the Office of the Attorney General and the relevant stakeholders to examine each Convention and Recommendation. It also notes with *interest* that the ILO Suva Office is currently providing technical advice to Kiribati in order to progress with the submission obligation. It further notes that the Maritime Labour Convention, 2006 (MLC, 2006) and the Work in Fishing Convention, 2007 (No. 188) will be the first two Conventions to be submitted to Parliament through Cabinet once all costs and benefits of its obligations are identified. Thus, a decision to ratify or not, based on the obligations that derive from the Conventions, will be taken at that point. *The Committee hopes that the Government will soon announce that the MLC, 2006 and Convention No. 188 have been submitted to Parliament. It recalls that 16 instruments adopted by the Conference at the nine sessions held between 2000 and 2010 (88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions) are to be submitted to Parliament in conformity with article 19 of the ILO Constitution.*

## Kuwait

The Committee recalls the information provided by the Government in September 2009, indicating that it will solicit the views of the social partners on the possibility of ratifying Conventions before referring the matter to the National Assembly. *The Committee hopes that the Government will complete soon the submission of the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th and 99th Sessions to the National Assembly (Majlis al-Ummah).*

*The Committee hopes that the Government will also provide the date of submission to the National Assembly of the instruments adopted at the 77th Session (1990: Conventions Nos 170 and 171, Recommendations Nos 177 and 178, and the Protocol of 1990), 80th Session (1993: Recommendation No. 181), 86th Session (1998: Recommendation No. 189) and 89th Session (2001: Convention No. 184 and Recommendation No. 192) of the Conference.*

## Kyrgyzstan

*Serious failure to submit.* The Committee notes with *serious concern* that the Government has not communicated information on the submission to the competent authorities of instruments adopted by the Conference at the 17 sessions held between 1992 and 2010.

The Committee notes that Kyrgyzstan has been a Member of the Organization since 31 March 1992. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. *The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on measures to be taken with regard to the instruments that have been submitted.*

*The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.*

## Lao People's Democratic Republic

*Submission to the National Assembly.* The Committee notes with *interest* the information provided by the Government in November 2010 indicating that a report was submitted, on 29 October 2010, to the Social and Cultural Affairs Committee of the National Assembly on 12 Conventions, 15 Recommendations and one Protocol adopted by the Conference between 1995 and 2010. *The Committee welcomes this progress and hopes that the Government will provide information regularly on the submission to the National Assembly of the instruments adopted by the Conference.*

## Liberia

The Committee recalls the information provided by the Government in May 2009 indicating that the instruments adopted by the Conference at its 88th, 89th, 90th, 92nd and 95th Sessions, as well as the Protocols of 1990 and of 1995,

have yet to be submitted to the National Legislature. *The Committee reiterates its hope that the Government will soon be in a position to submit to the National Legislature the 16 remaining instruments adopted by the Conference between 2000 and 2010, as well as the 1990 and 1995 Protocols.*

## Libyan Arab Jamahiriya

*Serious failure to submit. The Committee asks the Government to provide the information requested concerning the submission to the competent authorities, within the meaning of article 19, paragraphs 5 and 6, of the ILO Constitution, of Conventions, Recommendations and Protocols adopted at 13 sessions of the Conference held between 1996 and 2010 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). It urges the Government to take steps without delay to submit the pending instruments to the competent authorities.*

## Madagascar

The Committee notes the information supplied by the Government in a report received in October 2010. The Government indicates that, given the current political situation of the country, it is still not possible to submit to the National Assembly, which has been dissolved, the instruments adopted by the Conference at its 90th, 92nd, 94th, 95th and 96th Sessions. *In these circumstances, the Committee invites the Government to continue to provide information on any developments concerning the submission to the National Assembly of ten instruments adopted at six sessions held between 2002 and 2010.*

## Mali

*The Committee asks the Government to provide the relevant information concerning the submission to the National Assembly of the Protocols of 1996 and 2002, as well as of the instruments adopted at the 86th, 92nd, 94th, 95th, 96th and 99th Sessions of the Conference.*

## Mongolia

*The Committee asks the Government to indicate if the instruments adopted by the Conference at the 12 sessions held between 1995–2010 (82nd, 83rd, 84th, 85th, 86th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions) were submitted to the State Great Khural.*

## Mozambique

*Serious failure to submit. The Committee notes the statement by the Government representative of Mozambique to the Conference Committee in June 2010. The Government representative reiterated that the process of submitting the instruments adopted by the Conference to the competent authorities had been re-launched in 2009. The Government representative added that the process would be completed shortly. The Committee hopes that the Government will be in a position to provide all the relevant information on the submission to the Assembly of the Republic of the 28 instruments adopted by the Conference at the 13 sessions held between 1996 and 2010.*

## Nepal

*Submission to the Parliament of Nepal. The Committee notes with interest the communication forwarded in June 2010, indicating that the instruments adopted by the Conference between 1995 and 2007 have been submitted to the Parliament of Nepal, on 16 November 2008, for its consideration. The Committee welcomes this progress and hopes that the Government will continue to provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the Parliament of Nepal.*

## Niger

The Committee recalls that the ratification of Conventions Nos 155, 161 and 187 was registered in February 2009. *It invites the Government to provide the information required concerning the submission to the National Assembly of the 24 instruments adopted by the Conference at 12 sessions (83rd, 84th, 85th, 86th, 89th, 90th, 91st, 92nd, 94th, 95th (for the Employment Relationship Recommendation, 2006 (No. 198)), 96th and 99th Sessions) held between 1996 and 2010.*

## Pakistan

*Serious failure to submit. The Committee asks the Government to report on the measures taken to submit to Majlis-e-Shoora (Parliament) the instruments adopted by the Conference at 15 sessions held between 1994 and 2010 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). The Committee, in*



*the same way as the Conference Committee, urges the Government to take steps without delay to submit the 32 pending instruments to Parliament.*

## Papua New Guinea

*Serious failure to submit. The Committee refers to its previous observations and asks the Government to report on the submission to the National Parliament of the instruments adopted by the Conference at nine sessions between 2000 and 2010 (88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). It urges the Government to take steps without delay to submit the instruments to the National Parliament.*

## Paraguay

*Submission to the National Congress. The Committee notes with interest the communication from the President of the Republic to the National Congress dated 9 March 2010 submitting the instruments adopted by the Conference at the sessions held between 1997 and 2007. The Committee welcomes this progress and hopes that the Government will continue to provide regularly the information required on the obligation to submit to the National Congress the instruments adopted by the Conference.*

## Peru

*The Committee recalls its previous observations and requests the Government to provide information on the measures adopted for the submission to the Congress of the Republic of the remaining instruments adopted at the 84th, 88th and 90th Sessions of the Conference, and at the sessions held between 2002 and 2010.*

## Russian Federation

*Serious failure to submit. The Committee recalls the communication dated 17 June 2009 that was sent by the Chair of the Committee on Labour and Social Policy of the State Duma to the Ministry of Health and Social Development of the Russian Federation requesting the Government of the Russian Federation to comply in a timely manner with its obligations under article 19 of the ILO Constitution. The Committee further recalls the resolution adopted by the State Duma on 29 June 2007 requesting the Government of the Russian Federation to take additional measures to ensure unconditional observance of article 19 of the ILO Constitution with regard to the mandatory and timely submission to the State Duma of the Conventions and Recommendations adopted by the Conference. In conformity with article 19 of the ILO Constitution, the Committee asks the Government to take appropriate measures to comply with the requirement of the submission to the State Duma of the instruments adopted by the Conference at eight sessions held between 2001 and 2010 (89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions).*

## Rwanda

*Serious failure to submit. The Committee asks the Government to report on the submission to the National Assembly of the Conventions, Recommendations and Protocols adopted by the Conference at 15 sessions held between 1993 and 2010 (80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 33 pending instruments to the National Assembly.*

## Saint Kitts and Nevis

The Committee recalls that the Government indicated in its report on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) that it has submitted the instruments adopted at various sessions of the Conference to the tripartite members and to the Ministry of Labour. The Government further states its intention to pursue further discussions on the need to communicate these instruments to the National Assembly for consideration and action. *The Committee asks the Government to provide the required information about the date on which the instruments were submitted to the National Assembly and the proposals made by the Government on the measures which might be taken with regard to the instruments adopted by the Conference at 13 sessions held between 1996 and 2010 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). It again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.*

## Saint Lucia

*Serious failure to submit. The Committee notes with regret that the Government has not replied to its previous comments. It recalls that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, Saint Lucia, as a Member of the Organization, has the obligation to submit to Parliament all the remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2010 (66th, 67th (Conventions Nos 155 and*

156 and Recommendations Nos 164 and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). *The Committee again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.*

### Saint Vincent and the Grenadines

The Committee notes with *interest* that the ratification of Conventions Nos 122, 129, 144 and of the Maritime Labour Convention, 2006 was registered on 9 November 2010. It also recalls that, under the 1979 Constitution of Saint Vincent and the Grenadines, the Cabinet is the executive authority which has the responsibility for making final decisions on ratification and for determining any matter that is brought before the House of Assembly for legislative action. *The Committee asks the Government to fulfil its obligations under article 19, paragraphs 5 and 6, of the ILO Constitution by submitting to the House of Assembly the 22 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 11 sessions held from June 1995 to June 2010 (82nd, 83rd, 85th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th and 99th Sessions).*

### Sao Tome and Principe

*Serious failure to submit.* The Committee recalls that the Government has not provided the required information on the submission to the competent authorities of 42 instruments adopted by the Conference between 1990 and 2010 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). *The Committee asks the Government to make every effort to fulfil the constitutional obligation of submission and recalls that the International Labour Office is available to provide the necessary technical assistance to give effect to this essential obligation.*

### Seychelles

*Serious failure to submit.* *The Committee asks the Government to indicate whether the instruments adopted by the Conference at eight sessions held between 2001 and 2010 (89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions) have been submitted to the National Assembly.*

### Sierra Leone

*Serious failure to submit.* The Committee notes with *regret* that the Government has not replied to its previous comments. *The Committee asks the Government to report on the submission to Parliament of the instruments adopted by the Conference in October 1976 (Convention No. 146 and Recommendation No. 154, adopted at the 62nd Session) and the instruments adopted between 1977 and 2010. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 92 pending instruments to Parliament.*

### Solomon Islands

*Serious failure to submit.* The Committee notes with *serious concern* that the Government has not replied to its previous comments. *The Committee requests the Government to make every effort to comply with the constitutional obligation to submit to the National Legislature the instruments adopted by the Conference between 1984 and 2010. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 58 pending instruments to the National Legislature.*

### Somalia

*Serious failure to submit.* *The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the competent authorities with regard to the instruments adopted by the Conference between October 1976 and June 2010.*

### Sudan

*Serious failure to submit.* *Assistance from the ILO.* The Committee recalls that it noted in its observation of 2009 that the Government had requested technical assistance with respect to international labour standards from the ILO Subregional Office in Cairo. *The Committee reiterates its hope that the Government will soon announce that the instruments adopted by the Conference between 1994 and 2010 have been submitted to the National Assembly.*

## Suriname

The Committee recalls the information provided by the Government in September 2009 indicating that the instruments adopted at the 90th and 91st Sessions have been forwarded to the Labour Advisory Board to be discussed by social partners, after which, they will be submitted to the competent authorities. *The Committee hopes that the Government will soon announce that the instruments adopted at the 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions of the Conference have been submitted to the National Assembly.*

## Syrian Arab Republic

The Committee recalls that 41 of the instruments adopted by the Conference are still waiting to be submitted to the People's Council. *The Committee hopes that the Government will shortly be in a position to announce that the instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 90th (Recommendations Nos 193 and 194) 91st, 92nd, 94th, 95th, 96th and 99th Sessions have been submitted to the People's Council.*

## Tajikistan

*Serious failure to submit.* The Committee notes with *regret* that the information on submission to the legislature required by article 19 of the ILO Constitution for the instruments adopted by the Conference at the 11 sessions of the Conference held between October 1996–June 2010 (84th, 85th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions) has not been received. *The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 25 pending instruments to the Supreme Council (Majlisi Oli).*

## The former Yugoslav Republic of Macedonia

*Serious failure to submit.* The Committee notes with *regret* that the Government has not provided the information concerning the submission to the competent authorities of instruments adopted by the Conference at 13 sessions held between 1996 and 2010 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). *The Committee urges the Government to take steps without delay to submit the pending instruments to the competent authorities.*

## Togo

*The Committee refers to its previous comments and asks the Government to indicate the date on which the instruments on maternity protection (88th Session, 2000) were submitted to the National Assembly and the representative employers' and workers' organizations to which the information supplied to the Office was communicated. The Committee asks the Government to indicate whether the instruments adopted by the Conference at seven sessions held between 2002 and 2010 have been submitted to the National Assembly.*

## Turkmenistan

*Serious failure to submit.* The Committee notes with *serious concern* that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference at 15 sessions held by the Conference between 1994 and 2010.

The Committee notes that Turkmenistan has been a Member of the Organization since 24 September 1993. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies "for the enactment of legislation or other action". The Governing Body of the International Labour Office adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this subject. *The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on the measures to be taken with regard to the instruments that have been submitted.*

*The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.*

## Uganda

*Serious failure to submit.* *The Committee asks the Government to provide the required information on the submission to Parliament of the instruments adopted by the Conference at 15 sessions held between 1994 and 2010*

(81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). It urges the Government to take steps without delay to submit the pending instruments to Parliament.

## Ukraine

The Committee recalls the reply provided by the Government, in May 2009, to its previous comments indicating that the instruments adopted by the Conference between 2003 and 2007 were referred to the competent bodies of the executive authority in order to examine the possibility of their ratification. The Government further stated that these instruments were not submitted to the Supreme Rada of Ukraine since no proposals were made with regard to their ratification.

The Committee notes that, by virtue of the relevant provisions of article 19, paragraphs 5, 6 and 7, of the Constitution, the Members of the Organization have undertaken to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. In the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. Even in the case of instruments not requiring action in the form of legislation, it would be desirable to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met by submitting these instruments to the parliamentary body.

The Committee also notes that for many years the Government has provided information on the submission of the instruments adopted by the Conference to the Supreme Rada. Submission of the instruments adopted by the Conference to the Supreme Rada does not imply any obligation for the Government to propose the ratification of a Convention or Protocol, or the application of a Recommendation. Governments have complete freedom as to the nature of the proposals to be made when submitting instruments to the competent authorities. Furthermore, the proposals to be made to the competent authority or authorities in connection with submission have to be the subject of consultation in accordance with the tripartite procedures required in Article 5(1)(b) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which has been ratified by Ukraine.

*The Committee therefore hopes that the Government will be in a position in the near future to provide all the information requested in the questionnaire at the end of the Memorandum on the submission to the Supreme Rada of Ukraine regarding the instruments adopted at the 91st, 92nd, 94th, 95th, 96th and 99th Sessions of the Conference (2003–10).*

## Uzbekistan

*Serious failure to submit.* The Committee notes with **serious concern** that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference during 15 sessions held between 1993 and 2010.

The Committee notes that Uzbekistan has been a Member of the Organization since 31 July 1992. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this subject. *The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.*

*The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.*

## Bolivarian Republic of Venezuela

*Submission to the National Assembly.* The Committee notes with **interest** the communication received in September 2010 informing the ILO that, on 30 August 2010, the President of the National Assembly received information concerning 41 international labour Conventions, Recommendations and Protocols adopted by the Conference between 1992 and 2007. The Committee notes that the Government is following the action taken by the National Assembly on this matter and the policy pursued by the national executive authority in relation to each of the instruments submitted for consideration. *The Committee welcomes this progress and hopes that the Government will provide information regularly on the submission to the National Assembly of the instruments adopted by the Conference.*

## Zambia

*Submission to the National Assembly.* The Committee notes with **interest** the information provided by the Government in September 2010 indicating that 12 instruments adopted by the Conference from 1996 to 2007 were submitted to the National Assembly. **The Committee would appreciate receiving further information on the date on which the abovementioned instruments were submitted to the National Assembly. It also invites the Government to report on the proposals tabled and the decisions taken by the National Assembly, as well as on the tripartite consultation that took place with the social partners prior to the submission to the National Assembly.**

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Albania, Argentina, Armenia, Austria, Barbados, Belgium, Botswana, Brunei Darussalam, Burundi, Canada, Costa Rica, Cyprus, Dominican Republic, Ecuador, Eritrea, Estonia, Grenada, Guyana, Honduras, Islamic Republic of Iran, Jamaica, Jordan, Lao People's Democratic Republic, Lesotho, Malaysia, Malta, Mauritania, Mexico, Republic of Moldova, Montenegro, Netherlands, Nigeria, Oman, Panama, Portugal, Qatar, Samoa, Senegal, Spain, Sri Lanka, Swaziland, Sweden, Trinidad and Tobago, Uruguay, Vanuatu, Bolivarian Republic of Venezuela, Viet Nam, Yemen.*





## *Appendices*





**Appendix I. Table of reports received on ratified Conventions  
as of 10 December 2010  
(articles 22 and 35 of the Constitution)**

Article 22 of the Constitution of the International Labour Organization provides that “each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request”. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th Session (November 1977), the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

**Appendix I. Table of reports received on ratified Conventions  
as of 10 December 2010**  
(articles 22 and 35 of the Constitution)

*Note: First reports are indicated in parentheses.*

<b>Afghanistan</b>	<b>6 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 13, 45, 100, 105, 111, 139	
<b>Albania</b>	<b>15 reports requested</b>
<hr/>	
· 14 reports received: Conventions Nos 16, 29, 81, 105, 111, (129), 138, (147), 155, 174, 178, 181, 182, (185)	
· 1 report not received: Convention No. 176	
<b>Algeria</b>	<b>18 reports requested</b>
<hr/>	
· 8 reports received: Conventions Nos 81, 105, 111, 127, 138, 144, 150, 167	
· 10 reports not received: Conventions Nos 13, 29, 32, 42, 88, 119, 120, 155, 181, 182	
<b>Angola</b>	<b>8 reports requested</b>
<hr/>	
· 7 reports received: Conventions Nos 17, 29, 81, 88, 105, 138, 182	
· 1 report not received: Convention No. 45	
<b>Antigua and Barbuda</b>	<b>7 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 81, 105, 138, 155, (161), (182)	
<b>Argentina</b>	<b>17 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 2, 13, 29, 45, 81, 87, 88, 96, 105, 115, 129, 138, 139, 159, 169, 182, 184	
<b>Armenia</b>	<b>19 reports requested</b>
<hr/>	
· 17 reports received: Conventions Nos 81, (87), (97), 98, 100, 105, 111, 122, 135, (138), (143), 144, 154, (160), 174, 176, (182)	
· 2 reports not received: Conventions Nos 29, 151	
<b>Australia</b>	<b>8 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 42, 81, 88, 105, 155, 159, 182	
<i>Norfolk Island</i>	<b>4 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 87, 98, 105	
<b>Austria</b>	<b>8 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 13, 29, 81, 88, 105, 138, 176, 182	
<b>Azerbaijan</b>	<b>21 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 13, 16, 29, 45, 69, 73, 81, 88, 92, 105, 115, 119, 120, 129, 133, 138, 140, 148, 159, 182, (185)	
<b>Bahamas</b>	<b>10 reports requested</b>
<hr/>	
· 4 reports received: Conventions Nos 12, 22, 29, 45	
· 6 reports not received: Conventions Nos 81, 88, 105, 138, 182, (185)	
<b>Bahrain</b>	<b>5 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 81, 105, 159, 182	
<b>Bangladesh</b>	<b>7 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 45, 81, 96, 98, 105, 182	

<b>Barbados</b>	<b>15 reports requested</b>
· 9 reports received: Conventions Nos 22, 63, 74, 87, 98, 108, 111, 135, 147	
· 6 reports not received: Conventions Nos 29, 81, 105, 115, 138, 182	
<b>Belarus</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos 29, 45, 81, 87, 88, 105, 115, 119, 120, 138, 155, 167, 182	
<b>Belgium</b>	<b>19 reports requested</b>
· 15 reports received: Conventions Nos 13, 29, 55, 62, 81, 88, 105, 115, 120, 129, 138, 147, 174, 180, 181	
· 4 reports not received: Conventions Nos 139, 148, 162, 182	
<b>Belize</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos 29, 81, 88, 105, 115, 138, 155, 182	
<b>Benin</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos 13, 29, 81, 105, 138, 143, 161, 182	
<b>Plurinational State of Bolivia</b>	<b>23 reports requested</b>
· 20 reports received: Conventions Nos 29, 45, 77, 78, 81, 88, 95, 96, 102, 103, 105, 117, 120, 131, 136, 138, 156, 159, 162, 182	
· 3 reports not received: Conventions Nos 90, 124, 129	
<b>Bosnia and Herzegovina</b>	<b>18 reports requested</b>
· All reports received: Conventions Nos 13, 29, 32, 45, 81, 88, 105, 119, 129, 136, 138, 139, 148, 155, 159, 161, 162, 182	
<b>Botswana</b>	<b>9 reports requested</b>
· No reports received: Conventions Nos 19, 29, 87, 100, 105, 138, 151, 176, 182	
<b>Brazil</b>	<b>25 reports requested</b>
· 23 reports received: Conventions Nos 29, 45, 81, 88, 94, 105, 115, 119, 120, 127, 136, 138, 139, 148, 155, 159, 161, 162, 167, 170, 174, 176, 182	
· 2 reports not received: Conventions Nos 140, 169	
<b>Brunei Darussalam</b>	<b>1 report requested</b>
· No reports received: Convention No. (182)	
<b>Bulgaria</b>	<b>38 reports requested</b>
· 25 reports received: Conventions Nos 8, 16, 22, 23, 53, 55, 56, 68, 69, 71, 73, 87, 98, 100, 108, 111, 144, 146, 147, 163, 164, 166, 178, 179, 180	
· 13 reports not received: Conventions Nos 13, 29, 45, 62, 81, (102), 105, 120, (122), 127, 138, 181, 182	
<b>Burkina Faso</b>	<b>17 reports requested</b>
· 6 reports received: Conventions Nos 87, 98, 100, 111, 144, 150	
· 11 reports not received: Conventions Nos 13, 29, 81, 105, 129, 135, 138, 159, 161, 170, 182	
<b>Burundi</b>	<b>17 reports requested</b>
· 2 reports received: Conventions Nos 29, 182	
· 15 reports not received: Conventions Nos 1, 14, 52, 62, 81, 87, 89, 98, 100, 101, 105, 111, 135, 138, 144	
<b>Cambodia</b>	<b>11 reports requested</b>
· 6 reports received: Conventions Nos 98, 100, 105, 111, 122, 150	
· 5 reports not received: Conventions Nos 13, 29, 87, 138, 182	
<b>Cameroon</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos 13, 29, 45, 81, 105, 138, 143, 162, 182	
<b>Canada</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 1, 88, 105, 162, 182	

<b>Cape Verde</b>	<b>12 reports requested</b>
· All reports received: Conventions Nos 17, 19, 29, 81, 87, 98, 100, 105, 111, 118, 155, 182	
<b>Central African Republic</b>	<b>14 reports requested</b>
· No reports received: Conventions Nos 13, 29, 62, 81, 88, 105, 119, 120, 122, 138, 142, 155, 158, 182	
<b>Chad</b>	<b>6 reports requested</b>
· No reports received: Conventions Nos 13, 29, 81, 105, 138, 182	
<b>Chile</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 2, 13, 29, 35, 105, 115, 127, 136, 138, 159, 161, 162, (169), 182	
<b>China</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 45, 138, 155, 159, 167, 170, 182	
<b>Hong Kong Special Administrative Region</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos 2, 29, 81, 97, 105, 115, 138, 148, 182	
<b>Macau Special Administrative Region</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos 29, 81, 88, 105, 115, 120, 138, 148, 155, 167, 182	
<b>Colombia</b>	<b>19 reports requested</b>
· All reports received: Conventions Nos 2, 13, 22, 29, 81, 88, 105, 111, 129, 136, 138, 159, 161, 162, 167, 169, 170, 174, 182	
<b>Comoros</b>	<b>15 reports requested</b>
· No reports received: Conventions Nos 6, 11, 12, 13, 14, 29, 81, 87, 89, 99, 100, 105, 106, 138, 182	
<b>Congo</b>	<b>18 reports requested</b>
· No reports received: Conventions Nos 13, 14, 29, 81, 87, 89, 95, 98, 100, 105, 111, 119, 138, 144, 149, 150, 152, 182	
<b>Costa Rica</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos 1, 29, 45, 81, 88, 94, 96, 105, 120, 127, 129, 138, 148, 159, 182	
<b>Côte d'Ivoire</b>	<b>13 reports requested</b>
· 12 reports received: Conventions Nos 13, 29, 45, 81, 96, 105, 111, 129, 136, 138, 159, 182	
· 1 report not received: Convention No. 133	
<b>Croatia</b>	<b>36 reports requested</b>
· 33 reports received: Conventions Nos 8, 13, 16, 22, 23, 29, 45, 53, 56, 69, 73, 74, 81, 87, 91, 92, 98, 100, 103, 111, 122, 129, 135, 136, 138, 139, 147, 155, 159, 161, 162, 179, 182	
· 3 reports not received: Conventions Nos 105, 119, 148	
<b>Cuba</b>	<b>16 reports requested</b>
· All reports received: Conventions Nos 13, 29, 45, 81, 88, 96, 105, 108, 120, 136, 138, 148, 151, 155, 159, (187)	
<b>Cyprus</b>	<b>11 reports requested</b>
· 9 reports received: Conventions Nos 29, 81, 88, 105, 119, 138, 155, 159, 162	
· 2 reports not received: Conventions Nos 45, 182	
<b>Czech Republic</b>	<b>36 reports requested</b>
· All reports received: Conventions Nos 1, 13, 14, 29, 87, 88, 98, 100, 105, 108, 111, 115, 120, 122, 132, 135, 136, (138), 139, 140, 142, 144, 148, 150, 155, 159, 160, 161, 163, 164, 167, 171, 176, 181, 182, (187)	
<b>Democratic Republic of the Congo</b>	<b>24 reports requested</b>
· 7 reports received: Conventions Nos 29, 87, 102, 117, 144, 158, 182	
· 17 reports not received: Conventions Nos 12, 19, 62, 81, 88, 89, 94, 98, 100, 105, 111, 119, 120, 121, 135, 138, 150	

<b>Denmark</b>	<b>20 reports requested</b>
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· 9 reports received: Conventions Nos 27, 81, 105, 119, 120, 129, 147, 167, 180	
· 11 reports not received: Conventions Nos 29, 88, 115, 138, 139, 148, 155, 159, 162, 169, 182	
<i>Faeroe Islands</i>	<b>2 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 105	
<i>Greenland</i>	<b>6 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 7, 16, 29, 87, 105, 122	
<b>Djibouti</b>	<b>37 reports requested</b>
<hr/>	
· No reports received: Conventions Nos 1, 9, 13, 16, 19, 22, 23, 26, 29, 38, 53, 55, 56, 63, 69, 71, 73, 81, 87, 88, 94, 95, 96, 98, 100, 101, 105, 106, 108, 111, 115, 120, 122, 124, 138, 144, 182	
<b>Dominica</b>	<b>9 reports requested</b>
<hr/>	
· No reports received: Conventions Nos 16, 19, 29, 81, 95, 105, 138, (147), 182	
<b>Dominican Republic</b>	<b>13 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 45, 81, 88, 105, 119, 122, 138, 159, 167, 170, 171, 182	
<b>Ecuador</b>	<b>18 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 45, 81, 88, 103, 105, 115, 119, 120, 127, 136, 138, 139, 144, 148, 159, 162, 182	
<b>Egypt</b>	<b>18 reports requested</b>
<hr/>	
· 17 reports received: Conventions Nos 2, 29, 45, 62, 68, 81, 88, 96, 105, 115, 129, 138, 139, 148, 159, 166, 182	
· 1 report not received: Convention No. 87	
<b>El Salvador</b>	<b>10 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 81, 88, 105, 107, 129, 138, 155, 159, 182	
<b>Equatorial Guinea</b>	<b>14 reports requested</b>
<hr/>	
· No reports received: Conventions Nos 1, 14, 29, 30, (68), 87, (92), 98, 100, 103, 105, 111, 138, 182	
<b>Eritrea</b>	<b>7 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 29, 87, 98, 100, 105, 111, 138	
<b>Estonia</b>	<b>9 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 2, 13, 29, 81, 105, 129, 138, 174, 182	
<b>Ethiopia</b>	<b>13 reports requested</b>
<hr/>	
· 1 report received: Convention No. 156	
· 12 reports not received: Conventions Nos 2, 29, 88, 100, 105, 111, 138, 155, 158, 159, 181, 182	
<b>Fiji</b>	<b>14 reports requested</b>
<hr/>	
· 4 reports received: Conventions Nos 138, (155), (172), (184)	
· 10 reports not received: Conventions Nos 8, 29, 45, (81), 105, (149), 159, 169, (178), 182	
<b>Finland</b>	<b>23 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 13, 29, 81, 88, 105, 115, 119, 120, 129, 136, 138, 139, 148, 155, 159, 161, 162, 167, 176, 181, 182, 184, (187)	
<b>France</b>	<b>48 reports requested</b>
<hr/>	
· 22 reports received: Conventions Nos 13, 27, 29, 62, 81, 88, 96, 105, 106, 115, 120, 122, 127, 129, 136, 137, 138, 139, 148, 149, 159, 182	
· 26 reports not received: Conventions Nos 8, 16, 22, 23, 53, 55, 56, 68, 69, 71, 73, 74, 92, 97, 133, 134, 145, 146, 147, 163, 164, 166, 178, 179, 180, (185)	

<i>French Polynesia</i>	<b>9 reports requested</b>
· All reports received: Conventions Nos 13, 29, 81, 88, 105, 115, 120, 127, 129	
<i>French Southern and Antarctic Territories</i>	<b>18 reports requested</b>
· No reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 108, 133, 134, 146, 147	
<i>New Caledonia</i>	<b>9 reports requested</b>
· All reports received: Conventions Nos 13, 29, 81, 88, 105, 115, 120, 127, 129	
<b>Gabon</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 13, 29, 45, 81, 96, 105, 182	
<b>Gambia</b>	<b>4 reports requested</b>
· No reports received: Conventions Nos 29, 105, 138, 182	
<b>Georgia</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos 29, 88, 105, 138, 181, 182	
<b>Germany</b>	<b>18 reports requested</b>
· All reports received: Conventions Nos 29, 81, 88, 105, 115, 120, 129, 136, 138, 139, 148, 159, 161, 162, 167, 170, 176, 182	
<b>Ghana</b>	<b>15 reports requested</b>
· 11 reports received: Conventions Nos 8, 29, 45, 69, 88, 96, 115, 119, 120, 148, 182	
· 4 reports not received: Conventions Nos 74, 81, 92, 105	
<b>Greece</b>	<b>12 reports requested</b>
· 7 reports received: Conventions Nos 29, 45, 62, 81, 105, 115, 138	
· 5 reports not received: Conventions Nos 13, 88, 136, 159, 182	
<b>Grenada</b>	<b>7 reports requested</b>
· No reports received: Conventions Nos 16, 29, 81, 105, 108, 138, 182	
<b>Guatemala</b>	<b>20 reports requested</b>
· All reports received: Conventions Nos 13, 29, 45, 81, 87, 88, 96, 105, 119, 120, 127, 129, 138, 148, 159, 161, 162, 167, 169, 182	
<b>Guinea</b>	<b>47 reports requested</b>
· No reports received: Conventions Nos 3, 11, 13, 14, 16, 26, 29, 45, 62, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 115, 117, 118, 119, 120, 121, 122, 132, 133, 134, 135, 136, 138, 139, 140, 142, 143, 144, 148, 149, 150, 151, 152, 156, 159, 182	
<b>Guinea-Bissau</b>	<b>26 reports requested</b>
· No reports received: Conventions Nos 1, 12, 14, 17, 18, 19, 27, 29, 45, 68, 69, 73, 74, 81, 88, 89, 91, 92, 98, 100, 105, 106, 107, 108, 111, (182)	
<b>Guyana</b>	<b>31 reports requested</b>
· No reports received: Conventions Nos 2, 12, 19, 29, 42, 45, 81, 87, 97, 98, 100, 105, 108, 111, 115, 129, 135, 136, 137, 138, 139, 140, 142, 144, 149, 150, 151, 166, 172, 175, 182	
<b>Haiti</b>	<b>5 reports requested</b>
· No reports received: Conventions Nos 29, 45, 81, 105, 182	
<b>Honduras</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 29, 45, 62, 81, 105, 138, 182	
<b>Hungary</b>	<b>20 reports requested</b>
· 2 reports received: Conventions Nos 24, 29	
· 18 reports not received: Conventions Nos 13, 81, 88, 105, 115, 127, 129, 136, 138, 139, 148, 155, 159, 161, 167, 181, 182, (185)	

<b>Iceland</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 2, 29, 105, 108, 138, 139, 147, 155, 159, 182	
<b>India</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 1, 29, 45, 81, 88, 105, 107, 115, 136, (174)	
<b>Indonesia</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos 29, 45, 81, 88, 105, 120, 138, 182, (185)	
<b>Islamic Republic of Iran</b>	<b>8 reports requested</b>
· 6 reports received: Conventions Nos 29, 100, 105, 122, (142), 182	
· 2 reports not received: Conventions Nos 108, 111	
<b>Iraq</b>	<b>22 reports requested</b>
· 20 reports received: Conventions Nos 8, 13, 16, 29, 81, 88, 92, 105, 111, 115, 119, 120, 136, 138, 139, 145, 146, 148, 150, 182	
· 2 reports not received: Conventions Nos 135, 167	
<b>Ireland</b>	<b>39 reports requested</b>
· 15 reports received: Conventions Nos 8, 16, 22, 23, 32, 53, 68, 69, 73, 74, 92, 108, 147, 172, 178	
· 24 reports not received: Conventions Nos 14, 27, 29, 62, 81, 88, 96, 100, 105, 111, 122, 132, 138, 139, 142, 144, 155, 159, 160, 176, 177, 179, 180, 182	
<b>Israel</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos 29, 81, 88, 96, 97, 105, 136, 138, 182	
<b>Italy</b>	<b>22 reports requested</b>
· 21 reports received: Conventions Nos 2, 13, 29, 81, 105, 115, 119, 120, 122, 127, 129, 136, 138, 143, 148, 159, 164, 167, 170, 181, 182	
· 1 report not received: Convention No. 139	
<b>Jamaica</b>	<b>6 reports requested</b>
· 5 reports received: Conventions Nos 81, 100, 105, 138, 182	
· 1 report not received: Convention No. 29	
<b>Japan</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 29, 45, 81, 88, 115, 119, 120, 138, 139, 159, 162, 181, 182, (187)	
<b>Jordan</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos 29, 81, 105, 119, 120, 138, 159, 182, (185)	
<b>Kazakhstan</b>	<b>7 reports requested</b>
· No reports received: Conventions Nos 87, 98, 100, 111, 122, 144, (167)	
<b>Kenya</b>	<b>14 reports requested</b>
· 11 reports received: Conventions Nos 63, 98, 100, 105, 111, 132, 134, 137, 144, 146, 149	
· 3 reports not received: Conventions Nos 16, 27, 94	
<b>Kiribati</b>	<b>4 reports requested</b>
· 2 reports received: Conventions Nos 29, 105	
· 2 reports not received: Conventions Nos 87, 98	
<b>Republic of Korea</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos 53, 73, 100, 111, 122, 144, 150, (155), 160, (185), (187)	
<b>Kuwait</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 52, 87, 98, 111, 144	

<b>Kyrgyzstan</b>	<b>39 reports requested</b>
· No reports received: Conventions Nos 11, 16, (17), 23, 29, 69, 73, 77, 78, 79, 81, 87, 92, 95, (97), 98, 100, 105, 108, (111), 115, 119, 120, 122, 124, (131), 133, 134, 138, (144), 147, 148, 149, 150, 154, (157), 159, 160, (184)	
<b>Lao People's Democratic Republic</b>	<b>4 reports requested</b>
· No reports received: Conventions Nos 4, 6, (100), (111)	
<b>Latvia</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 87, 98, 100, 108, 111, 122, 133, 144, 147, 150, 160, 180	
<b>Lebanon</b>	<b>13 reports requested</b>
· 12 reports received: Conventions Nos 8, 9, 58, 71, 73, 74, 98, 100, 111, 133, 147, 150	
· 1 report not received: Convention No. 122	
<b>Lesotho</b>	<b>16 reports requested</b>
· All reports received: Conventions Nos 26, 29, 45, 81, 87, 98, 100, 105, 111, 135, 138, 144, 150, 155, 167, 182	
<b>Liberia</b>	<b>18 reports requested</b>
· 8 reports received: Conventions Nos 22, 53, 55, 58, 92, (133), 144, 147	
· 10 reports not received: Conventions Nos 23, 29, 87, 98, 108, 111, 112, 113, 114, 150	
<b>Libyan Arab Jamahiriya</b>	<b>18 reports requested</b>
· 12 reports received: Conventions Nos 29, 81, 87, 96, 98, 100, 111, 118, 121, 128, 130, 182	
· 6 reports not received: Conventions Nos 53, 88, 102, 105, 122, 138	
<b>Lithuania</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 73, 87, 98, 100, 108, 111, 122, 144, 147, 160	
<b>Luxembourg</b>	<b>50 reports requested</b>
· 20 reports received: Conventions Nos 2, 96, 98, 100, (115), (119), (120), (127), (129), (136), (139), (148), 159, (161), (162), (167), (170), (174), (176), (184)	
· 30 reports not received: Conventions Nos 8, 9, 13, 16, 22, 23, 53, 55, 56, 68, 69, 73, 74, 81, 87, 88, 92, 108, 111, 133, 146, 147, (149), 150, 155, 166, (171), 178, 180, (183)	
<b>Madagascar</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos 87, (89), 98, 100, 111, 122, 144, (171), (185)	
<b>Malawi</b>	<b>13 reports requested</b>
· 7 reports received: Conventions Nos 29, 45, 105, 138, 158, 159, 182	
· 6 reports not received: Conventions Nos 87, 98, 100, 111, 144, 150	
<b>Malaysia</b>	<b>3 reports requested</b>
· All reports received: Conventions Nos 98, 100, 144	
<b>Peninsular Malaysia</b>	<b>1 report requested</b>
· All reports received: Convention No. 19	
<b>Sabah</b>	<b>2 reports requested</b>
· All reports received: Conventions Nos 16, 97	
<b>Sarawak</b>	<b>1 report requested</b>
· All reports received: Convention No. 16	
<b>Mali</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 87, 98, 100, 111, (144), (150), (183)	



<b>Malta</b>	<b>31 reports requested</b>
· 18 reports received: Conventions Nos 2, 13, 29, 32, 62, 81, 88, 96, 105, 119, 127, 129, 135, 136, 138, 148, 159, 182	
· 13 reports not received: Conventions Nos 8, 16, 22, 53, 73, 74, 87, 98, 100, 108, 111, 147, 180	
<b>Mauritania</b>	<b>9 reports requested</b>
· 8 reports received: Conventions Nos 22, 23, 53, 58, 87, 98, 100, 111	
· 1 report not received: Convention No. 122	
<b>Mauritius</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos 8, 16, 17, 19, 74, 87, 98, 100, 108, 111, 144, 150, 160	
<b>Mexico</b>	<b>21 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 53, 55, 56, 58, 87, 100, 108, 111, 134, 144, 150, 155, 160, 163, 164, 166, 169	
<b>Republic of Moldova</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 29, 81, 87, 92, 98, 100, 105, 111, 122, 133, 144, 150, (152), (185)	
<b>Mongolia</b>	<b>8 reports requested</b>
· 6 reports received: Conventions Nos 87, 98, 100, 103, 122, 144	
· 2 reports not received: Conventions Nos 111, 155	
<b>Montenegro</b>	<b>18 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 98, 100, 111, 122, 144	
<b>Morocco</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 22, 55, 98, 100, 108, 111, 122, 145, 146, 147, 178, 179, 180, 182	
<b>Mozambique</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 87, 98, 100, 105, 111, 122, 144	
<b>Myanmar</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos 16, 22, 26, 29, 63, 87	
<b>Namibia</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 87, 98, 111, 144, 150	
<b>Nepal</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 98, 100, 111, 144, (169)	
<b>Netherlands</b>	<b>29 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 23, 29, 68, 69, 71, 73, 74, 87, 92, 98, 100, 111, 122, 133, 144, 145, 146, 147, 150, 152, 159, 160, 162, 180, 181	
<i>Aruba</i>	<b>12 reports requested</b>
· No reports received: Conventions Nos 8, 9, 22, 23, 69, 74, 87, 122, 144, 145, 146, 147	
<i>Netherlands Antilles</i>	<b>9 reports requested</b>
· All reports received: Conventions Nos 8, 9, 22, 23, 58, 69, 74, 87, 122	
<b>New Zealand</b>	<b>21 reports requested</b>
· All reports received: Conventions Nos 8, 9, 14, 16, 22, 23, 53, 58, 68, 69, 74, 92, 98, 100, 111, 122, 133, 134, 144, 145, 160	
<i>Tokelau</i>	<b>2 reports requested</b>
· All reports received: Conventions Nos 100, 111	
<b>Nicaragua</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 23, 63, 87, 98, 100, 111, 122, 144, 146	

<b>Niger</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos 87, 98, 100, 111	
<b>Nigeria</b>	<b>25 reports requested</b>
· No reports received: Conventions Nos 8, 16, 19, 29, 32, 45, 81, 87, 88, 94, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179, 182, (185)	
<b>Norway</b>	<b>48 reports requested</b>
· All reports received: Conventions Nos 8, 13, 16, 22, 53, 56, 68, 69, 71, 73, 81, 87, 88, 92, 98, 100, 108, 111, 115, 119, 120, 122, 129, 133, 134, 135, 138, 139, 144, 145, 147, 148, 150, 151, 154, 155, 159, 160, 162, 163, 164, 167, 170, 176, 178, 179, 180, 182	
<b>Pakistan</b>	<b>17 reports requested</b>
· 9 reports received: Conventions Nos 11, 29, 45, 81, 87, 105, 138, 144, 182	
· 8 reports not received: Conventions Nos 16, 22, 96, 98, 100, 111, 159, (185)	
<b>Panama</b>	<b>26 reports requested</b>
· 23 reports received: Conventions Nos 3, 8, 9, 16, 17, 22, 23, 30, 53, 55, 56, 68, 69, 71, 73, 74, 87, 88, 92, 98, 108, 122, 160	
· 3 reports not received: Conventions Nos 100, 111, (167)	
<b>Papua New Guinea</b>	<b>14 reports requested</b>
· 8 reports received: Conventions Nos 2, 29, 45, 98, 100, 105, 122, 182	
· 6 reports not received: Conventions Nos 8, 22, 85, 87, 111, 138	
<b>Paraguay</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 87, 95, 98, 100, 111, 122, 123	
<b>Peru</b>	<b>26 reports requested</b>
· All reports received: Conventions Nos 8, 9, 22, 23, 44, 53, 55, 56, 58, 68, 69, 71, 73, 87, 98, 100, 102, 111, 122, (127), 144, 147, 152, 169, (176), 178	
<b>Philippines</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 23, 53, 87, 98, 100, 111, 122, 144, 165, 179	
<b>Poland</b>	<b>25 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 23, 68, 69, 73, 74, 87, 91, 92, 98, 100, 108, 111, 122, 133, 134, 144, 145, 147, 160, 178, (181)	
<b>Portugal</b>	<b>21 reports requested</b>
· All reports received: Conventions Nos 8, 22, 23, 68, 69, 73, 74, 87, 92, 98, 100, 108, 111, 117, 122, 144, 145, 146, 147, 150, 160	
<b>Qatar</b>	<b>1 report requested</b>
· All reports received: Convention No. 111	
<b>Romania</b>	<b>20 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 68, 87, 92, 98, 100, 108, 111, 122, 133, 134, 144, 147, (150), 163, 166, 180	
<b>Russian Federation</b>	<b>18 reports requested</b>
· 17 reports received: Conventions Nos 16, 23, 69, 73, 87, 92, 98, 100, 108, 122, 133, 134, 147, 150, 160, 163, 179	
· 1 report not received: Convention No. 111	
<b>Rwanda</b>	<b>11 reports requested</b>
· 6 reports received: Conventions Nos 29, 62, 81, 105, 138, 182	
· 5 reports not received: Conventions Nos 87, 94, 98, 100, 111	
<b>Saint Kitts and Nevis</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos 87, 98, 100, 111, 144, 182	

<b>Saint Lucia</b>	<b>10 reports requested</b>
· 8 reports received: Conventions Nos 7, 8, 87, 97, 98, 100, 111, 158	
· 2 reports not received: Conventions Nos 16, 108	
<b>Saint Vincent and the Grenadines</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 16, 87, 98, 100, 108, 111, 180	
<b>Samoa</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos (29), (87), (98), (100), (105), (111), (138), (182)	
<b>San Marino</b>	<b>21 reports requested</b>
· 5 reports received: Conventions Nos 88, 103, 143, 144, 182	
· 16 reports not received: Conventions Nos 29, 87, 98, 100, 105, 111, 119, 138, 140, 148, 150, 151, 154, 159, 160, 161	
<b>Sao Tome and Principe</b>	<b>19 reports requested</b>
· 6 reports received: Conventions Nos (135), (138), (151), (154), (155), (182)	
· 13 reports not received: Conventions Nos 18, 29, 81, 87, 88, 98, 100, 105, 106, 111, 144, 159, (184)	
<b>Saudi Arabia</b>	<b>3 reports requested</b>
· 2 reports received: Conventions Nos 100, 111	
· 1 report not received: Convention No. 174	
<b>Senegal</b>	<b>17 reports requested</b>
· All reports received: Conventions Nos 13, 29, 81, 87, 96, 98, 100, 102, 105, 111, 117, 120, 122, 135, 138, 144, 182	
<b>Serbia</b>	<b>19 reports requested</b>
· 18 reports received: Conventions Nos 8, 9, 16, 22, 23, 29, 53, 56, 69, 73, 74, 87, 92, 98, 100, 105, 111, 122	
· 1 report not received: Convention No. 144	
<b>Seychelles</b>	<b>24 reports requested</b>
· 10 reports received: Conventions Nos 2, 16, 29, 87, 98, 100, 108, 111, (144), (152)	
· 14 reports not received: Conventions Nos 8, 22, (73), 81, 105, 138, (147), 148, 150, 151, 155, (161), (180), 182	
<b>Sierra Leone</b>	<b>26 reports requested</b>
· No reports received: Conventions Nos 8, 16, 17, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144	
<b>Singapore</b>	<b>6 reports requested</b>
· No reports received: Conventions Nos 8, 16, 22, 94, 98, 100	
<b>Slovakia</b>	<b>22 reports requested</b>
· 11 reports received: Conventions Nos 13, 87, 98, 111, 115, 136, 144, 155, 160, 182, 184	
· 11 reports not received: Conventions Nos 100, 120, 122, 139, 148, 159, 161, 163, 164, 167, 176	
<b>Slovenia</b>	<b>22 reports requested</b>
· 18 reports received: Conventions Nos 8, 16, 22, 23, 53, 69, 73, 74, 87, 92, 97, 98, 100, 108, 111, 122, 143, 147	
· 4 reports not received: Conventions Nos 9, 56, 91, 180	
<b>Solomon Islands</b>	<b>13 reports requested</b>
· No reports received: Conventions Nos 8, 14, 16, 19, 26, 29, 42, 45, 81, 84, 94, 95, 108	
<b>Somalia</b>	<b>13 reports requested</b>
· No reports received: Conventions Nos 16, 17, 19, 22, 23, 29, 45, 84, 85, 94, 95, 105, 111	
<b>South Africa</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos 63, 87, 98, 100, 111, 144	

<b>Spain</b>	<b>31 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 55, 68, 69, 73, 74, 87, 88, 92, 98, 100, 108, 111, 122, 134, 144, 145, 146, 147, 150, 160, 163, 164, 165, 166, 180	
<b>Sri Lanka</b>	<b>13 reports requested</b>
· 12 reports received: Conventions Nos 8, 16, 58, 87, 98, 100, 103, 105, 111, 135, 144, 160 · 1 report not received: Convention No. 108	
<b>Sudan</b>	<b>5 reports requested</b>
· 4 reports received: Conventions Nos 98, 100, 111, 122 · 1 report not received: Convention No. 29	
<b>Suriname</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 87, 98, 122, 144, 150	
<b>Swaziland</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos 87, 98, 100, 111, 144, 160	
<b>Sweden</b>	<b>24 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 73, 87, 92, 98, 100, 108, 111, 122, 133, 134, 144, 145, 146, 147, 150, 160, 163, 164, 178, 180, (187)	
<b>Switzerland</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos 8, 16, 23, 87, 98, 100, 111, 144, 150, 160, 163	
<b>Syrian Arab Republic</b>	<b>7 reports requested</b>
· 6 reports received: Conventions Nos 63, 87, 98, 100, 111, 144 · 1 report not received: Convention No. 53	
<b>Tajikistan</b>	<b>24 reports requested</b>
· 23 reports received: Conventions Nos 16, 23, 27, 32, 45, 69, 73, 87, 92, 98, 100, 105, 108, 111, 119, 122, 126, 133, 134, 142, (143), 147, 160 · 1 report not received: Convention No. 106	
<b>United Republic of Tanzania</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 16, 63, 87, 98, 100, 111, 134, 135, 144, 170	
<b>Tanganyika</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 45, 81, 88, 101, 108	
<b>Zanzibar</b>	<b>3 reports requested</b>
· 2 reports received: Conventions Nos 58, 97 · 1 report not received: Convention No. 85	
<b>Thailand</b>	<b>9 reports requested</b>
· 7 reports received: Conventions Nos 19, 29, 88, 100, 105, 138, 182 · 2 reports not received: Conventions Nos 122, (159)	
<b>The former Yugoslav Republic of Macedonia</b>	<b>41 reports requested</b>
· All reports received: Conventions Nos 8, 9, 12, 13, 16, 19, 22, 23, 24, 25, 27, 29, 32, 53, 56, 69, 73, 74, 81, 87, 88, 92, 97, 98, 100, 102, 105, 111, 119, 121, 122, 129, 131, 136, 139, 143, 144, 155, 156, 159, 161	
<b>Togo</b>	<b>17 reports requested</b>
· 5 reports received: Conventions Nos 87, 98, 138, 144, 182 · 12 reports not received: Conventions Nos 6, 11, 13, 14, 26, 29, 85, 95, 100, 105, 111, 143	

<b>Trinidad and Tobago</b>	<b>9 reports requested</b>
· 3 reports received: Conventions Nos 87, 125, 147	
· 6 reports not received: Conventions Nos 16, 98, 100, 111, 144, 150	
<b>Tunisia</b>	<b>17 reports requested</b>
· 9 reports received: Conventions Nos 8, 16, 22, 23, 55, 73, 108, 118, 127	
· 8 reports not received: Conventions Nos 87, 88, 98, 100, 107, 111, 122, 150	
<b>Turkey</b>	<b>34 reports requested</b>
· 17 reports received: Conventions Nos 29, 45, 81, 87, 88, 105, 115, 119, 127, 135, 138, 151, 155, 158, 159, 161, 182	
· 17 reports not received: Conventions Nos 53, 55, 68, 69, 73, 92, 98, 100, 108, 111, 122, 133, 134, 144, 146, 164, 166	
<b>Turkmenistan</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos (29), (87), (98), (100), (105), (111)	
<b>Uganda</b>	<b>25 reports requested</b>
· No reports received: Conventions Nos 11, 12, 19, 26, 29, 45, 81, 87, 94, 95, 98, 100, 105, 111, 122, 123, 124, 138, 143, 144, 154, 158, 159, 162, 182	
<b>Ukraine</b>	<b>22 reports requested</b>
· 21 reports received: Conventions Nos 16, 69, 73, 81, 87, 92, 95, 98, 100, 108, 111, 119, 122, 129, 133, 140, 144, 147, 150, (153), 160	
· 1 report not received: Convention No. 23	
<b>United Arab Emirates</b>	<b>2 reports requested</b>
· All reports received: Conventions Nos 100, 111	
<b>United Kingdom</b>	<b>23 reports requested</b>
· 20 reports received: Conventions Nos 8, 16, 22, 23, 56, 68, 69, 74, 87, 92, 98, 108, 122, 133, 144, 147, 150, 178, 180, (187)	
· 3 reports not received: Conventions Nos 100, 111, 160	
<i>Anguilla</i>	<b>9 reports requested</b>
· All reports received: Conventions Nos 8, 17, 22, 23, 58, 85, 87, 98, 108	
<i>Bermuda</i>	<b>10 reports requested</b>
· No reports received: Conventions Nos 16, 22, 23, 58, 82, 87, 98, 108, 133, 147	
<i>British Virgin Islands</i>	<b>16 reports requested</b>
· No reports received: Conventions Nos 8, 10, 14, 23, 26, 29, 58, 59, 82, 85, 87, 94, 97, 98, 105, 108	
<i>Falkland Islands (Malvinas)</i>	<b>16 reports requested</b>
· No reports received: Conventions Nos 8, 10, 14, 22, 23, 29, 32, 45, 58, 59, 82, 87, 98, 105, 108, (182)	
<i>Gibraltar</i>	<b>23 reports requested</b>
· 12 reports received: Conventions Nos 2, 29, 45, 59, 81, 82, 98, 100, 105, 135, 142, 151	
· 11 reports not received: Conventions Nos 8, 16, 22, 23, 58, 87, 108, 133, 147, 150, 160	
<i>Guernsey</i>	<b>13 reports requested</b>
· 12 reports received: Conventions Nos 7, 8, 16, 22, 63, 69, 74, 87, 98, 108, 122, 150	
· 1 report not received: Convention No. 56	
<i>Isle of Man</i>	<b>20 reports requested</b>
· 18 reports received: Conventions Nos 7, 8, 22, 23, 68, 69, 74, 87, 92, 98, 108, 122, 133, 147, 150, 160, 178, 180	
· 2 reports not received: Conventions Nos 16, 56	
<i>Jersey</i>	<b>11 reports requested</b>
· All reports received: Conventions Nos 7, 8, 16, 22, 56, 69, 74, 87, 98, 108, 160	

<i>Montserrat</i>	<b>10 reports requested</b>
· All reports received: Conventions Nos 8, 16, 29, 58, 82, 85, 87, 98, 105, 108	
<i>St Helena</i>	<b>21 reports requested</b>
· No reports received: Conventions Nos 8, 10, 11, 12, 14, 16, 17, 19, 29, 58, 59, 63, 82, 85, 87, 98, 105, 108, 150, 151, (182)	
<b>United States</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos 53, 55, 58, 74, 144, 147, 150, 160	
<i>American Samoa</i>	<b>5 reports requested</b>
· All reports received: Conventions Nos 53, 55, 58, 144, 147	
<i>Guam</i>	<b>6 reports requested</b>
· 5 reports received: Conventions Nos 53, 55, 58, 74, 147	
· 1 report not received: Convention No. 144	
<i>Northern Mariana Islands</i>	<b>2 reports requested</b>
· 1 report received: Convention No. 144	
· 1 report not received: Convention No. 147	
<i>Puerto Rico</i>	<b>6 reports requested</b>
· All reports received: Conventions Nos 53, 55, 58, 74, 144, 147	
<i>United States Virgin Islands</i>	<b>6 reports requested</b>
· All reports received: Conventions Nos 53, 55, 58, 74, 144, 147	
<b>Uruguay</b>	<b>19 reports requested</b>
· All reports received: Conventions Nos 8, 9, 16, 22, 23, 63, 73, 87, 98, 100, 108, 111, 122, 133, 134, 136, 144, 150, 161	
<b>Uzbekistan</b>	<b>9 reports requested</b>
· 8 reports received: Conventions Nos 29, 98, 100, 105, 111, 122, 135, 154	
· 1 report not received: Convention No. 182	
<b>Vanuatu</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos (29), (87), (98), (100), (105), (111), (182), (185)	
<b>Bolivarian Republic of Venezuela</b>	<b>14 reports requested</b>
· 13 reports received: Conventions Nos 22, 87, 98, 100, 102, 111, 118, 121, 122, 128, 130, 142, 144	
· 1 report not received: Convention No. 150	
<b>Viet Nam</b>	<b>3 reports requested</b>
· All reports received: Conventions Nos 100, 111, (144)	
<b>Yemen</b>	<b>10 reports requested</b>
· No reports received: Conventions Nos 16, 58, 81, 87, 98, 100, 111, 122, 144, (185)	
<b>Zambia</b>	<b>18 reports requested</b>
· No reports received: Conventions Nos 11, 29, 87, 98, 100, 103, 105, 111, 122, 135, 136, 144, 148, 150, 151, 154, 159, 176	
<b>Zimbabwe</b>	<b>21 reports requested</b>
· All reports received: Conventions Nos 29, 81, 87, 98, 99, 100, 105, 111, 129, 135, 138, 144, 150, 155, 159, 161, 162, 170, 174, 176, 182	

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## Grand Total

A total of 2,745 reports (article 22) were requested,  
of which 1,866 reports (67.98 per cent) were received.

A total of 245 reports (article 35) were requested,  
of which 136 reports (55.51 per cent) were received.

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**Appendix II. Statistical table of reports received on  
ratified Conventions as of 10 December 2010**  
(article 22 of the Constitution)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
<b>As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions</b>							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%



Committee of Experts year	Reports requested	Reports received at the date requested	Reports received in time for the session of the Committee	Reports received in time for the session of the Conference
<b>As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals</b>				
1977	1529	215 14.0%	1120 73.2%	1328 87.0%
1978	1701	251 14.7%	1289 75.7%	1391 81.7%
1979	1593	234 14.7%	1270 79.8%	1376 86.4%
1980	1581	168 10.6%	1302 82.2%	1437 90.8%
1981	1543	127 8.1%	1210 78.4%	1340 86.7%
1982	1695	332 19.4%	1382 81.4%	1493 88.0%
1983	1737	236 13.5%	1388 79.9%	1558 89.6%
1984	1669	189 11.3%	1286 77.0%	1412 84.6%
1985	1666	189 11.3%	1312 78.7%	1471 88.2%
1986	1752	207 11.8%	1388 79.2%	1529 87.3%
1987	1793	171 9.5%	1408 78.4%	1542 86.0%
1988	1636	149 9.0%	1230 75.9%	1384 84.4%
1989	1719	196 11.4%	1256 73.0%	1409 81.9%
1990	1958	192 9.8%	1409 71.9%	1639 83.7%
1991	2010	271 13.4%	1411 69.9%	1544 76.8%
1992	1824	313 17.1%	1194 65.4%	1384 75.8%
1993	1906	471 24.7%	1233 64.6%	1473 77.2%
1994	2290	370 16.1%	1573 68.7%	1879 82.0%
<b>As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995</b>				
1995	1252	479 38.2%	824 65.8%	988 78.9%
<b>As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals</b>				
1996	1806	362 20.5%	1145 63.3%	1413 78.2%
1997	1927	553 28.7%	1211 62.8%	1438 74.6%
1998	2036	463 22.7%	1264 62.1%	1455 71.4%
1999	2288	520 22.7%	1406 61.4%	1641 71.7%
2000	2550	740 29.0%	1798 70.5%	1952 76.6%
2001	2313	598 25.9%	1513 65.4%	1672 72.2%
2002	2368	600 25.3%	1529 64.5%	1701 71.8%
2003	2344	568 24.2%	1544 65.9%	1701 72.6%
2004	2569	659 25.6%	1645 64.0%	1852 72.1%
2005	2638	696 26.4%	1820 69.0%	2065 78.3%
2006	2586	745 28.8%	1719 66.5%	1949 75.4%
2007	2478	845 34.1%	1611 65.0%	1812 73.2%
2008	2515	811 32.2%	1768 70.2%	1962 78.0%
2009	2733	682 24.9%	1853 67.8%	2120 77.6%
2010	2745	861 31.4%	1866 67.9%	

### Appendix III. List of observations made by employers' and workers' organizations

<b>Albania</b>	<hr/> <ul style="list-style-type: none"> <li>• Union of Independent Trade Union of Albania (BSPSH)</li> </ul>	<hr/> <p>on Convention No. 87</p>
<b>Argentina</b>	<hr/> <ul style="list-style-type: none"> <li>• Confederation of Workers of Argentina (CTA)</li> <li>• General Confederation of Labour (CGT)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<hr/> <p>on Conventions Nos 81, 87, 169 29, 81, 87, 129, 169, 182 87</p>
<b>Armenia</b>	<hr/> <ul style="list-style-type: none"> <li>• Confederation of Trade Unions of Armenia (CTUA)</li> <li>• Union of Manufacturers and Entrepreneurs of Armenia (UMEA)</li> </ul>	<hr/> <p>on Conventions Nos 150, 173 111, 150</p>
<b>Australia</b>	<hr/> <ul style="list-style-type: none"> <li>• Australian Council of Trade Unions (ACTU)</li> </ul>	<hr/> <p>on Conventions Nos 29, 81, 88, 155, 159</p>
<b>Azerbaijan</b>	<hr/> <ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<hr/> <p>on Convention No. 29</p>
<b>Bahrain</b>	<hr/> <ul style="list-style-type: none"> <li>• Bahrain Chamber of Commerce and Industry (BCCI)</li> </ul>	<hr/> <p>on Convention No. 111</p>
<b>Bangladesh</b>	<hr/> <ul style="list-style-type: none"> <li>• Bangladesh Free Trade Union Congress (BFTUC)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<hr/> <p>on Conventions Nos 81 87</p>
<b>Barbados</b>	<hr/> <ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<hr/> <p>on Conventions Nos 87, 98</p>
<b>Belarus</b>	<hr/> <ul style="list-style-type: none"> <li>• Belarusian Congress of Democratic Trade Unions (CDTU)</li> </ul>	<hr/> <p>on Conventions Nos 87, 98</p>
<b>Belgium</b>	<hr/> <ul style="list-style-type: none"> <li>• Confederation of Christian Trade Unions (CSC), General Labour Federation of Belgium (FGTB) and General Confederation of Liberal Trade Unions of Belgium (CGSLB)</li> </ul>	<hr/> <p>on Conventions Nos 87, 98</p>
<b>Benin</b>	<hr/> <ul style="list-style-type: none"> <li>• Confederation of United Unions of Benin (CSUB)</li> </ul>	<hr/> <p>on Conventions Nos 87, 98, 135, 150, 160</p>
<b>Botswana</b>	<hr/> <ul style="list-style-type: none"> <li>• Education International</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<hr/> <p>on Conventions Nos 87 87, 98</p>
<b>Brazil</b>	<hr/> <ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> <li>• National Union of Labour Inspectors (SINAIT)</li> <li>• Union of Teachers, Federal District (SINPRO-DF)</li> <li>• Union of Workers in the Lumber, Civil Construction and Furniture Industries of Altamira and the Surrounding Region (SINTICMA)</li> </ul>	<hr/> <p>on Conventions Nos 169 81 155 81, 155, 167</p>
<b>Burkina Faso</b>	<hr/> <ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<hr/> <p>on Conventions Nos 87, 98</p>

## Burundi

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Cambodia

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- Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87  
87

## Cameroon

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- General Union of Workers of Cameroon (UGTC)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 95, 98, 111, 135, 158  
98

## Canada

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- Canadian Labour Congress (CLC)

on Conventions Nos  
1, 88, 162, 182

## Cape Verde

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- Cape Verde Confederation of Free Trade Unions (CCSL)
- National Workers' Union of Cape Verde - Trade Union Confederation (UNTC-CS)

on Conventions Nos  
17, 19, 29, 87, 98, 100, 118, 182  
87, 98

## Chile

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- Confederation of Production and Commerce (CPC)
- National Confederation of Artisanal Fishers of Chile (CONAPACH)
- National Confederation of Bakery Workers' Unions (CONAPAN)
- Single Central Organization (CUT)

on Conventions Nos  
35  
169  
169  
169

## China

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- All-China Federation of Trade Unions (ACFTU)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
159, 167  
155, 167, 182

## Hong Kong Special Administrative Region

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- International Trade Union Confederation (ITUC)

on Convention No.  
97

## Macau Special Administrative Region

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- Association of Public Service Workers of Macau

on Conventions Nos  
87, 98

## Colombia

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- Education International
- General Confederation of Labour (CGT)
- International Trade Union Confederation (ITUC)
- National Association of Telephone, Communication and Allied Technicians (ATELCA)
- National Employers Association of Colombia (ANDI)
- Single Confederation of Workers of Colombia (CUT) and Confederation of Workers of Colombia (CTC)
- Union of Workers of the National Mining Enterprise 'Minercol Ltda.' (SINTRAMINERCOL)

on Conventions Nos  
87, 98  
2, 138, 159, 169  
87  
154  
169  
2, 13, 29, 81, 87, 88, 98, 111, 129,  
138, 151, 154, 159, 161, 162, 169,  
170, 182  
169

## Congo

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Costa Rica

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- Confederation of Workers Rerum Novarum (CTRN)

on Conventions Nos  
1, 29, 81, 105, 129, 182

## Croatia

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- International Trade Union Confederation (ITUC)
- Trade Union of State and Local Government Employees of Croatia

on Conventions Nos  
87, 98  
98

## Czech Republic

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- Czech-Moravian Confederation of Trade Unions (CM KOS)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
1, 13, 87, 98, 132, 142  
87, 98

## Democratic Republic of the Congo

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Greenland

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- Association of Employers of Greenland (GA)
- Teachers Trade Union (IMAK)

on Conventions Nos  
122  
122

## Djibouti

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Dominica

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- Waterfront and Allied Workers Union (WAWU)

on Convention No.  
150

## Dominican Republic

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- Autonomous Confederation of Workers' Unions (CASC), National Confederation of Trade Union Unity (CNUS) and National Confederation of Dominican Workers (CNTD)

on Conventions Nos  
29, 88, 122, 167, 182

## Ecuador

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- National Federation of Workers of the Enterprise "Petróleos del Ecuador" (FETRAPEC) and others

on Convention No.  
87

## Egypt

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- Federation of Egyptian Industries

on Conventions Nos  
62, 68, 96, 115

## Equatorial Guinea

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Eritrea

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Ethiopia

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- Education International

on Conventions Nos  
87, 98

## Fiji

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- Education International
- Fiji Mine Workers Union (FMWU)

on Conventions Nos  
87, 98  
98

## Finland

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- Central Organization of Finnish Trade Unions (SAK)
- Commission for Local Authority Employers (KT)
- Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA)
- Finnish Confederation of Professionals (STTK)
- The State Employer's Office (VTML)

on Conventions Nos  
148, 155, 161, 162, 167, 176, 181,  
184, 187  
155, 187  
155, 187  
155, 181, 187  
155

## France

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- Autonomous National Union of Sciences
- General Confederation of Labour - Force Ouvrière (CGT-FO)
- Inter-Union Association CGT-SUD-UNSA
- National Union of Scientific Research Workers
- Single National Union - Work, Employment, Training and Professional Integration

on Conventions Nos  
29, 111, 122, 142, 158  
106  
81  
29, 111, 122, 142, 158  
81, 129

## Georgia

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- Education International
- Georgian Trade Union Confederation (GTUC)

### on Conventions Nos

87, 98  
29, 52, 87, 98, 105, 117, 138, 163, 181

## Greece

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- Greek General Confederation of Labour (GSEE)

### on Conventions Nos

81, 87, 95, 98, 100, 102, 111, 122,  
138, 150, 154, 156

## Guatemala

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- Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)
- Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG)
- National Union of Health Workers of Guatemala (SNTSG)
- Trade Union of Workers of Operators of Plants, Wells and Guards of the Municipal Water Company

### on Conventions Nos

169  
81, 87, 129, 169  
169  
29

## Guinea

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- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Guinea-Bissau

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- International Trade Union Confederation (ITUC)

### on Convention No.

98

## Honduras

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- Honduran National Business Council (COHEP)
- Worker's Central Union of Honduras (CTH), Worker's General Central Union (CGT), and Single Confederation of Workers of Honduras (CUTH)

### on Conventions Nos

29, 81, 105, 138, 182  
87, 95, 98, 106, 111, 122

## India

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- All India Manufacturers' Organization (AIMO)
- Dakshini Rajasthan Majdoor Union

### on Conventions Nos

81, 88  
29, 105

## Islamic Republic of Iran

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- Education International
- International Trade Union Confederation (ITUC)

### on Conventions Nos

111  
122

## Italy

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- Italian Confederation of Private Shipowners (CONFITARMA)
- Italian General Confederation of Labour (CGIL)

### on Conventions Nos

9  
29, 81, 105, 138, 143, 159, 181

## Jamaica

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- Nurses Association of Jamaica (NAJ)

### on Convention No.

149

**Japan**

	<b>on Conventions Nos</b>
• All Japan Shipbuilding and Engineering Union (AJSEU)	29
• Federation of Korean Trade Unions (FKTU) - Korean Confederation of Trade Unions (KCTU)	29
• International Trade Union Confederation (ITUC)	29
• Japan Business Federation (NIPPON KEIDANREN)	181
• Japan Postal Industry Workers' Union (YUSANRO)	122
• Japanese Trade Union Confederation (JTUC-RENGO)	29, 45, 81, 88, 119, 120, 139, 159, 162, 181
• Labor Union of Migrant Workers	29
• National Confederation of Trade Unions (ZENROREN)	81, 88
• National Federation of Construction Engineering Workers' Unions of Japan (JCEW)	29
• National Union of Welfare and Childcare Workers	159
• Netherlands Trade Union Confederation (FNV)	29
• Teacher's Union of the Nagoya Municipal High School (MEIKOUKYO)	29
• Zentoitsu Workers Union	87, 98

**Kenya**

	<b>on Convention No.</b>
• International Trade Union Confederation (ITUC)	98

**Republic of Korea**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	111
• Korean Confederation of Trade Unions (KCTU)	111, 122, 155, 187

**Kuwait**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	87, 98

**Kyrgyzstan**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	87, 98

**Latvia**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	87, 98
• Latvian Free Trade Union Federation (LBAS)	98

**Lebanon**

	<b>on Conventions Nos</b>
• Association of Industrialists (AI)	8, 92, 100, 111, 147, 150
• International Trade Union Confederation (ITUC)	98

**Liberia**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	87, 98

**Libyan Arab Jamahiriya**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	87, 98

**Lithuania**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	87, 98
• Lithuanian Trade Union Confederation	87, 98
• Lithuanian Trade Union 'Sandrauga'	87

**Madagascar**

	<b>on Conventions Nos</b>
• Autonomous Trade Union of Labour Inspectors	81, 129
• International Trade Union Confederation (ITUC)	87, 98

**Malawi**

	<b>on Conventions Nos</b>
• International Trade Union Confederation (ITUC)	87, 98

**Malaysia**

- International Trade Union Confederation (ITUC)

on Convention No.  
98

**Mali**

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

**Mauritania**

- Association of Pensioners of the National Social Security Fund
- International Trade Union Confederation (ITUC)

on Conventions Nos  
102  
87, 98

**Mauritius**

- Confederation of Private Sector Workers (CTSP)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98  
87, 98

**Mexico**

- Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)
- Independent Union of Daily Workers (SINTRAJOR)
- International Trade Union Confederation (ITUC)
- National Union of Workers of 'Caminos y Puentes Federales de Ingresos y Servicios Conexos'
- Trade Union of Telephone Operators of the Republic of Mexico

on Conventions Nos  
8, 9, 16, 87, 100, 169  
169  
87  
150, 155, 170  
102

**Republic of Moldova**

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

**Montenegro**

- International Trade Union Confederation (ITUC)
- New Trade Union of Radio and Television of Montenegro

on Conventions Nos  
87, 98  
158

**Morocco**

- International Trade Union Confederation (ITUC)

on Convention No.  
98

**Mozambique**

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

**Myanmar**

- Federation of Trade Unions Kawthoolei (FTUK)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
29  
29

**Namibia**

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

**Nepal**

- International Trade Union Confederation (ITUC)

on Convention No.  
98

**Netherlands**

- Confederation of Netherlands Industry and Employers (VNO-NCW)
- Netherlands Trade Union Confederation (FNV)

on Conventions Nos  
98, 100, 122, 145, 181  
22, 29, 71, 73, 87, 94, 98, 100, 111,  
121, 122, 159, 162, 181

**New Zealand**

- Business New Zealand
- New Zealand Council of Trade Unions (NZCTU)

on Conventions Nos  
98, 100, 111, 144  
98, 100, 111, 122, 144, 145, 160

**Tokelau**

- Business New Zealand

on Conventions Nos  
100, 111

## Nicaragua

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Nigeria

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Norway

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- Confederation of Norwegian Business and Industry (NHO)
- Confederation of Norwegian Business and Industry (NHO) and Norwegian Confederation of Trade Unions (LO)
- Confederation of Unions for Professionals (Unio)
- Norwegian Confederation of Trade Unions (LO)

on Conventions Nos  
87  
111  
98  
115, 144, 155, 167, 176

## Pakistan

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- All Pakistan Federation of Trade Unions (APFTU)
- International Trade Union Confederation (ITUC)
- Pakistan Workers' Federation (PWF)

on Conventions Nos  
81, 87  
87, 98  
1, 11, 14, 18, 27, 29, 81, 87, 96, 100,  
105, 107, 111, 118, 138, 144, 159, 182

## Panama

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Paraguay

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98, 111

## Peru

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- CGTP-CUT-CTP-CATP
- General Confederation of Workers of Peru (CGTP)
- International Trade Union Confederation (ITUC)
- National Confederation of Private Business' Institutions (CONFIEP)
- Single Confederation of Workers of Peru (CUT)

on Conventions Nos  
87, 98, 100, 111, 122, 144  
8, 44, 56, 100, 102, 122, 169, 176  
87, 98  
8, 22, 23, 44, 53, 55, 56, 58, 68, 69,  
71, 87, 98, 100, 102, 111, 122, 127,  
144, 147, 152, 176, 178  
87, 98, 100, 102, 111, 169

## Philippines

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- International Trade Union Confederation (ITUC)
- Trade Federation 4, Trade Federation for Metals, Electronics, Electrical and other Allied Industries - Federation of Free Workers

on Conventions Nos  
87, 98  
87, 98

## Poland

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Portugal

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- Confederation of Portuguese Tourism (CTP)
- Confederation of Trade and Services of Portugal (CCSP)
- General Workers' Union (UGT)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98, 100, 111, 117, 122  
122, 144  
87, 98, 100, 111, 117, 122, 144, 150  
87, 98

## Romania

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- Block of National Trade Unions (BNS)
- Confederation of Democratic Trade Unions of Romania (CSDR)
- General Confederation of Industry of Romania (UGIR)
- International Trade Union Confederation (ITUC)
- National Confederation of Free Trade Unions of Romania (FRATIA)
- National Trade Union Confederation (CNS 'CARTEL ALFA')

on Conventions Nos  
1, 81, 87, 95, 98, 150, 168, 183  
81  
87  
87, 98  
81  
87, 95



## Russian Federation

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- Confederation of Labour of Russia (KTR) and Seafarers' Union of Russia
- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98  
87, 98

## Rwanda

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- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

## Senegal

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- International Trade Union Confederation (ITUC)
- National Federation of Independent Trade Unions of Senegal (UNSAS)

on Conventions Nos

87, 98  
81, 102, 122, 182

## Serbia

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- Confederation of Autonomous Trade Unions of Serbia (CATUS)
- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98  
87, 98

## Singapore

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- International Trade Union Confederation (ITUC)

on Convention No.

98

## Slovenia

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- Association of Free Trade Unions of Slovenia (AFTUS)

on Conventions Nos

97, 143

## Sri Lanka

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- International Trade Union Confederation (ITUC)
- Lanka Jathika Estate Workers' Union (LJEWU)

on Conventions Nos

87, 98  
87, 98, 100, 103, 105, 111, 135, 144

## Sudan

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- International Trade Union Confederation (ITUC)

on Conventions Nos

29, 98

## Swaziland

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- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

## Sweden

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- International Trade Union Confederation (ITUC)
- Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO)

on Conventions Nos

87, 98  
87, 98, 187

## Switzerland

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- International Trade Union Confederation (ITUC)
- Swiss Federation of Trade Unions (USS/SGB)
- Union of Swiss Employers (UPS)

on Conventions Nos

87, 98  
87, 98  
87, 98

## Syrian Arab Republic

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- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

## United Republic of Tanzania

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- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

## Thailand

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- National Congress of Thai Labour
- State Enterprises Workers Relations Confederation (SERC)

on Conventions Nos

19, 138  
19

## The former Yugoslav Republic of Macedonia

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- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

## Togo

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- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98, 182

## Trinidad and Tobago

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Tunisia

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Turkey

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- Confederation of Public Employees' Trade Unions (KESK)
- Confederation of Turkish Trade Unions (TÜRK-İS)
- Education International
- Independant Confederation of Public Servants' Trade Unions (BASK)
- International Trade Union Confederation (ITUC)
- Turkish Confederation of Employers' Associations (TISK)

on Conventions Nos  
87, 98, 151, 161  
29, 45, 81, 88, 105, 115, 119, 127,  
135, 138, 155, 158, 159, 161, 182  
87  
87  
87, 98  
29, 45, 81, 88, 105, 115, 119, 127,  
135, 138, 151, 155, 158, 159, 161, 182

## Uganda

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Ukraine

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- Confederation of Free Trade Unions of Ukraine (KVPU)
- International Trade Union Confederation (ITUC)
- National Forum of Trade Unions of Ukraine (NFTU)
- Workers' Union of the Coalmine Nikanor-Novaya (NPG)

on Conventions Nos  
47, 87, 98, 158  
87, 98  
47, 87, 95, 98, 106, 111, 131, 158  
87, 95, 131, 135

## United Kingdom

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- International Trade Union Confederation (ITUC)
- Trades Union Congress (TUC)

on Conventions Nos  
87, 98  
87, 92, 98, 133, 187

## Uruguay

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- International Organization of Employers (IOE)

on Conventions Nos  
98, 144

## Uzbekistan

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- EURATEX, ETUF:TCL
- International Trade Union Confederation (ITUC)
- ITUC, ETUF:TCL, IUF, EFFAT

on Conventions Nos  
29, 182  
182  
29, 105, 182

## Bolivarian Republic of Venezuela

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- Confederation of Workers of Venezuela (CTV)
- Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS)
- Independent Trade Union Alliance (ASI)
- International Organization of Employers (IOE)
- International Trade Union Confederation (ITUC)
- Single National Union of Public Employees of the Venezuelan Corporation of Guayana (SUNEP-CVG)

on Conventions Nos  
87  
26, 87, 98, 122, 144, 158  
26, 87, 98, 102, 122, 144, 155  
87, 98  
87, 98  
87, 98

## Viet Nam

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- Vietnam Chamber of Commerce and Industry (VCCI)

on Conventions Nos  
111, 144

## Yemen

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Zambia

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

**Zimbabwe**

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- International Trade Union Confederation (ITUC)
- Zimbabwe Congress of Trade Unions (ZCTU)

**on Conventions Nos**

87, 98

87, 98

**Appendix IV. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities**

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions, the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution, a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures to rationalize and simplify proceedings. As a result, the summarized information appears in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains the most recent information on the submission to the competent authorities of the instruments adopted by the Conference at its 96th Session (May–June 2007). The Conference adopted no international labour Conventions or Recommendations at its 97th (June 2008) and 98th (June 2009) Sessions.

The summarized information also consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 99th Session of the Conference (Geneva, June 2010) and which could not therefore be laid before the Conference at that session.

In the next report, the summary will contain information showing how far governments have progressed in the submission to the competent authorities of the HIV and AIDS Recommendation, 2010 (No. 200), adopted by the Conference at its 99th Session (June 2010).

**Bosnia and Herzegovina.** The ratification of Conventions Nos 174, 175, 177, 181, 184, 186 and the Maritime Labour Convention, 2006 was registered on 12 February 2010. The ratification of Conventions Nos 176 and 188 was registered on 4 February 2010. The ratification of Convention No 187 was registered on 9 March 2010. Recommendations Nos 189, 193, 194, 195 and 198 were submitted to the competent authorities in December 2009.

**Costa Rica.** The Work in Fishing Convention, 2007 (No. 188) was submitted to the Legislative Assembly on 21 May 2009.

**Cuba.** The competent legislative authorities have examined the instruments adopted by the Conference at its 92nd, 94th, 95th and 96th Sessions.

**Gambia.** On 22 March 2010, the instruments adopted by the Conference between 1994 and 2007 were submitted to the National Assembly.

**Germany.** The ratification of Convention No. 187 was registered on 21 July 2010.

**Kenya.** On 13 September 2010, the Protocols adopted at the 82nd and 84th Sessions and all the other instruments adopted by the Conference between 2000 and 2007 were submitted to the National Assembly.

**Lao People's Democratic Republic.** The instruments adopted by the Conference between 1995 and 2010 were submitted to the National Assembly on 29 October 2010.

**Latvia.** The Work in Fishing Convention and Recommendation, 2007, adopted at the 96th Session of the Conference were submitted to the Saeima in 2010.

**Republic of Moldova.** The ratification of Convention No. 187 was registered on 12 February 2010.

**Nepal.** On 3 June 2010, the Government reported on the submission to the Parliament of Nepal, on 16 November 2008, of the instruments adopted by the Conference between 1995 and 2006.

**Paraguay.** On 9 March 2010, the instruments adopted by the Conference between 1997 and 2007 were submitted to the National Congress.

**Portugal.** The Work in Fishing Convention and Recommendation, 2007, adopted at the 96th Session of the Conference were submitted to the Assembly of the Republic in April 2008.

**Slovakia.** The ratification of Convention No. 187 was registered on 22 February 2010.

**South Africa.** The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to the National Assembly in October 2007.

**Bolivarian Republic of Venezuela.** On 30 August 2010, 41 Conventions, Recommendations and Protocols adopted by the Conference between 1992 and 2007 were submitted to the National Assembly.

*Zambia.* The instruments adopted by the Conference between 1996 and 2007 were submitted to the National Assembly in 2010.

The Committee has deemed it necessary, in certain cases, to request additional information on the nature of the competent authorities to which the instruments adopted by the Conference have been submitted, as well as other particulars required by the questionnaire at the end of the Memorandum of 1980, as revised in March 2005.

**Appendix V. Information supplied by governments with regard to the  
obligation to submit Conventions and Recommendations  
to the competent authorities**

(31st to 98th Sessions of the International Labour Conference, 1948-2009)

*Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.*

*Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.*

*The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972), 73rd Session (June 1987), 93rd Session (June 2004), 97th Session (June 2008) and 98th Session (June 2009).*

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Afghanistan</b>	31-56, 58-72, 74-92, 94-95	96
<b>Albania</b>	31-49, 79-81, 82(C176; R183), 83, 84(C178; P147; R186), 85, 87-88, 90(P155), 91	78, 82(P081), 84(C179; C180; R185; R187), 86, 89, 90(R193; R194), 92, 94, 95, 96
<b>Algeria</b>	47-56, 58-72, 74-92, 94-96	-
<b>Angola</b>	61-72, 74-78, 79(C173), 80-81, 82(C176; R183), 83-85, 87-90	79(R180), 82(P081), 86, 91, 92, 94, 95, 96
<b>Antigua and Barbuda</b>	68-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Argentina</b>	31-56, 58-72, 74-90, 92, 94, 96	91, 95
<b>Armenia</b>	80-81, 82(C176; R183), 83-89, 90(R193; R194), 91-92, 94-96	82(P081), 90(P155)
<b>Australia</b>	31-56, 58-72, 74-92, 94-96	-
<b>Austria</b>	31-56, 58-72, 74-92, 95(R198), 96	94, 95(C187; R197)
<b>Azerbaijan</b>	79(C173), 80-82, 85-88, 91-92	79(R180), 83, 84, 89, 90, 94, 95, 96
<b>Bahamas</b>	61-72, 74-84, 87, 91, 94	85, 86, 88, 89, 90, 92, 95, 96
<b>Bahrain</b>	63-72, 74-87	88, 89, 90, 91, 92, 94, 95, 96
<b>Bangladesh</b>	58-72, 74-76, 77(C171; R178), 78, 80, 84(C178; C180; P147), 85(C181), 87	77(C170; P089; R177), 79, 81, 82, 83, 84(C179; R185; R186; R187), 85(R188), 86, 88, 89, 90, 91, 92, 94, 95, 96

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Barbados</b>	
51-56, 58-72, 74-92, 94-95	96
<b>Belarus</b>	
37-56, 58-72, 74-92, 94-96	-
<b>Belgium</b>	
31-56, 58-72, 74-92, 94, 95(C187; R197)	95(R198), 96
<b>Belize</b>	
68-72, 74-76, 84(P147), 87-88	77, 78, 79, 80, 81, 82, 83, 84(C178; C179; C180; R185; R186; R187), 85, 86, 89, 90, 91, 92, 94, 95, 96
<b>Benin</b>	
45-56, 58-72, 74-92, 94-96	-
<b>Plurinational State of Bolivia</b>	
31-56, 58-72, 74-79, 80(C174), 81(C175), 82(C176), 83(C177), 84(C178; C179; C180), 85(C181), 87, 88(C183), 89(C184), 91	80(R181), 81(R182), 82(P081; R183), 83(R184), 84(P147; R185; R186; R187), 85(R188), 86, 88(R191), 89(R192), 90, 92, 94, 95, 96
<b>Bosnia and Herzegovina</b>	
80-81, 82(C176; R183), 83-87, 89, 90(R193; R194), 91-92, 94-96	82(P081), 88, 90(P155)
<b>Botswana</b>	
64-72, 74-87, 94-95	88, 89, 90, 91, 92, 96
<b>Brazil</b>	
31-50, 51(C127; R128; R129; R130; R131), 53(R133; R134), 54-56, 58-62, 63(C148; R156; R157), 64(C151; R158; R159), 65-66, 67(C154; C155; R163; R164; R165), 68(C158; P110; R166), 69-72, 74-77, 80, 82(C176; R183), 84(C178; R185), 87, 89, 91	51(C128), 52, 53(C129; C130), 63(C149), 64(C150), 67(C156), 68(C157), 78, 79, 81, 82(P081), 83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 92, 94, 95, 96
<b>Brunei Darussalam</b>	
-	96
<b>Bulgaria</b>	
31-56, 58-72, 74-92, 94-96	-
<b>Burkina Faso</b>	
45-56, 58-72, 74-92, 94-96	-
<b>Burundi</b>	
47-56, 58-72, 74-92, 95	94, 96
<b>Cambodia</b>	
53-54, 56, 58(C138; R146), 64(C150; R158), 87	55, 58(C137; R145), 59, 60, 61, 62, 63, 64(C151; R159), 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Cameroon</b>	
44-56, 58-72, 74-92, 94-96	-
<b>Canada</b>	
31-56, 58-72, 74-90, 94	91, 92, 95, 96
<b>Cape Verde</b>	
65-72, 74-81, 87	82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Central African Republic</b>	45-56, 58-72, 74, 76, 87	75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Chad</b>	45-56, 58-72, 74-92, 94-96	-
<b>Chile</b>	31-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>China</b>	31-56, 58-72, 74-92, 94-96	-
<b>Colombia</b>	31-56, 58-72, 74, 75(C167; R175; R176), 76-78, 79(R180), 80, 81(C175), 87, 88(C183), 89(C184)	75(C168), 79(C173), 81(R182), 82, 83, 84, 85, 86, 88(R191), 89(R192), 90, 91, 92, 94, 95, 96
<b>Comoros</b>	65-72, 74-78, 87	79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Congo</b>	45-53, 54(C131; C132), 55(C133; C134), 56, 58(C138; R146), 59, 60(C142; R150), 61, 63(C148; C149; R157), 64-66, 67(C154; C155; C156), 68(C158), 71(C160; C161), 75(C167; C168), 76, 87	54(R135; R136), 55(R137; R138; R139; R140; R141; R142), 58(C137; R145), 60(C141; C143; R149; R151), 62, 63(R156), 67(R163; R164; R165), 68(C157; P110; R166), 69, 70, 71(R170; R171), 72, 74, 75(R175; R176), 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Costa Rica</b>	31-56, 58-72, 74-92, 94-95, 96(C188)	96(R199)
<b>Côte d'Ivoire</b>	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Croatia</b>	80-85, 87, 94	86, 88, 89, 90, 91, 92, 95, 96
<b>Cuba</b>	31-56, 58-72, 74-92, 94-96	-
<b>Cyprus</b>	45-56, 58-72, 74-90, 92	91, 94, 95, 96
<b>Czech Republic</b>	80-92, 94-96	-
<b>Democratic Republic of the Congo</b>	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Denmark</b>	31-56, 58-72, 74-92, 94-96	-
<b>Djibouti</b>	64-65, 67, 71-72, 83, 87	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Dominica</b>	68-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96



Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Dominican Republic</b> 31-56, 58-72, 74-92, 94-95	96
<b>Ecuador</b> 31-56, 58-72, 74-88, 90(P155), 91-92, 94-95	89, 90(R193; R194), 96
<b>Egypt</b> 31-56, 58-72, 74-92, 94-96	-
<b>El Salvador</b> 31-56, 58-61, 63(C149), 64, 67(C155; C156; R164; R165), 69(C159; R168), 71-72, 74-81, 87, 90(P155)	62, 63(C148; R156; R157), 65, 66, 67(C154; R163), 68, 69(R167), 70, 82, 83, 84, 85, 86, 88, 89, 90(R193; R194), 91, 92, 94, 95, 96
<b>Equatorial Guinea</b> 67-72, 74-79, 84, 87	80, 81, 82, 83, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Eritrea</b> 80-92, 94-95	96
<b>Estonia</b> 79-92, 94-95	96
<b>Ethiopia</b> 31-56, 58-72, 74-87, 88(C183), 89	88(R191), 90, 91, 92, 94, 95, 96
<b>Fiji</b> 59-72, 74-82, 84(C178; R185), 87, 89	83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 91, 92, 94, 95, 96
<b>Finland</b> 31-56, 58-72, 74-92, 94-96	-
<b>France</b> 31-56, 58-72, 74-92, 94-96	-
<b>Gabon</b> 45-56, 58-72, 75-81, 82(C176), 83(C177), 84(C179), 85(C181), 87, 89(C184), 91	74, 82(P081; R183), 83(R184), 84(C178; C180; P147; R185; R186; R187), 85(R188), 86, 88, 89(R192), 90, 92, 94, 95, 96
<b>Gambia</b> 82-92, 94-96	-
<b>Georgia</b> 85, 86-87	80, 81, 82, 83, 84, 88, 89, 90, 91, 92, 94, 95, 96
<b>Germany</b> 34-56, 58-72, 74-76, 77(C170; R177), 78-92, 94-96	77(C171; P089; R178)
<b>Ghana</b> 40-56, 58-72, 74-79, 83, 84(C178; C179; C180; P147; R187), 85-87	80, 81, 82, 84(R185; R186), 88, 89, 90, 91, 92, 94, 95, 96
<b>Greece</b> 31-56, 58-72, 74-92, 94-96	-
<b>Grenada</b> 66-72, 74-92, 94-95	96

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Guatemala</b>	31-56, 58-72, 74-92, 94-96	-
<b>Guinea</b>	43-56, 58-72, 74-83, 87	84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Guinea-Bissau</b>	63-72, 74-82, 83(R184), 84-87, 88(R191), 94	83(C177), 88(C183), 89, 90, 91, 92, 95, 96
<b>Guyana</b>	50-56, 58-72, 74-92, 94-95	96
<b>Haiti</b>	31-56, 58-66, 67(C156; R165), 69-72, 74, 75(C167), 87	67(C154; C155; R163; R164), 68, 75(C168; R175; R176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Honduras</b>	39-56, 58-72, 74-92	94, 95, 96
<b>Hungary</b>	31-56, 58-72, 74-92, 94-96	-
<b>Iceland</b>	31-56, 58-72, 74-92, 94-96	-
<b>India</b>	31-56, 58-72, 74-92, 94-96	-
<b>Indonesia</b>	33-56, 58-72, 74-92, 94-96	-
<b>Islamic Republic of Iran</b>	31-56, 58-72, 74-83, 84(C178; C179; C180; R185; R186; R187), 85-89, 90(R193; R194), 92, 95-96	84(P147), 90(P155), 91, 94
<b>Iraq</b>	31-56, 58-72, 74-87, 89	88, 90, 91, 92, 94, 95, 96
<b>Ireland</b>	31-56, 58-72, 74-87	88, 89, 90, 91, 92, 94, 95, 96
<b>Israel</b>	32-56, 58-72, 74-92, 94-96	-
<b>Italy</b>	31-56, 58-72, 74-92, 94-96	-
<b>Jamaica</b>	47-56, 58-72, 74-91	92, 94, 95, 96
<b>Japan</b>	35-56, 58-72, 74-92, 94-96	-
<b>Jordan</b>	39-56, 58-72, 74-91	92, 94, 95, 96
<b>Kazakhstan</b>	82(C176; R183), 87, 91	80, 81, 82(P081), 83, 84, 85, 86, 88, 89, 90, 92, 94, 95, 96

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Kenya</b>	48-56, 58-72, 74-92, 94-96	-
<b>Kiribati</b>	-	88, 89, 90, 91, 92, 94, 95, 96
<b>Republic of Korea</b>	79-92, 94-96	-
<b>Kuwait</b>	45-56, 58-72, 74-76, 78-79, 80(C174), 81-85, 87-88, 90-91	77, 80(R181), 86, 89, 92, 94, 95, 96
<b>Kyrgyzstan</b>	87, 89	79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 94, 95, 96
<b>Lao People's Democratic Republic</b>	48-56, 58-72, 74-81, 82(C176; R183), 83-87, 89-92, 94-96	82(P081), 88
<b>Latvia</b>	79-92, 94-96	-
<b>Lebanon</b>	31-56, 58-72, 74-92, 94-96	-
<b>Lesotho</b>	51-53, 66-72, 74-92, 94-95	96
<b>Liberia</b>	31-56, 58-72, 74-76, 77(C170; C171; R177; R178), 78-81, 82(C176; R183), 83-87, 91, 94	77(P089), 82(P081), 88, 89, 90, 92, 95, 96
<b>Libyan Arab Jamahiriya</b>	35-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Lithuania</b>	79-92, 94-96	-
<b>Luxembourg</b>	31-56, 58-72, 74-92, 94-96	-
<b>Madagascar</b>	45-56, 58-72, 74-89, 91	90, 92, 94, 95, 96
<b>Malawi</b>	49-56, 58-72, 74-92, 94-96	-
<b>Malaysia</b>	41-56, 58-72, 74-92, 94	95, 96
<b>Mali</b>	44-56, 58-72, 74-83, 84(C178; C179; C180; R185; R186; R187), 85, 87-89, 90(R193; R194), 91	84(P147), 86, 90(P155), 92, 94, 95, 96
<b>Malta</b>	49-56, 58-72, 74-92, 94-95	96
<b>Marshall Islands</b>	-	96

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Mauritania</b> 45-56, 58-72, 74-80, 81(C175), 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-91	<b>81(R182), 82(P081), 84(P147), 92, 94, 95, 96</b>
<b>Mauritius</b> 53-56, 58-72, 74-92, 94-96	-
<b>Mexico</b> 31-56, 58-72, 74-89, 90(P155; R194), 91, 94	<b>90(R193), 92, 95, 96</b>
<b>Republic of Moldova</b> 79-91, 95(C187; R197)	<b>92, 94, 95(R198), 96</b>
<b>Mongolia</b> 52-56, 58-72, 74-81, 87-89	<b>82, 83, 84, 85, 86, 90, 91, 92, 94, 95, 96</b>
<b>Montenegro</b> -	<b>96</b>
<b>Morocco</b> 39-56, 58-72, 74-92, 94-96	-
<b>Mozambique</b> 61-72, 74-82, 87	<b>83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96</b>
<b>Myanmar</b> 31-56, 58-72, 74-92, 94-96	-
<b>Namibia</b> 78-92, 94-96	-
<b>Nepal</b> 51-56, 58-72, 74-92, 94-95	<b>96</b>
<b>Netherlands</b> 31-56, 58-72, 74-92, 95(R198), 96	<b>94, 95(C187; R197)</b>
<b>New Zealand</b> 31-56, 58-72, 74-92, 94-96	-
<b>Nicaragua</b> 40-56, 58-72, 74-92, 94-96	-
<b>Niger</b> 45-56, 58-72, 74-82, 87-88, 95(C187; R197)	<b>83, 84, 85, 86, 89, 90, 91, 92, 94, 95(R198), 96</b>
<b>Nigeria</b> 45-56, 58-72, 74-92, 95	<b>94, 96</b>
<b>Norway</b> 31-56, 58-72, 74-92, 94-96	-
<b>Oman</b> 81-91	<b>92, 94, 95, 96</b>
<b>Pakistan</b> 31-56, 58-72, 74-80, 87, 91	<b>81, 82, 83, 84, 85, 86, 88, 89, 90, 92, 94, 95, 96</b>
<b>Panama</b> 31-56, 58-72, 74-87, 88(R191), 89(R192), 90(R193; R194), 92, 94	<b>88(C183), 89(C184), 90(P155), 91, 95, 96</b>

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Papua New Guinea</b> 61-72, 74-87	88, 89, 90, 91, 92, 94, 95, 96
<b>Paraguay</b> 40-56, 58-72, 74-92, 94-96	-
<b>Peru</b> 31-56, 58-72, 74-83, 84(C178; R185; R186), 85-87, 88(C183), 90(R193)	84(C179; C180; P147; R187), 88(R191), 89, 90(P155; R194), 91, 92, 94, 95, 96
<b>Philippines</b> 31-56, 58-72, 74-92, 94-96	-
<b>Poland</b> 31-56, 58-72, 74-92, 94-96	-
<b>Portugal</b> 31-56, 58-72, 74-92, 94-96	-
<b>Qatar</b> 58-72, 74-92	94, 95, 96
<b>Romania</b> 39-56, 58-72, 74-92, 94-96	-
<b>Russian Federation</b> 37-56, 58-72, 74-88, 91	89, 90, 92, 94, 95, 96
<b>Rwanda</b> 47-56, 58-72, 74-79, 81, 87	80, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Saint Kitts and Nevis</b> 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Saint Lucia</b> 67(C154; R163), 68(C158; R166), 87	66, 67(C155; C156; R164; R165), 68(C157; P110), 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Saint Vincent and the Grenadines</b> 84, 86-87, 94	82, 83, 85, 88, 89, 90, 91, 92, 95, 96
<b>Samoa</b> -	94, 95, 96
<b>San Marino</b> 69-72, 74-92, 94-96	-
<b>Sao Tome and Principe</b> 68-72, 74-76, 87, 89	77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 94, 95, 96
<b>Saudi Arabia</b> 61-72, 74-92, 94-96	-
<b>Senegal</b> 44-56, 58-72, 74-81, 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-89, 90(R193; R194), 91-92, 94-96	82(P081), 84(P147), 90(P155)

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Serbia</b>	-
89-92, 94-96	
<b>Seychelles</b>	89, 90, 91, 92, 94, 95, 96
63-72, 74-88	
<b>Sierra Leone</b>	62(C146; R154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96
45-56, 58-61, 62(C145; C147; R153; R155)	
<b>Singapore</b>	-
50-56, 58-72, 74-92, 94-96	
<b>Slovakia</b>	84
80-83, 85-92, 94-96	
<b>Slovenia</b>	-
79-92, 94-96	
<b>Solomon Islands</b>	70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96
74	
<b>Somalia</b>	76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96
45-56, 58-72, 74-75	
<b>South Africa</b>	-
31-50, 68, 74, 81-92, 94-96	
<b>Spain</b>	88, 90(P155), 91, 96
39-56, 58-72, 74-87, 89, 90(R193; R194), 92, 94-95	
<b>Sri Lanka</b>	94, 95, 96
31-56, 58-72, 74-92	
<b>Sudan</b>	81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
39-56, 58-72, 74-80, 87	
<b>Suriname</b>	90, 91, 92, 94, 95, 96
61-72, 74-89	
<b>Swaziland</b>	94, 95, 96
60-72, 74-92	
<b>Sweden</b>	94, 96
31-56, 58-72, 74-92, 95	
<b>Switzerland</b>	-
31-56, 58-72, 74-92, 94-96	
<b>Syrian Arab Republic</b>	66, 69(R168), 70, 77(C171; P089; R178), 78, 79, 80, 81, 82, 83, 84, 85, 86, 90(R193; R194), 91, 92, 94, 95, 96
31-56, 58-65, 67-68, 69(C159; R167), 71-72, 74-76, 77(C170; R177), 87-89, 90(P155)	
<b>Tajikistan</b>	84, 85, 88, 89, 90, 91, 92, 94, 95, 96
81-83, 86-87	

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>United Republic of Tanzania</b> 46-56, 58-72, 74-92, 94-96	-
<b>Thailand</b> 31-56, 58-72, 74-92, 94-96	-
<b>The former Yugoslav Republic of Macedonia</b> 80-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Timor-Leste</b> 92, 94-96	-
<b>Togo</b> 44-56, 58-72, 74-87, 89	88, 90, 91, 92, 94, 95, 96
<b>Trinidad and Tobago</b> 47-56, 58-72, 74-92, 94-95	96
<b>Tunisia</b> 39-56, 58-72, 74-92, 94-96	-
<b>Turkey</b> 31-56, 58-72, 74-92, 94-96	-
<b>Turkmenistan</b> 87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Uganda</b> 47-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Ukraine</b> 37-56, 58-72, 74-90	91, 92, 94, 95, 96
<b>United Arab Emirates</b> 58-72, 74-92, 95-96	94
<b>United Kingdom</b> 31-56, 58-72, 74-92, 94-96	-
<b>United States</b> 31-56, 58-60, 66-72, 74-92, 94-96	-
<b>Uruguay</b> 31-56, 58-72, 74-89, 90(R193; R194), 91-92, 95(R197; R198)	90(P155), 94, 95(C187), 96
<b>Uzbekistan</b> 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96
<b>Vanuatu</b> -	91, 92, 94, 95, 96
<b>Bolivarian Republic of Venezuela</b> 31-56, 58-72, 74-89, 90(R193; R194), 91-92, 94-96	90(P155)
<b>Viet Nam</b> 33-56, 58-63, 80-92, 94-95	96
<b>Yemen</b> 49-56, 58-72, 74-87, 88(C183), 89(C184), 91	88(R191), 89(R192), 90, 92, 94, 95, 96

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Zambia</b>	49-56, 58-72, 74-92, 94-95	96
<b>Zimbabwe</b>	66-72, 74-92, 94-96	-



**Appendix VI. Overall position of member States with regard to  
the submission to the competent authorities of  
the instruments adopted by the Conference  
(as of 10 December 2010)**

Sessions of the ILC	Number of States in which, according to the information supplied by the Government:			ILO Member States at the time of the session
	All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
<i>All the instruments adopted between the 31st and the 50th Sessions have been submitted to the competent authorities by member States</i>				
51st (June 1967)	116	1		117
52nd (June 1968)	117		1	118
53rd (June 1969)	120	1		121
54th (June 1970)	119	1		120
55th (October 1970)	117	1	2	120
56th (June 1971)	120			120
58th (June 1973)	121	2		123
59th (June 1974)	124		1	125
60th (June 1975)	123	1	2	126
61st (June 1976)	129		2	131
62nd (October 1976)	127	1	3	131
63rd (June 1977)	128	3	3	134
64th (June 1978)	132	2	1	135
65th (June 1979)	133		4	137
66th (June 1980)	136		6	142
67th (June 1981)	135	5	3	143
68th (June 1982)	138	3	6	147
69th (June 1983)	140	3	5	148
70th (June 1984)	140		9	149
71st (June 1985)	143	1	5	149
72nd (June 1986)	143		6	149
74th (October 1987)	142		7	149
75th (June 1988)	139	3	7	149
76th (June 1989)	139		8	147
77th (June 1990)	131	4	12	147
78th (June 1991)	134		15	149
79th (June 1992)	137	3	16	156
80th (June 1993)	144	2	21	167
81st (June 1994)	142	3	26	171
82nd (June 1995)	131	12	30	173
83rd (June 1996)	130	3	41	174
84th (October 1996)	122	13	39	174
85th (June 1997)	129	3	42	174
86th (June 1998)	126		48	174
87th (June 1999)	171		3	174
88th (June 2000)	114	7	54	175
89th (June 2001)	117	5	53	175
90th (June 2002)	98	15	62	175
91st (June 2003)	114		62	176
92nd (June 2004)	100		77	177
94th (February 2006)	94		84	178
95th (June 2006)	88	6	84	178
96th (June 2007)	71	1	106	178

## Appendix VII. Comments made by the Committee, by country

*The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned.  
This table also lists acknowledgements by the Committee of responses received to direct requests.*

<b>Afghanistan</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 100, 105, 111</b></p> <p><i>Direct requests on Conventions Nos 13, 105, 139</i></p> <p><i>Response received to a direct request on Convention No. 45</i></p> <p><i>Direct request on submission</i></p>
<b>Albania</b>	<p><b>Observations on Conventions Nos 138, 150, 182</b></p> <p><i>Direct requests on Conventions Nos 16, 100, 131, 143, 147, 150, 155, 156, 174, 176, 178, 181, 182, 185</i></p> <p><i>Direct request on submission</i></p>
<b>Algeria</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 13, 29, 32, 42, 81, 100, 105, 111, 119, 120, 122</b></p> <p><i>Direct requests on Conventions Nos 29, 63, 88, 100, 105, 111, 127, 144, 155, 181, 182</i></p>
<b>Angola</b>	<p><b>Observations on Conventions Nos 81, 88, 182</b></p> <p><i>Direct requests on Conventions Nos 1, 14, 29, 45, 89, 91, 105, 106, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Antigua and Barbuda</b>	<p><b>Observations on Conventions Nos 81, 138</b></p> <p><i>Direct requests on Conventions Nos 155, 161, 182</i></p> <p><b>Observation on submission</b></p>
<b>Argentina</b>	<p><b>Observations on Conventions Nos 68, 87, 88, 95, 111, 138, 169, 182</b></p> <p><i>Direct requests on Conventions Nos 9, 13, 45, 96, 100, 111, 139, 159, 182, 184</i></p> <p><i>Response received to a direct request on Convention No. 150</i></p> <p><i>Direct request on submission</i></p>
<b>Armenia</b>	<p><b>Observation on Convention No. 81</b></p> <p><i>Direct requests on Conventions Nos 14, 29, 81, 87, 105, 138, 150, 160, 173, 174, 176, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Australia</b>	<p><b>Observations on Conventions Nos 42, 81, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 81, 100, 111, 150, 155, 160, 182</i></p>
Norfolk Island	<p><i>Direct requests on Conventions Nos 100, 160</i></p>
<b>Austria</b>	<p><b>Observations on Conventions Nos 81, 122, 138</b></p> <p><i>Direct requests on Conventions Nos 160, 176, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Azerbaijan</b>	<p><b>Observations on Conventions Nos 29, 100, 111, 119, 138</b></p> <p><i>Direct requests on Conventions Nos 13, 16, 29, 45, 69, 81, 100, 111, 122, 129, 148, 160, 182, 185</i></p> <p><b>Observation on submission</b></p>
<b>Bahamas</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 105</b></p> <p><i>Direct requests on Conventions Nos 14, 22, 26, 81, 88, 100, 111, 138, 147, 182</i></p> <p><b>Observation on submission</b></p>
<b>Bahrain</b>	<p><b>Observation on Convention No. 182</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 105, 159, 182</i></p> <p><b>Observation on submission</b></p>
<b>Bangladesh</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 100, 111, 182</b></p> <p><i>Direct requests on Conventions Nos 16, 45, 96, 111, 182</i></p> <p><b>Observation on submission</b></p>

<b>Barbados</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 98, 108, 115, 135</b></p> <p><i>Direct requests on Conventions Nos 22, 63, 98, 105, 111, 138, 147, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Belarus</b>	<p><b>Observations on Conventions Nos 87, 98, 122</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 138, 150, 160, 182</i></p>
<b>Belgium</b>	<p><b>Observations on Conventions Nos 87, 138</b></p> <p><i>Direct requests on Conventions Nos 62, 100, 111, 115, 122, 147, 148, 162, 174, 180, 181, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Belize</b>	<p><i>Direct requests on Conventions Nos 138, 156, 182</i></p> <p><b>Observation on submission</b></p>
<b>Benin</b>	<p><b>Observations on Conventions Nos 29, 105, 143, 150</b></p> <p><i>Direct requests on Conventions Nos 13, 29, 81, 100, 105, 111, 138, 143, 144, 150, 160, 182</i></p>
<b>Plurinational State of Bolivia</b>	<p><b>Observations on Conventions Nos 81, 129</b></p> <p><i>Direct requests on Conventions Nos 45, 96, 117, 120, 124, 156, 160</i></p> <p><b>Observation on submission</b></p>
<b>Bosnia and Herzegovina</b>	<p><b>Observation on Convention No. 81</b></p> <p><i>Direct requests on Conventions Nos 13, 32, 45, 81, 102, 119, 121, 129, 136, 138, 139, 148, 155, 161, 162, 182</i></p> <p><b>Observation on submission</b></p>
<b>Botswana</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 98, 151</b></p> <p><i>Direct requests on Conventions Nos 29, 100, 105, 138, 176, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Brazil</b>	<p><b>Observations on Conventions Nos 81, 140, 155, 161, 167, 169, 176</b></p> <p><i>Direct requests on Conventions Nos 16, 22, 45, 92, 108, 119, 133, 134, 146, 147, 163, 164, 166, 176, 178</i></p> <p><i>Response received to a direct request on Convention No. 120</i></p> <p><b>Observation on submission</b></p>
<b>Brunei Darussalam</b>	<p><i>General direct request</i></p> <p><i>Direct request on submission</i></p>
<b>Bulgaria</b>	<p><b>Observations on Conventions Nos 87, 98, 120, 182</b></p> <p><i>Direct requests on Conventions Nos 22, 29, 45, 68, 69, 73, 105, 108, 146, 147, 163, 164, 166, 178, 179, 180, 181, 182</i></p>
<b>Burkina Faso</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 98, 100, 129, 161, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 87, 100, 105, 111, 138, 144, 150, 159, 170, 182</i></p>
<b>Burundi</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 62, 81, 87, 98, 100, 111, 138, 144</b></p> <p><i>Direct requests on Conventions Nos 14, 52, 87, 89, 100, 101, 105, 111, 135, 138</i></p> <p><i>Direct request on submission</i></p>
<b>Cambodia</b>	<p><b>Observations on Conventions Nos 87, 98, 122</b></p> <p><i>Direct requests on Conventions Nos 13, 87, 98, 100, 111, 138, 150, 182</i></p> <p><b>Observation on submission</b></p>
<b>Cameroon</b>	<p><b>Observations on Conventions Nos 29, 81, 138, 143, 162, 182</b></p> <p><i>Direct requests on Conventions Nos 13, 29, 45, 143, 182</i></p>
<b>Canada</b>	<p><b>Observations on Conventions Nos 100, 111, 162</b></p> <p><i>Direct requests on Conventions Nos 88, 100, 111, 160, 162, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Cape Verde</b>	<p><b>Observations on Conventions Nos 19, 81, 98</b></p> <p><i>Direct requests on Conventions Nos 19, 29, 87, 155, 182</i></p> <p><b>Observation on submission</b></p>

<b>Central African Republic</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 13, 29, 62, 81, 105, 119, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 19, 29, 88, 105, 120, 122, 131, 142, 155, 158, 182</i></p> <p><b>Observation on submission</b></p>
<b>Chad</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 81, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 138, 182</i></p>
<b>Chile</b>	<p><b>Observations on Conventions Nos 22, 35, 37, 100, 111, 122, 161, 169</b></p> <p><i>Direct requests on Conventions Nos 9, 13, 16, 63, 100, 111, 138, 161, 162, 169, 182</i></p> <p><b>Observation on submission</b></p>
<b>China</b>	<p><b>Observations on Conventions Nos 23, 100, 122, 138, 150, 155, 167, 170, 182</b></p> <p><i>Direct requests on Conventions Nos 16, 22, 23, 45, 100, 138, 150, 155, 159, 167, 170, 182</i></p>
<b>Hong Kong Special Administrative Region</b>	<p><b>Observations on Conventions Nos 81, 150</b></p> <p><i>Direct requests on Conventions Nos 81, 105, 115, 122, 148, 160</i></p> <p><i>Response received to a direct request on Convention No. 138</i></p>
<b>Macau Special Administrative Region</b>	<p><b>Observations on Conventions Nos 138, 150</b></p> <p><i>Direct requests on Conventions Nos 22, 23, 29, 69, 73, 81, 88, 92, 100, 105, 108, 111, 122, 144, 155, 182</i></p>
<b>Colombia</b>	<p><b>Observations on Conventions Nos 13, 81, 129, 136, 138, 161, 162, 169, 170, 182</b></p> <p><i>Direct requests on Conventions Nos 2, 13, 22, 29, 88, 129, 159, 160, 161, 170, 182</i></p> <p><b>Observation on submission</b></p>
<b>Comoros</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 99, 100</b></p> <p><i>Direct requests on Conventions Nos 12, 13, 29, 100, 105, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Congo</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 29, 81, 87, 95, 144, 150, 152, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 89, 98, 100, 105, 111, 138, 149, 182</i></p> <p><b>Observation on submission</b></p>
<b>Costa Rica</b>	<p><b>Observations on Conventions Nos 1, 81, 94, 95, 129, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 14, 96, 106, 147, 150, 160, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Côte d'Ivoire</b>	<p><b>Observations on Conventions Nos 13, 81, 96, 111, 129, 136, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 45, 105, 111, 133, 136, 138, 159, 182</i></p> <p><b>Observation on submission</b></p>
<b>Croatia</b>	<p><b>Observations on Conventions Nos 87, 98, 111, 138, 162</b></p> <p><i>Direct requests on Conventions Nos 13, 22, 23, 45, 69, 73, 87, 92, 100, 111, 119, 122, 138, 182</i></p> <p><i>Response received to a direct request on Convention No. 136</i></p> <p><b>Observation on submission</b></p>
<b>Cuba</b>	<p><b>Observations on Conventions Nos 81, 155</b></p> <p><i>Direct requests on Conventions Nos 13, 45, 63, 81, 108, 138, 187</i></p>
<b>Cyprus</b>	<p><b>Observations on Conventions Nos 88, 100</b></p> <p><i>Direct requests on Conventions Nos 45, 100, 111, 119, 138, 147, 150, 155, 159, 160, 162, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Czech Republic</b>	<p><b>Observations on Conventions Nos 98, 115, 132, 144, 161, 176</b></p> <p><i>Direct requests on Conventions Nos 1, 14, 87, 105, 108, 132, 138, 139, 148, 155, 161, 167, 171, 176, 182, 187</i></p> <p><i>Response received to direct requests on Conventions Nos. 13, 120</i></p>
<b>Democratic Republic of the Congo</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 62, 81, 87, 94, 98, 100, 111, 117, 119, 121, 144, 150, 158, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 87, 88, 98, 100, 105, 111, 135, 138, 150, 182</i></p> <p><b>Observation on submission</b></p>

<b>Denmark</b>	<p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 27, 29, 100, 111, 115, 122, 138, 139, 147, 148, 150, 155, 160, 162, 167, 169, 180, 182</i></p> <p><i>Response received to a direct request on Convention No. 120</i></p>
<b>Greenland</b>	<p><i>Direct requests on Conventions Nos 16, 122</i></p>
<b>Djibouti</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 19, 26, 81, 87, 94, 95, 98, 100, 115, 120</b></p> <p><i>Direct requests on Conventions Nos 9, 16, 23, 29, 38, 63, 73, 87, 88, 96, 100, 101, 105, 106, 111, 122, 138, 144, 182</i></p> <p><b>Observation on submission</b></p>
<b>Dominica</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 29, 81, 138</b></p> <p><i>Direct requests on Conventions Nos 16, 19, 26, 29, 95, 182</i></p> <p><b>Observation on submission</b></p>
<b>Dominican Republic</b>	<p><b>Observations on Conventions Nos 100, 111, 122, 138, 167, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 88, 100, 105, 111, 119, 138, 150, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Ecuador</b>	<p><b>Observations on Conventions Nos 81, 115, 128, 130, 131, 136, 138, 139, 148, 152, 162, 182</b></p> <p><i>Direct requests on Conventions Nos 45, 81, 88, 119, 122, 128, 130, 144, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Egypt</b>	<p><b>Observations on Conventions Nos 9, 29, 87, 98, 100, 105, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 2, 29, 45, 62, 63, 68, 87, 88, 96, 100, 105, 111, 115, 129, 139, 147, 148, 150, 159, 166, 182</i></p>
<b>El Salvador</b>	<p><b>Observations on Conventions Nos 81, 111, 129</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 122, 150</i></p> <p><i>Response received to a direct request on Convention No. 160</i></p> <p><b>Observation on submission</b></p>
<b>Equatorial Guinea</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 1, 30, 87, 98</b></p> <p><i>Direct requests on Conventions Nos 29, 30, 103, 105, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Eritrea</b>	<p><b>Observations on Conventions Nos 98, 138</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 100, 105, 111</i></p> <p><i>Direct request on submission</i></p>
<b>Estonia</b>	<p><i>Direct requests on Conventions Nos 2, 13, 100, 111, 122, 129, 138, 174, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Ethiopia</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 111, 138, 155, 181</b></p> <p><i>Direct requests on Conventions Nos 29, 88, 100, 105, 156, 158, 159, 181, 182</i></p> <p><b>Observation on submission</b></p>
<b>Fiji</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 100, 111</b></p> <p><i>Direct requests on Conventions Nos 45, 100, 105, 111, 138, 155, 159, 169, 172, 182</i></p> <p><b>Observation on submission</b></p>
<b>Finland</b>	<p><b>Observations on Conventions Nos 100, 115, 155, 167, 187</b></p> <p><i>Direct requests on Conventions Nos 13, 100, 111, 119, 120, 122, 136, 139, 148, 160, 161, 162, 176, 178, 182, 184, 187</i></p>
<b>France</b>	<p><b>General observation</b></p> <p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 88, 96, 97, 106, 111, 115, 122, 129, 137, 148, 149</b></p> <p><i>Direct requests on Conventions Nos 23, 62, 63, 69, 81, 97, 100, 106, 111, 127, 136, 139, 148, 149, 163, 164, 166, 178, 179, 180, 182</i></p> <p><i>Response received to a direct request on Convention No. 27</i></p>

<b>French Polynesia</b>	<b>Observation on Convention No. 115</b> <i>Direct requests on Conventions Nos 63, 82, 89, 100, 111, 122, 144, 149</i> <i>Response received to direct requests on Conventions Nos. 13, 120</i> <i>Direct request on Convention No. 111</i>
<b>French Southern and Antarctic Territories New Caledonia</b>	<i>Direct requests on Conventions Nos 9, 58, 63, 81, 89, 95, 100, 111, 122, 129, 144, 147, 149</i> <i>Response received to direct requests on Conventions Nos. 13, 98</i>
<b>Gabon</b>	<b>Observations on Conventions Nos 81, 182</b> <i>Direct requests on Conventions Nos 29, 45, 81, 96, 105, 150, 182</i> <i>Response received to a direct request on Convention No. 154</i> <b>Observation on submission</b>
<b>Gambia</b>	<i>General direct request</i> <b>Observation on Convention No. 111</b> <i>Direct requests on Conventions Nos 29, 100, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Georgia</b>	<b>Observations on Conventions Nos 52, 138</b> <i>Direct requests on Conventions Nos 29, 88, 105, 138, 181, 182</i> <b>Observation on submission</b>
<b>Germany</b>	<b>Observations on Conventions Nos 88, 122, 129</b> <i>Direct requests on Conventions Nos 100, 111, 115, 138, 139, 147, 148, 159, 160, 161, 162, 166, 170, 176, 180, 182</i>
<b>Ghana</b>	<b>Observations on Conventions Nos 81, 96, 105, 119, 150</b> <i>Direct requests on Conventions Nos 22, 23, 45, 81, 92, 105, 108, 115, 120, 147, 182</i> <b>Observation on submission</b>
<b>Greece</b>	<b>Observations on Conventions Nos 81, 87, 95, 98, 100, 102, 111, 122, 138, 150, 154, 156</b> <i>Direct requests on Conventions Nos 45, 88, 115, 136, 160, 182</i>
<b>Grenada</b>	<i>General direct request</i> <b>Observation on Convention No. 144</b> <i>Direct requests on Conventions Nos 81, 105, 138, 182</i> <i>Direct request on submission</i>
<b>Guatemala</b>	<b>Observations on Conventions Nos 13, 81, 87, 122, 127, 129, 160, 162</b> <i>Direct requests on Conventions Nos 45, 88, 96, 117, 159, 160, 161</i> <i>Response received to a direct request on Convention No. 120</i>
<b>Guinea</b>	<b>General observation</b> <b>Observations on Conventions Nos 26, 81, 87, 94, 98, 111, 115, 117, 118, 119, 120, 121, 122, 134, 136, 139, 140, 142, 144, 148, 149, 152, 159</b> <i>Direct requests on Conventions Nos 3, 13, 16, 29, 62, 81, 89, 90, 95, 100, 105, 111, 113, 118, 132, 133, 138, 143, 150, 156, 182</i> <b>Observation on submission</b>
<b>Guinea-Bissau</b>	<b>General observation</b> <b>Observations on Conventions Nos 18, 19, 69, 98</b> <i>Direct requests on Conventions Nos 12, 14, 17, 29, 45, 73, 81, 88, 89, 92, 100, 105, 106, 108, 111</i> <b>Observation on submission</b>
<b>Guyana</b>	<b>General observation</b> <b>Observations on Conventions Nos 29, 42, 87, 98, 100, 111, 129, 137, 140, 142, 144</b> <i>Direct requests on Conventions Nos 2, 19, 45, 81, 97, 100, 111, 115, 136, 138, 139, 149, 150, 166, 172, 175, 182</i> <i>Direct request on submission</i>
<b>Haiti</b>	<i>General direct request</i> <b>Observations on Conventions Nos 29, 81, 182</b> <i>Direct requests on Conventions Nos 45, 182</i> <b>Observation on submission</b>
<b>Honduras</b>	<b>Observations on Conventions Nos 81, 122</b> <i>Direct requests on Conventions Nos 45, 62</i> <i>Direct request on submission</i>

<b>Hungary</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 24, 29, 81, 98</b></p> <p><i>Direct requests on Conventions Nos 81, 100, 105, 111, 115, 122, 127, 129, 136, 138, 139, 148, 155, 161, 167, 181, 182</i></p>
<b>Iceland</b>	<p><i>Direct requests on Conventions Nos 2, 100, 108, 111, 138, 139, 147, 155, 182</i></p>
<b>India</b>	<p><b>Observations on Conventions Nos 81, 115, 122</b></p> <p><i>Direct requests on Conventions Nos 45, 81, 136, 160, 174</i></p>
<b>Indonesia</b>	<p><b>Observations on Conventions Nos 100, 111, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 45, 88, 100, 111, 120, 182, 185</i></p>
<b>Islamic Republic of Iran</b>	<p><b>Observations on Conventions Nos 95, 111, 122</b></p> <p><i>Direct requests on Conventions Nos 14, 19, 29, 100, 106, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Iraq</b>	<p><i>Direct requests on Conventions Nos 111, 122, 138, 167, 182</i></p> <p><b>Observation on submission</b></p>
<b>Ireland</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 23, 111, 122, 144</b></p> <p><i>Direct requests on Conventions Nos 14, 22, 29, 62, 68, 69, 73, 96, 100, 108, 111, 132, 138, 139, 147, 155, 159, 160, 172, 176, 177, 178, 179, 180, 182</i></p> <p><b>Observation on submission</b></p>
<b>Israel</b>	<p><b>Observation on Convention No. 111</b></p> <p><i>Direct requests on Conventions Nos 96, 100, 105, 111, 122, 138, 182</i></p> <p><i>Response received to a direct request on Convention No. 150</i></p>
<b>Italy</b>	<p><b>Observations on Conventions Nos 92, 122, 127, 133, 139, 150</b></p> <p><i>Direct requests on Conventions Nos 13, 16, 68, 100, 111, 138, 146, 160, 164, 182</i></p>
<b>Jamaica</b>	<p><b>Observations on Conventions Nos 29, 81, 100, 105, 149, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 100, 138, 150, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Japan</b>	<p><b>Observations on Conventions Nos 29, 81, 88, 100, 122, 159, 162</b></p> <p><i>Direct requests on Conventions Nos 45, 115, 120, 121, 182</i></p> <p><i>Response received to a direct request on Convention No. 138</i></p>
<b>Jordan</b>	<p><b>Observations on Conventions Nos 81, 100, 111, 119, 122, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 100, 105, 111, 120, 147, 150, 159, 182, 185</i></p> <p><i>Direct request on submission</i></p>
<b>Kazakhstan</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 98, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 81, 88, 100, 122, 129, 138, 144, 155, 182</i></p> <p><b>Observation on submission</b></p>
<b>Kenya</b>	<p><b>Observations on Conventions Nos 29, 98, 105, 129, 144</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 137, 146</i></p> <p><b>Observation on submission</b></p>
<b>Kiribati</b>	<p><b>Observations on Conventions Nos 87, 98, 105</b></p> <p><i>Direct requests on Conventions Nos 29, 105</i></p> <p><b>Observation on submission</b></p>
<b>Republic of Korea</b>	<p><b>Observations on Conventions Nos 81, 155, 187</b></p> <p><i>Direct requests on Conventions Nos 73, 144, 155, 159, 185, 187</i></p>
<b>Kuwait</b>	<p><b>Observations on Conventions Nos 29, 87, 98, 105, 111, 144</b></p> <p><i>Direct requests on Conventions Nos 29, 52, 81, 87, 98, 159</i></p> <p><b>Observation on submission</b></p>

<b>Kyrgyzstan</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 122, 148, 149, 182</b>  <i>Direct requests on Conventions Nos 11, 14, 29, 52, 77, 78, 79, 81, 87, 95, 98, 100, 105, 115, 119, 120, 124, 138, 150, 154, 159, 160, 182</i>  <b>Observation on submission</b></p>
<b>Lao People's Democratic Republic</b>	<p><i>General direct request</i>  <i>Direct request on Convention No. 4</i>  <b>Observation on submission</b>  <i>Direct request on submission</i></p>
<b>Latvia</b>	<p><b>Observations on Conventions Nos 81, 98, 111, 129, 150</b>  <i>Direct requests on Conventions Nos 9, 16, 81, 87, 100, 105, 108, 111, 133, 147, 180</i></p>
<b>Lebanon</b>	<p><b>Observations on Conventions Nos 29, 81</b>  <i>Direct requests on Conventions Nos 29, 81, 88, 98, 115, 120, 122, 127, 159, 176</i></p>
<b>Lesotho</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 138, 182</b>  <i>Direct requests on Conventions Nos 26, 29, 87, 100, 105, 111, 144, 155, 167, 182</i>  <i>Response received to a direct request on Convention No. 45</i>  <i>Direct request on submission</i></p>
<b>Liberia</b>	<p><b>General observation</b>  <i>General direct request</i>  <b>Observations on Conventions Nos 29, 87, 98, 112, 113, 114, 144</b>  <i>Direct requests on Conventions Nos 22, 29, 92, 111, 133, 147, 150, 182</i>  <b>Observation on submission</b></p>
<b>Libyan Arab Jamahiriya</b>	<p><b>Observations on Conventions Nos 81, 98, 102, 105</b>  <i>Direct requests on Conventions Nos 87, 88, 102, 122, 182</i>  <b>Observation on submission</b></p>
<b>Lithuania</b>	<p><b>Observation on Convention No. 87</b>  <i>Direct requests on Conventions Nos 73, 81, 87, 98, 108, 147, 159</i></p>
<b>Luxembourg</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 68, 81</b>  <i>Direct requests on Conventions Nos 13, 29, 69, 73, 81, 87, 92, 96, 108, 111, 129, 133, 146, 150, 155, 166, 178, 180</i></p>
<b>Madagascar</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 129, 144</b>  <i>Direct requests on Conventions Nos 29, 81, 88, 105, 129, 159</i>  <b>Observation on submission</b></p>
<b>Malawi</b>	<p><b>Observations on Conventions Nos 87, 98, 100, 111, 138, 144</b>  <i>Direct requests on Conventions Nos 29, 45, 87, 100, 105, 111, 150, 158, 159, 182</i></p>
<b>Malaysia</b>	<p><b>Observations on Conventions Nos 81, 98</b>  <i>Direct requests on Conventions Nos 81, 144</i>  <i>Direct request on submission</i>  <b>Observation on Convention No. 19</b>  <b>Observation on Convention No. 97</b>  <i>Direct request on Convention No. 97</i></p>
Peninsular Malaysia Sabah	
<b>Mali</b>	<p><b>Observation on Convention No. 87</b>  <i>Direct requests on Conventions Nos 87, 100, 111, 144, 150, 159</i>  <b>Observation on submission</b></p>
<b>Malta</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 119</b>  <i>Direct requests on Conventions Nos 22, 81, 96, 100, 111, 127, 129, 136, 147, 148, 180</i>  <i>Response received to direct requests on Conventions Nos. 32, 182</i>  <i>Direct request on submission</i></p>
<b>Mauritania</b>	<p><b>Observations on Conventions Nos 81, 87, 102</b>  <i>Direct requests on Conventions Nos 81, 87, 96, 98, 122</i>  <i>Direct request on submission</i></p>



<b>Mauritius</b>	<b>Observations on Conventions Nos 17, 19, 87, 98, 108</b> <i>Direct requests on Conventions Nos 87, 150, 159</i>
<b>Mexico</b>	<b>Observations on Conventions Nos 22, 87, 102, 111, 155, 161, 166, 167, 170, 182</b> <i>Direct requests on Conventions Nos 9, 16, 108, 111, 155, 161, 182</i> <i>Direct request on submission</i>
<b>Republic of Moldova</b>	<i>General direct request</i> <b>Observations on Conventions Nos 81, 87, 98, 111</b> <i>Direct requests on Conventions Nos 81, 92, 100, 111, 133, 144, 150, 152, 185</i> <i>Direct request on submission</i>
<b>Mongolia</b>	<b>Observation on Convention No. 155</b> <i>Direct requests on Conventions Nos 29, 87, 103, 105, 111, 144, 155, 159</i> <b>Observation on submission</b>
<b>Montenegro</b>	<i>Direct requests on Conventions Nos 16, 29, 69, 73, 87, 91, 92, 98, 100, 105, 111, 144, 158</i> <i>Direct request on submission</i>
<b>Morocco</b>	<b>Observations on Conventions Nos 29, 81, 129, 182</b> <i>Direct requests on Conventions Nos 22, 29, 98, 105, 146, 178, 179, 180, 182</i>
<b>Mozambique</b>	<b>Observations on Conventions Nos 81, 87, 100</b> <i>Direct requests on Conventions Nos 98, 100, 105, 111, 144</i> <b>Observation on submission</b>
<b>Myanmar</b>	<i>General direct request</i> <b>Observations on Conventions Nos 29, 87</b>
<b>Namibia</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 29, 87, 98, 105, 144</i>
<b>Nepal</b>	<b>Observations on Conventions Nos 98, 144</b> <i>Direct requests on Conventions Nos 105, 169</i> <b>Observation on submission</b>
<b>Netherlands</b>	<b>Observations on Conventions Nos 22, 81, 94, 98, 121, 162</b> <i>Direct requests on Conventions Nos 9, 29, 69, 73, 81, 92, 129, 133, 147, 152, 159, 180</i> <i>Response received to a direct request on Convention No. 154</i> <i>Direct request on submission</i>
Aruba	<i>General direct request</i> <b>Observations on Conventions Nos 87, 94</b> <i>Direct requests on Conventions Nos 29, 81, 87, 88, 105, 122, 144</i>
Netherlands Antilles	<i>Direct requests on Conventions Nos 9, 22, 23, 58, 69, 87</i>
<b>New Zealand</b>	<b>Observations on Conventions Nos 14, 22, 122</b> <i>Direct requests on Conventions Nos 9, 68, 69, 92, 133, 134</i>
Tokelau	<i>Direct requests on Conventions Nos 100, 111</i>
<b>Nicaragua</b>	<b>Observations on Conventions Nos 87, 98, 144</b> <i>Direct requests on Conventions Nos 9, 16, 22, 23, 87</i>
<b>Niger</b>	<b>Observations on Conventions Nos 29, 81, 87, 95, 138, 148, 182</b> <i>Direct requests on Conventions Nos 29, 95, 98, 105, 158, 182</i> <b>Observation on submission</b>
<b>Nigeria</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 88, 98, 105, 111, 123, 134, 144</b> <i>Direct requests on Conventions Nos 19, 29, 32, 45, 94, 97, 100, 111, 133, 138, 155, 178, 179, 182</i> <i>Direct request on submission</i>
<b>Norway</b>	<b>Observations on Conventions Nos 22, 81, 129, 144, 155, 170</b> <i>Direct requests on Conventions Nos 68, 69, 73, 87, 92, 100, 108, 111, 115, 129, 133, 139, 147, 148, 159, 162, 163, 164, 167, 176, 178, 179, 180, 182</i> <i>Response received to direct requests on Conventions Nos. 13, 120</i>

<b>Oman</b>	<i>Direct requests on Conventions Nos 29, 105</i> <i>Direct request on submission</i>
<b>Pakistan</b>	<i>General direct request</i> <b>Observations on Conventions Nos 11, 29, 81, 87, 96, 98, 100, 105, 111, 138, 144, 159, 182</b> <i>Direct requests on Conventions Nos 16, 22, 27, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Panama</b>	<b>Observations on Conventions Nos 16, 32, 87, 98, 100, 111, 138, 182</b> <i>Direct requests on Conventions Nos 9, 22, 23, 68, 69, 92, 100, 108, 111, 113, 114, 125, 126, 181, 182</i> <i>Direct request on submission</i>
<b>Papua New Guinea</b>	<b>Observations on Conventions Nos 98, 105, 182</b> <i>Direct requests on Conventions Nos 22, 29, 45, 87, 100, 111, 122, 138, 182</i> <b>Observation on submission</b>
<b>Paraguay</b>	<b>Observations on Conventions Nos 87, 98, 182</b> <i>Direct requests on Conventions Nos 100, 138, 182</i> <b>Observation on submission</b>
<b>Peru</b>	<b>Observations on Conventions Nos 29, 44, 81, 87, 98, 100, 111, 139, 144, 159, 169</b> <i>Direct requests on Conventions Nos 9, 22, 23, 29, 58, 68, 69, 73, 87, 105, 111, 139, 147, 169, 178</i> <b>Observation on submission</b>
<b>Philippines</b>	<b>Observations on Conventions Nos 87, 94, 98, 100, 105, 111, 144</b> <i>Direct requests on Conventions Nos 23, 29, 87, 88, 100, 105, 111, 159, 179</i>
<b>Poland</b>	<b>Observations on Conventions Nos 87, 98, 108</b> <i>Direct requests on Conventions Nos 9, 16, 22, 23, 29, 68, 69, 73, 91, 92, 100, 111, 133, 134, 147, 178</i>
<b>Portugal</b>	<b>Observations on Conventions Nos 81, 98, 117, 129, 144, 155, 162, 176</b> <i>Direct requests on Conventions Nos 22, 23, 68, 69, 73, 81, 87, 92, 108, 139, 147, 148, 155, 162, 181</i> <i>Direct request on submission</i>
<b>Qatar</b>	<b>Observation on Convention No. 81</b> <i>Direct request on Convention No. 105</i> <i>Direct request on submission</i>
<b>Romania</b>	<b>Observations on Conventions Nos 87, 98, 122</b> <i>Direct requests on Conventions Nos 9, 16, 22, 29, 68, 87, 92, 105, 108, 133, 134, 144, 147, 150, 163, 166, 168, 180</i>
<b>Russian Federation</b>	<b>Observations on Conventions Nos 29, 87, 98, 111, 122, 126, 142, 179</b> <i>Direct requests on Conventions Nos 13, 29, 69, 87, 105, 111, 115, 119, 120, 148, 149, 152, 155, 159, 162</i> <b>Observation on submission</b>
<b>Rwanda</b>	<i>General direct request</i> <b>Observations on Conventions Nos 62, 81, 87, 94, 98, 100, 111</b> <i>Direct requests on Conventions Nos 29, 81, 87, 100, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Saint Kitts and Nevis</b>	<b>Observations on Conventions Nos 98, 144</b> <i>Direct requests on Conventions Nos 29, 87, 100, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Saint Lucia</b>	<b>Observations on Conventions Nos 87, 100</b> <i>Direct requests on Conventions Nos 87, 97, 98, 100, 108, 111, 158</i> <b>Observation on submission</b>
<b>Saint Vincent and the Grenadines</b>	<b>Observation on Convention No. 16</b> <i>Direct requests on Conventions Nos 87, 98, 100, 108, 111, 180</i> <b>Observation on submission</b>

<b>Samoa</b>	<p><i>General direct request</i></p> <p><i>Direct request on submission</i></p>
<b>San Marino</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 103</b></p> <p><i>Direct requests on Conventions Nos 88, 100, 103, 111, 143, 148, 150, 160, 182</i></p>
<b>Sao Tome and Principe</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 18, 81, 87, 88, 98, 144</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 100, 105, 106, 111, 135, 138, 151, 154, 155, 159, 182</i></p> <p><b>Observation on submission</b></p>
<b>Saudi Arabia</b>	<p><b>Observations on Conventions Nos 81, 100</b></p> <p><i>Direct requests on Conventions Nos 81, 100, 174</i></p>
<b>Senegal</b>	<p><b>Observations on Conventions Nos 81, 87, 96, 122, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 13, 98, 117, 120, 138, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Serbia</b>	<p><b>Observations on Conventions Nos 81, 87, 98</b></p> <p><i>Direct requests on Conventions Nos 9, 16, 22, 23, 69, 73, 87, 92, 105, 129, 144, 159</i></p> <p><i>Response received to a direct request on Convention No. 102</i></p>
<b>Seychelles</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 2, 22, 81, 100, 105, 108, 111, 138, 144, 148, 150, 151, 152, 155, 182</i></p> <p><b>Observation on submission</b></p>
<b>Sierra Leone</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 17, 29, 59, 95, 98, 101, 111, 119, 125, 144</b></p> <p><i>Direct requests on Conventions Nos 26, 45, 81, 87, 88, 94, 100, 105, 126</i></p> <p><b>Observation on submission</b></p>
<b>Singapore</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 94</b></p> <p><i>Direct requests on Conventions Nos 22, 81, 98, 100</i></p>
<b>Slovakia</b>	<p><b>Observations on Conventions Nos 100, 115, 144</b></p> <p><i>Direct requests on Conventions Nos 88, 98, 100, 102, 105, 115, 120, 122, 128, 130, 139, 148, 161, 163, 164, 167, 176, 182, 184</i></p> <p><i>Response received to direct requests on Conventions Nos. 29, 136, 155</i></p>
<b>Slovenia</b>	<p><b>Observations on Conventions Nos 98, 121</b></p> <p><i>Direct requests on Conventions Nos 9, 22, 23, 69, 73, 81, 91, 92, 100, 108, 129, 147, 154, 180</i></p>
<b>Solomon Islands</b>	<p><b>General observation</b></p> <p><i>Direct requests on Conventions Nos 14, 16, 26, 29, 45, 81, 94, 95</i></p> <p><b>Observation on submission</b></p>
<b>Somalia</b>	<p><b>General observation</b></p> <p><b>Observation on submission</b></p>
<b>South Africa</b>	<p><b>Observation on Convention No. 87</b></p> <p><i>Direct requests on Conventions Nos 2, 26, 29, 89, 98, 105</i></p>
<b>Spain</b>	<p><b>Observations on Conventions Nos 81, 87, 88, 92, 122, 148, 155</b></p> <p><i>Direct requests on Conventions Nos 9, 22, 68, 69, 100, 108, 129, 136, 146, 147, 148, 155, 162, 163, 166, 169, 176</i></p> <p><i>Response received to a direct request on Convention No. 151</i></p> <p><i>Direct request on submission</i></p>
<b>Sri Lanka</b>	<p><b>Observations on Conventions Nos 29, 81, 87, 98, 103, 108</b></p> <p><i>Direct requests on Conventions Nos 16, 29, 58, 105, 108, 135, 144</i></p> <p><i>Direct request on submission</i></p>

<b>Sudan</b>	<b>Observations on Conventions Nos 29, 81, 98, 111</b> <i>Direct requests on Conventions Nos 2, 100, 111</i> <b>Observation on submission</b>
<b>Suriname</b>	<b>Observation on Convention No. 81</b> <i>Direct requests on Conventions Nos 81, 87, 98, 122, 144, 150</i> <b>Observation on submission</b>
<b>Swaziland</b>	<b>Observations on Conventions Nos 81, 87, 98</b> <i>Direct requests on Conventions Nos 81, 87, 144</i> <i>Direct request on submission</i>
<b>Sweden</b>	<b>Observations on Conventions Nos 87, 98, 180</b> <i>Direct requests on Conventions Nos 108, 134, 178</i> <i>Direct request on submission</i>
<b>Switzerland</b>	<b>Observation on Convention No. 98</b> <i>Direct request on Convention No. 87</i>
<b>Syrian Arab Republic</b>	<b>Observations on Conventions Nos 87, 98, 100, 111</b> <i>Direct requests on Conventions Nos 88, 96, 100, 111, 144</i> <b>Observation on submission</b>
<b>Tajikistan</b>	<b>Observation on Convention No. 111</b> <i>Direct requests on Conventions Nos 16, 23, 32, 45, 69, 73, 87, 92, 98, 100, 108, 111, 113, 119, 122, 133, 142, 143, 147, 149, 159, 160, 182</i> <b>Observation on submission</b>
<b>United Republic of Tanzania</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 16, 144, 170</i>
Tanganyika	<b>Observation on Convention No. 108</b> <i>Direct requests on Conventions Nos 45, 88, 101</i>
Zanzibar	<i>Direct requests on Conventions Nos 58, 97</i>
<b>Thailand</b>	<b>General observation</b> <b>Observations on Conventions Nos 88, 105, 122, 182</b> <i>Direct requests on Conventions Nos 105, 138, 182</i>
<b>The former Yugoslav Republic of Macedonia</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 9, 12, 13, 22, 23, 69, 81, 87, 97, 100, 129, 131, 136, 138, 143, 144, 148, 155, 156, 158, 161, 162, 182</i> <b>Observation on submission</b>
<b>Togo</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 98, 138, 144, 182</b> <i>Direct requests on Conventions Nos 13, 26, 29, 87, 98, 100, 105, 111, 143, 182</i> <b>Observation on submission</b>
<b>Trinidad and Tobago</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 98, 100, 105, 111</b> <i>Direct requests on Conventions Nos 29, 81, 100, 111, 138, 144, 150, 159, 182</i> <i>Direct request on submission</i>
<b>Tunisia</b>	<b>Observations on Conventions Nos 81, 87, 107, 111</b> <i>Direct requests on Conventions Nos 23, 29, 81, 88, 98, 100, 111, 122, 150, 159</i>
<b>Turkey</b>	<b>Observations on Conventions Nos 29, 81, 87, 98, 100, 105, 111, 119, 138, 155, 158, 161, 182</b> <i>Direct requests on Conventions Nos 29, 45, 68, 69, 88, 92, 100, 108, 111, 115, 122, 127, 133, 134, 144, 146, 151, 159, 164, 166, 182</i> <i>Response received to a direct request on Convention No. 135</i>
<b>Turkmenistan</b>	<i>Direct requests on Conventions Nos 87, 100, 111</i> <b>Observation on submission</b>

<b>Uganda</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 26, 29, 81, 98, 105, 122, 144, 158, 182</b>  <i>Direct requests on Conventions Nos 11, 29, 87, 94, 95, 100, 105, 111, 123, 124, 138, 143, 154, 159, 162, 182</i></p> <p><b>Observation on submission</b></p>
<b>Ukraine</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 87, 95, 98, 100, 111, 122, 129, 131</b>  <i>Direct requests on Conventions Nos 16, 23, 47, 69, 73, 81, 100, 106, 108, 119, 129, 144, 147, 150, 159</i>  <i>Response received to a direct request on Convention No. 135</i></p> <p><b>Observation on submission</b></p>
<b>United Arab Emirates</b>	<p><b>Observation on Convention No. 81</b>  <i>Direct requests on Conventions Nos 29, 105</i></p>
<b>United Kingdom</b>	<p><b>Observations on Conventions Nos 87, 98, 144, 187</b>  <i>Direct requests on Conventions Nos 23, 87, 92, 100, 108, 111, 133, 147, 150, 160, 178, 180, 187</i></p>
Anguilla	<p><b>Observation on Convention No. 85</b>  <i>Direct requests on Conventions Nos 87, 98</i></p>
Bermuda	<p><b>General observation</b>  <b>Observations on Conventions Nos 98, 147</b>  <i>Direct requests on Conventions Nos 23, 82, 147</i></p>
British Virgin Islands	<p><b>General observation</b>  <b>Observations on Conventions Nos 85, 94</b>  <i>Direct requests on Conventions Nos 26, 59, 82, 97</i></p>
Falkland Islands (Malvinas)	<p><b>General observation</b>  <i>Direct requests on Conventions Nos 45, 59, 82</i></p>
Gibraltar	<p><b>Observation on Convention No. 100</b>  <i>Direct requests on Conventions Nos 45, 59, 81, 133, 160</i></p>
Guernsey	<p><i>Direct requests on Conventions Nos 108, 122</i></p>
Isle of Man	<p><i>Direct requests on Conventions Nos 22, 23, 68, 69, 92, 108, 133, 147, 150, 180</i></p>
Jersey	<p><b>Observations on Conventions Nos 87, 98</b>  <i>Direct requests on Conventions Nos 22, 69, 108</i></p>
Montserrat	<p><i>Direct requests on Conventions Nos 82, 85</i></p>
St Helena	<p><b>General observation</b>  <i>Direct requests on Conventions Nos 17, 29, 108</i></p>
<b>United States</b>	<p><b>Observation on Convention No. 144</b>  <i>Direct requests on Conventions Nos 58, 147</i></p>
American Samoa	<p><i>Direct requests on Conventions Nos 58, 147</i></p>
Guam	<p><i>Direct requests on Conventions Nos 58, 147</i></p>
Puerto Rico	<p><i>Direct requests on Conventions Nos 58, 147</i></p>
United States Virgin Islands	<p><i>Direct requests on Conventions Nos 58, 147</i></p>
<b>Uruguay</b>	<p><b>Observations on Conventions Nos 98, 128, 144, 181, 184</b>  <i>Direct requests on Conventions Nos 9, 22, 63, 73, 87, 108, 128, 184</i>  <i>Direct request on submission</i></p>
<b>Uzbekistan</b>	<p><b>Observations on Conventions Nos 98, 105, 182</b>  <i>Direct requests on Conventions Nos 29, 100, 105, 111, 154, 182</i>  <i>Response received to a direct request on Convention No. 135</i></p> <p><b>Observation on submission</b></p>
<b>Vanuatu</b>	<p><b>General observation</b>  <i>Direct request on submission</i></p>
<b>Bolivarian Republic of Venezuela</b>	<p><b>Observations on Conventions Nos 22, 26, 81, 87, 98, 138, 144, 182</b>  <i>Direct request on Convention No. 182</i></p> <p><b>Observation on submission</b>  <i>Direct request on submission</i></p>

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<b>Viet Nam</b>	<i>Direct requests on Conventions Nos 29, 81, 144</i> <i>Direct request on submission</i>
<b>Yemen</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 98, 111</b> <i>Direct requests on Conventions Nos 16, 100, 111, 122, 144, 159</i> <i>Direct request on submission</i>
<b>Zambia</b>	<i>General direct request</i> <b>Observations on Conventions Nos 29, 87, 95, 98, 103, 122</b> <i>Direct requests on Conventions Nos 29, 100, 111, 117, 136, 144, 148, 150, 159, 176</i> <b>Observation on submission</b>
<b>Zimbabwe</b>	<b>Observations on Conventions Nos 81, 87, 98, 99, 105, 129, 138, 140, 144, 155, 159, 170, 182</b> <i>Direct requests on Conventions Nos 29, 81, 100, 105, 111, 150, 155, 161, 162, 174, 176, 182</i>

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